SENATE—*Thursday, October 3, 1974*

The Senate met at 11 a.m. and was called to order by Hon. WALTER D. HUDDLESTON, a Senator from the State of Kentucky.

PRAYER

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

Our God and Father, who has placed us here and given us work to do, give us grace to do it as in Thy sight. Deliver us from the coldness of heart which keeps us from Thee, from spiritual blindness which obscures Thee, from all insensitiveness and skepticism which will not trust Thy love. Under Thy guidance and by Thy power, make us allies in high and in humble tasks, that we may give our best service to the Nation. Keep us so close to Thee that Thy providence may be fulfilled in the movement of history. Grant us peace in our hearts and peace among men and nations.

Through Him who is Prince of Peace and Lord of Lords. 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 second assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 3, 1974.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. WALTER D. HUDDLESTON, a Senator from the State of Kentucky, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

Mr. HUDDLESTON 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 Wednesday, October 2, 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 a nomination on the Executive Calendar.

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

The ACTING PRESIDENT pro tempore. The nomination will be stated.

DEPARTMENT OF THE INTERIOR

The second assistant legislative clerk read the nomination of Lynn Adams Greenwalt, of Maryland, to be Director of the U.S. Fish and Wildlife Service.

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

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

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

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

ORDER FOR CONSIDERATION ON TUESDAY OF H.R. 12993, BROADCAST LICENSE RENEWAL ACT

Mr. MANSFIELD. Mr. President, it is the intention of the leadership to call up, on Tuesday next, Calendar No. 1133, H.R. 12993, a bill to amend the Communications Act of 1934 to provide that licenses for the operation of broadcasting stations may be issued and renewed for terms of 4 years, and for other purposes. After consultation all around, I should like to make a unanimous-consent request in relation to this measure.

I ask unanimous consent that there be a limitation of 1 hour on the bill, one-half hour on amendments, 15 minutes on amendments to amendments, motions or appeals; that rule XII be waived; and that the regular procedure be followed.

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

CONSIDERATION OF CERTAIN ITEMS ON THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the calendar, beginning with Calendar No. 1137, up to and including Calendar No. 1147.

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

DR. LAWRENCE CHIN BONG CHAN

The bill (S. 1534) for the relief of Dr. Lawrence Chin Bong Chan, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, Doctor Lawrence Chin Bong Chan shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by one number, during the current fiscal year or the fiscal year next following, the total number of immigrant visas and conditional entries which are made available to natives of the country of the alien's birth under paragraphs (1) through (8) of section 203(a) of the Immigration and Nationality Act.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93–1196), 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 grant the status of permanent residence in the United States to Dr. Lawrence Chin Bong Chan. The bill provides for the payment of the required visa fee and for an appropriate visa number deduction.

JOSE ISMARNARDO REYES-MORELOS

The Senate proceeded to consider the bill (S. 3397) for the relief of Jose Ismarnardo Reyes-Morelos, which had been reported from the Committee on the Judiciary with an amendment on page 1, in line 8, after "States", strike out "and the provisions of section 245(c) of the Act shall be inapplicable in this case", so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, section 204(c) of the Act, relating to the number of petitions which may be approved in behalf of children, shall be inapplicable in the case of a petition filed in behalf of Jose Ismarnardo Reyes-Morelos by Mr. and Mrs. Lawrence A. Lemmen, citizens of the United States: *Provided,* That the brothers or sisters of the beneficiary shall not by virtue of such relationship be accorded any right, privilege, or status under the Immigration and Nationality Act.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93–1198), explaining the purposes of the measure.

There being no objection, the excerpt

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was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to facilitate the entry of the beneficiary into the United States as an immediate relative of the U.S. citizen parents by whom he is to be adopted. The purpose of the amendment is to delete reference to section 245(c), since the beneficiary is not in the United States.

The amendment was agreed to.

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

LUCILLE DE SAINT ANDRE

The bill (H.R. 6477) for the relief of Lucille de Saint Andre was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93–1197), 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 waive the excluding provision of existing law relating to one who has been arrested for a crime involving moral turpitude in behalf of Lucille de Saint Andre.

INCREASE IN DUES FOR INTERNATIONAL CRIMINAL POLICE ORGANIZATION

The Senate proceeded to consider the bill (H.R. 14597) to increase the limit on dues for U.S. membership in the International Criminal Police Organization, which had been reported from the Committee on the Judiciary with an amendment on page 1, at the end of line 9, strike out "$20,000" and insert in lieu thereof "$30,000".

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93–1199), 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 AS AMENDED

The purpose of H.R. 14597, as amended, is to substitute $120,000 for the present statutory ceiling of $80,000 on the total annual dues authorized to be paid for membership of the United States in the International Criminal Police Organization (Interpol) and to authorize payment of $30,000 to meet the unpaid balance of dues for calendar year 1973, which has not been paid because of the existing $80,000 ceiling.

United States participation dates from 1938 when the Department of Justice, through the Federal Bureau of Investigation, acted as the first U.S. representative to Interpol. An informal affiliation of the Department of the Treasury with that organization commenced in 1951 and in 1958 that department was officially designated as the U.S. representative to Interpol.

Interpol maintains a secretariat in Paris staffed by experts in various fields and its primary purpose is to coordinate international law enforcement efforts by compiling and exchanging with member governments information concerning international criminal operations. In order to fulfill this objective, Interpol has established a complex communications network consisting of an international radio network as well as telex and cable facilities. In addition to collecting, exchanging and retrieving information on international criminal activities. Interpol organizes seminars and schedules meetings to consider law enforcement issues of international concern. It also conducts research projects and publishes articles on topics ranging from new criminal investigative techniques to police ethics.

The Treasury Department has advised the Committee that the United States receives valuable information and services from Interpol especially in the area of combating international narcotics traffic, smuggling, counterfeiting and forgery. Furthermore, as a result of the increasing awareness by the member countries of the services provided by Interpol, the case load of that organization is increasing. Due to the rising international crime rate and the increasing ease and availability of international travel, greater reliance is being placed upon Interpol's role in combating such crime. For example, the Washington office of Interpol processed a total of 3,918 foreign and domestic requests for investigative information in Fiscal Year 1973. Of this number, 1,098 were requests from U.S. enforcement agencies for foreign investigations—representing an 800% increase over similar U.S. requests that were made in Fiscal Year 1969.

The Committee is convinced that U.S. membership in Interpol is of substantial value.

The present statutory limitation of $80,000 per year falls short of the current dues assessment of $91,251 applicable to the United States as a so-called "Group I member" (other Group I members which each pay approximately 6% of the total dues of the organization are France, Germany, the United Kingdom, and Italy). As a result, the United States will be unable to pay its 1974 dues and a portion of the calendar year 1973 dues remains unpaid. In addition, the Committee has been advised that the General Assembly of Interpol is expected to vote an additional 21% increase in September of this year which will raise the U.S. dollar equivalent in dues to approximately $117,420 at the current exchange rate.

This bill is designed to raise the limit on annual dues from $80,000 to $120,000, thereby enabling the United States to pay its proportionate share of annual dues and to provide a small cushion to account for future fluctuations in the money market.

In accordance with a committee amendment, H.R. 14597 also authorizes the amount of $30,000 for the payment of unpaid calendar year 1973 dues. As passed by the House of Representatives, the authorization for payment of back dues in the subject bill was limited to $20,000. However, it was necessary to amend the House-passed measure in this one respect in order to correct a clerical error of the Department of the Treasury (see Executive Communication of August 1, 1974, *infra.*).

The 1973 deficiency amounts to $22,382.52 in current American dollars. The $30,000 ceiling will allow the United States to become current in its dues and provide the flexibility to meet the almost daily fluctuation in international exchange markets.

CONCLUSION

Although sound arguments can be advanced for providing a somewhat broader margin for dues payments to Interpol, the Committee recommends the prompt enactment of the subject bill as reported in order to obviate the possibility of further embarrassment for failure to promptly meet a relatively minor financial responsibility.

REFERRAL OF BILL TO THE COURT OF CLAIMS

The resolution (S. Res. 203) to refer the bill (S. 2698) for the relief of John J. Egan to the Chief Commissioner of the Court of Claims was considered and agreed to, as follows:

Resolved, That S. 2698, entitled "A bill for the relief of John J. Egan", together with all accompanying papers, is hereby referred to the Chief Commissioner of the Court of Claims pursuant to sections 1492 and 2509 of title 28, United States Code, for further proceedings in accordance with applicable law.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93–1201), explaining the purposes of the measure.

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

PURPOSE

The purpose of the resolution is to refer the bill, S. 2698, entitled "A bill for the relief of John J. Egan", now pending in the Senate together with all the accompanying papers, to the Chief Commissioner of the U.S. Court of Claims; and the Chief Commissioner shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report thereon to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States or a gratuity and the amount, if any legally or equitably due from the United States to the claimant.

STATEMENT

The facts of the referred bill, S. 2698, as contained in the Department of the Navy report, are as follows:

"After Mr. John J. Egan had served on active duty in the grade of first lieutenant in the Marine Corps Reserve, he was relieved from active duty on October 28, 1943, and discharged on April 11, 1944, as not physically qualified for active duty by reason of permanent psychosis.

"On April 7, 1948, pursuant to a decision by the Board for Correction of Naval Records, the Commandant of the Marine Corps issued orders cancelling Mr. Egan's discharge of April 11, 1944, and substituting an honorable discharge without reference to physical disqualification.

"Mr. Egan subsequently filed suit in the Court of Claims in regard to his service. The Court concluded that (1) his promotion to captain effective March 1, 1943, had been improperly withheld; (2) his October 28, 1943, release from active duty was illegal; (3) his discharge did not validly occur until April 7, 1948; and (4) he continued in an active duty status until the date of his valid discharge. Consequently, he was awarded a judgment for the difference between the pay and allowances of a captain and those of a first lieutenant from March 1, 1943, to October 28, 1943, and for the pay and allowances of a captain from October 29, 1943, to April 7, 1948, less net civilian earnings for this period. See *Egan* v. *United States*, 141 Ct. Cl. 1. It appears that Mr. Egan is now seeking additional payments for the period after April 7,

1948, a period not covered by the Court of Claims decision. "The Department of the Navy has been advised that S. Res. 203 has been introduced to effect the referral of S. 2698 to the Court of Claims for a finding of facts and the formulation of conclusions sufficient to inform the Congress whether Mr. Egan's claim is in law or in equity or is a gratuity, and of the amount, if any, which is legally or equitably due him.

"In view of the foregoing, the Department of the Navy has no objection to the enactment of S. Res. 203. The Department of the Navy recommends that no action be taken on S. 2698 pending receipt by the Committee of a report from the chief commissioner of the Court of Claims."

The Committee, in the consideration of this legislation, believes that there are sufficient facts set forth to justify the finding that the resolution should be referred to the Chief Commissioner of the Court of Claims to report thereon, giving his findings of fact and conclusions sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, and the amount, if any, which might be due from the United States. Accordingly, the Committee recommends favorable consideration of Senate Resolution 203, without amendment.

Favorable action on this resolution would be in accordance with established precedents.

DONALD L. TYNDALL, ET AL.

The bill (H.R. 3532) for the relief of Donald L. Tyndall, Bruce Edward Tyndall, Kimberly Fay Tyndall, and Lisa Michele Tyndall was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93-1202), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to pay the persons named below the amounts shown in full settlement of their claims against the United States for medical and hospital expenses, funeral expenses, personal injuries, death, property damage and other damage resulting from an automobile accident involving a U.S. Marine Corps truck driven by a member of the Marine Corps which occurred in North Carolina near the town of Beulaville on October 5, 1967.

Donald L. Tyndall, $24,000.00

Bruce Edward Tyndall, a minor, $12,000.00.

Kimberly Fay Tyndall, a minor, $2,000.00.

Lisa Michele Tyndall, a minor, $12,000.00.

The bill would provide the payments in behalf of the minors would be paid to the Clerk of the Superior Court of Duplin County, North Carolina to be administered under North Carolina general statute 7A-111 entitled "Receipts and Disbursements of Insurance and other Moneys of Minors and Incapacitated Adults".

STATEMENT

The facts of this case, as contained in House Report 93-1005, are as follows:

"On the evening of October 5, 1967, Donald L. Tyndall, then 24 years of age, with his wife Elizabeth—24, and their three small children, was driving a 1957 Chevrolet on Highway 24 in Duplin County, North Carolina near the town of Beulaville. While apparently attempting to pass another vehicle, Private First Class Robert H. Braathe, U.S. Marine Corps, drove a Government owned six wheel stake truck head on into the Tyndall vehicle. The Tyndall car was totally destroyed, Mrs. Elizabeth M. Tyndall was killed and Donald L. Tyndall and their children all suffered injuries. Private First Class Braathe was also killed in the collision. Subsequent investigation indicated that the Marine driver was intoxicated and had taken the truck without permission. As a result of the foregoing circumstances and a subsequent court proceeding, it was held that the Marine driver was not acting within the scope of his employment. The action was brought in a United States district court under the Federal Tort Claims Act but the determination as to lack of official duty status was the basis of a dismissal. The decision was affirmed on appeal.

"A subcommittee hearing on the bill H.R. 3532 was held on October 31, 1973. In addition to the testimony presented at the hearing, the subcommittee requested and received from the Department of the Navy copies of depositions taken in 1968 of witnesses in the civil proceedings in the Federal Court, *Donald L. Tyndall* v. *United States;* statements obtained from witnesses in the course of the investigation by Marine authorities of the accident; and a copy of the Marine Corps investigation report of the accident. On the basis of its consideration of all the facts of the matter, this committee has concluded that this is an appropriate case for legislative relief in the reduced amounts recommended in the committee amendment. As outlined in its report on the bill, the Department of the Navy has opposed relief. However, the Navy position as amplified by its testimony at the hearing, is primarily based upon the right of the claimants to recover under the law applicable to tort proceedings or the laws governing administrative relief administered by the Department. The bill H.R. 3532 embodies an appeal to Congress for the redress of grievances. The Navy report itself recognizes that legislative action in cases such as these is based upon a congressional recognition of a moral obligation. Of course, this authority extends beyond the departmental authority referred to by the Navy which is provided in section 2737 of Title 10 of the United States Code.

"The power of Congress to recognize moral or equitable claims has been exercised since the early days of the Republic. The Supreme Court in the case of *United States* v. *Realty Co.* 163 U.S. 427 (1896) commented on this power of Congress. The court pointed out that the language of Article 1, section 8 of the power to lay and collect taxes "to pay the the Constitution provides the Congress with the power to lay and collect taxes "to pay the debts of the United States." It held that these debts are not limited to those evidenced by some written obligation or those of a strictly legal character. Specifically, the Court stated that:

" 'The nation, speaking broadly, owes a 'debt' to an individual when his claim grows out of general principles of right and justice; when, in other words it is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law. The power of Congress extends at least as far as the recognition and payment of claims against the government which are thus founded * * *'

"The committee finds that the facts and circumstances of this case do involve particular equities which provides the basis for relief.

"The facts developed by the investigation establish that this accident was caused by a Marine who was operating the truck. The same investigation made it clear that the acts and omissions of other Marine Corps personnel in failing to take appropriate action, created a set of circumstances that enabled an intoxicated member of the Marine Corps to gain access to the keys of a truck after having been observed to have been under the influence of alcohol, appropriate that truck and drive it through a guarded gate of the Marine facility onto a public highway. He then caused an accident, the consequences of which have been borne by the Tyndall family without compensation.

"The Navy investigation found that the Marine who took the truck was observed by a number of persons on the Marine base who subsequently testified that he was under the influence of alcohol when they saw him prior to his taking the truck. The investigation also stated that he was observed in the barracks with alcoholic beverage contrary to existing regulations prior to taking the vehicle. The investigation further found that the vehicle taken by the Marine was not turned in to the Motor Pool on the day it was taken in accordance with existing orders and verbal instructions. It was also found that the keys were not removed from the vehicle in accordance with applicable Marine regulations.

"The committee feels that the most significant omission in this case was the failure on the part of Marine personnel to properly control the vehicle and, in particular, the failure to stop the vehicle from leaving the base. The investigation found that the Marine Private left the Marine Corps Air facility at about 10:00 P.M. on October 5, 1967 through or adjacent to the main gate with the Government vehicle and that the gate sentries either failed to notice the truck or failed to attempt to stop it. The findings in the investigation included a statement that the physical area of the base is such that it prohibits the exit of any wheeled vehicles from the facility except in an area within 40 yards of the main gate.

"The committee points out that had proper diligence been exercised concerning the matters outlined above, this tragic accident could have been averted. The committee amendment provides for payments based on general principles of equity and justice. It should also be noted that, as provided in the committee amendment to the bill, the payments in behalf of the minor children would be made to the Clerk of the Superior Court of Duplin County, North Carolina, to be administered under North Carolina general statute 7A-111 entitled "Receipts and Disbursements of Insurance and other Moneys of Minor and Incapacitated Adults." The committee has been advised that this North Carolina statute would make it possible for the court to supervise the administration and disbursement of the funds paid in behalf of the minor children as provided in the amended bill. It is concluded that the facts of the matter justify the payments provided for in the committee amendment and it is recommended that the bill be considered favorably."

In agreement with the views of the House of Representatives this Committee recommends that the bill be favorably considered.

THOMAS C. JOHNSON

The bill (H.R. 6202) for the relief of Thomas C. Johnson was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93-1203), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to relieve Thomas C. Johnson of liability in the sum of $2,382.94 for overpayments of active duty pay as a member of the United

States Army from July 5, 1967, to July 4, 1969, which liability arose as the result of an administrative error in crediting him with service in the Advanced Reserve Officers' Training Corps program.

AMENDMENT OF THE MILITARY PERSONNEL AND CIVILIAN EMPLOYEES' CLAIMS ACT OF 1964

The bill (H.R. 7135) to amend the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, with respect to the settlement of claims against the United States by members of the uniformed services and civilian officers and employees for damages to, or loss of, personal property incident to their service, was considered, ordered, to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93-1204), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to amend section 3 of the Military Personnel and Civilian Employees' Claims Act of 1964, to increase the limit on payments for losses of personal property incident to federal service from $10,000 to $15,000.

STATEMENT

The facts of this case, as contained in House Report number 93-1320, are as follows:

"The Department of State and the Department of the Air Force in their reports to the Committee stated they were in favor of the amendment. A favorable report was also received from the Civil Service Commission.

"The bill H.R. 7135, as amended by the Committee, would amend the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243) to increase from $10,000 to $15,000 the amount of a claim for damage to or loss of personal property incident to service which may be paid by—

"(a) The Secretary of a military department, when the claim is made by a member of the uniformed services under the jurisdiction of, or by a civilian officer or employee of, that department;

"(b) the Secretary of Transportation, when the claim is made by a member of the uniformed services under the jurisdiction of, or by a civilian officer or an employee of, the Coast Guard when it is not operating as a part of the Navy; or

"(c) the Secretary of Defense, when the claim is by a civilian employee of the Department of Defense not under the jurisdiction of a military department or the Coast Guard.

"H.R. 7135, as amended by the Committee, would, in addition, increase to $15,000 the amount of such a claim which may be paid by the head of any other agency, when a claim is made by a member of the uniformed services under the jurisdiction of that agency or by a civilian officer or employee of that agency. Some of these other agencies now may pay a claim for no more than $10,000; some only a claim for no more than $6,500.

"As to the Military Departments and the Coast Guard, the present limitation on the payment of personnel claims incident to service was established in 1965. The elements of the Department of Defense and the Coast Guard have demonstrated their ability to administer this Act, as well as the other laws authorizing payment of claims against the United States, with fairness to the claimants and concern for the protection of the public funds. Since the $10,000 limitation was established, the cost of repairing or replacing property of the type whose loss or damage may give rise to claims within the terms and purpose of this Act has increased significantly. The increase is due primarily to the general inflationary trend which has raised the price of virtually all household items. One method of calculating increased costs of such goods is the consumer price index. According to the U.S. Bureau of Labor Statistics, the consumer price index in May 1964 was 92.7, and in May 1973 it was 131.5, an increase of 41.9 percent. If this increase is correlated with the Congressional intent in 1964, when the $10,000 limit was established, at least $14,190 would be required to provide the same protection today A $15,000 limit appears to be more in line with the current value of such property or its repair. An increase in the limit to $15,000 would thus serve to maintain the level of protection that was previously considered appropriate for this property by Congress as a matter of fairness, support for morale, of Government personnel. As to the Armed Forces such protection would be a further inducement for entering and continuing membership in the Armed Forces.

COST

"The additional cost to the Government is not possible of exact computation since it would relate only to those cases of large loss which would exceed the present limits. An indication of the potential for such losses can be gained from the report of the Department of the Air Force which details the experience of the military services as to claims which exceeded the $10,000 limit in the period since July 1, 1969. In that period the Army had 53 such claims, the Navy 42 and the Air Force 53. Of course such an analysis would not result in the full increase being paid in every case for only the amounts proven and recognized under applicable regulations and standards as losses subject to compensation could be paid.

"The bill as originally introduced provided for a measure of retroactive effect in that it would have permitted a reconsideration of previously adjudicated claims to the extent of providing authority for the payment of proven losses which were not paid because of the previous limit for payments. It would have permitted payments up to the new limit upon application within one year of the effective date of a new law. However the committee has recommended an amendment striking this provision. It is felt that the new limit should have prospective force only.

"In summary, therefore, it can be said that Section 3 of the Act now provides for a limit of $10,000 as to the military departments and the Coast Guard in subsection (a), and in subsection (b) there is a limit of $6,500 for civilian departments or agencies, but (as a result of a 1972 amendment) the Peace Corps, the Overseas Private Investment Corporation, State Department, AID, USIA and the U.S. Arms Control and Disarmament Agency have $10,000 limit.

"The amended bill would provide a uniform limit of $15,000 for all agencies and departments.

"It is recommended that the amended bill be considered favorably."

In agreement with the views of the House of Representatives, this Committee recommends that the bill be favorably considered.

LEAH MAUREEN ANDERSON

The Senate proceeded to consider the bill (S. 3718) for the relief of Leah Maureen Anderson which had been reported from the Committee on the Judiciary with an amendment to strike out all after the enacting clause and insert the following:

That notwithstanding any statute of limitations, lapse of time, bars of laches, or any proceeding, jurisdiction is hereby conferred upon the Secretary of the Army and the United States District Court for the District of North Carolina to receive and adjudicate under the provisions of sections 2401 and 2672 of title 28, United States Code, any claim upon behalf of Leah Maureen Anderson of Hopkinsville, Kentucky, for compensation for personal injury, and expenses and damages sustained by her due to a collision on March 26, 1971, between a Department of the Army vehicle and the automobile in which she was a passenger on the Fort Bragg Military Reservation, North Carolina, such collision having occurred as the result of the alleged negligent operation of the truck by United States Army personnel while acting within the alleged scope of their Federal employment. Nothing in this Act shall be construed as an inference of liability on the part of the United States.

SEC. 2. Such claim shall be filed with the Secretary of the Army, or his designee, no later than six months after the date of the enactment of this Act. In the event that an offer of settlement, if any, if not accepted on behalf of the aforesaid Leah Maureen Anderson, suit may be filed in the Federal district court no later than six months after the Secretary of the Army, or his designee, has mailed a notice of final disposition of the claim to the representatives of Leah Maureen Anderson.

The amendment was agreed to.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93-1205), 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 AMENDMENT

The purpose of the amendment is to enable the claimant to pursue her administrative remedies before instituting action in Federal District Court under the provisions of the Federal Tort Claims Act.

PURPOSE OF THE BILL AS AMENDED

The purpose of the bill, as amended, is to waive the statute of limitations which presently bars any action under the Federal Tort Claims Act which Maureen Anderson may file against the U.S. Government for compensation for injuries she sustained as the result of a collision on March 26, 1971, between a Department of the Army vehicle and the automobile in which she was a passenger on the Fort Bragg Military Reservation, N.C.

STATEMENT

The records of the Department of the Army disclose the following facts.

On March 26, 1971, at 1445 hours Sgt. Walter H. Richardson, age 31, was operating a passenger vehicle at Fort Bragg, N.C., in a southerly direction on Sixth Street. He had two passengers, Mrs. Maria L. Davidson, age 37, and Leah M. Anderson (the present claimant), who was then 5 years of age. Pvt. Johnnie O. Evans, age 18, was operating an Army vehicle and was proceeding in an easterly direction on C Street. Neither street has stop or warning signs. Sergeant Richardson was on the dominant road. At the time of the accident it was raining and the roads were wet. When Richardson was in the intersection of Sixth and C Streets, Private Evans' vehicle struck the right side of Sergeant Richardson's car.

The impact demolished Sergeant Richardson's car and injured all of the occupants. Mrs. Davidson was dead at the time of arrival at Womack Army Hospital, Fort Bragg. Leah Anderson was found to have suffered a compound depressed skull fracture with dural and cortical lacerations, severe head injuries, and fracture of the right femur. Sergeant Richardson was treated for minor injuries and released.

A claim was filed on a timely basis on behalf of the deceased Mrs. Davidson and an award was made by the Chief, Army Claims Service. However, Leah Anderson was represented by a different attorney and he did not file a claim until February 19, 1974. On April 2, 1974, the Chief of the U.S. Army Claims Service denied the claim because it was cognizable only under the provisions of the Federal Tort Claims Act (28 U.S.C. 2671–2680) and the 2-year statute of limitations prescribed by the act had expired [28 U.S.C. 2401(b)].

The Department of the Army is not opposed to the bill.

Although the Department is generally opposed to the waiver of the statute of limitations, it would be equitable to make an exception in this bill for two reasons. The Government will not be prejudiced in adjudicating the claim because the accident was thoroughly investigated and the facts were fully developed in the companion claim involving the deceased Mrs. Davidson. The second compelling reason for the waiver is based upon the fact that the delay of an attorney in filing a claim should not be attributed to a 5-year-old under the tragic circumstances of this case.

It is the opinion of the Department, however, that the bill should be amended to provide that upon the waiver of the statute of limitations, the claims should be adjudicated under the remaining provisions of the Federal Tort Claims Act. This procedure would enable the claimant to seek administrative relief and if she is successful, time consuming and costly litigation would be avoided.

FARM LABOR CONTRACTOR REGISTRATION ACT AMENDMENTS OF 1974

The Senate proceeded to consider the bill (H.R. 13342) to amend the Farm Labor Contractor Registration Act of 1963 by extending its coverage and effectuating its enforcement, which had been reported from the Committee on Labor and Public Welfare with an amendment to strike out all after the enacting clause and insert:

That (a) this Act may be cited as the "Farm Labor Contractor Registration Act Amendments of 1974".

(b) Unless the context otherwise requires, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision the reference shall be considered to be made to a section or other provision of the Farm Labor Contractor Registration Act of 1963 (7 U.S.C. 2041).

SEC. 2. Section 3 of the Act is amended by striking out the word "interstate" each place where it appears therein. The first sentence of section 3(b) is amended to delete therefrom the phrase "ten or more" and the phrase "at any one time in any calendar year". The second sentence of section 3(b) is amended to read as follows: "Such term shall not include—

"(1) any nonprofit charitable organization, public or nonprofit private educational institution, or similar organization;

"(2) any farmer, processor, canner, ginner, packing shed operator, or nurseryman (A) who personally engages in any such activity for the purpose of supplying migrant workers solely for his own operation; or (B) who indirectly engages in any such activity through an agent or by contract, where he first determines that the person so engaged possesses a certificate from the Secretary that is in full force and effect at the time he contracts with such person so engaged;

"(3) any full-time or regular employee of any entity referred to in (1) or (2) above who engages in such activity solely for his employer on no more than an incidental basis;

"(4) any person who engages in such activity (A) solely within a 25-mile intrastate radius of his permanent place of residence, and (B) for not more than 13 weeks per year;

"(5) any person who engages in any such activity for the purpose of obtaining migrant workers of any foreign nation for employment in the United States if the employment is subject to—

"(A) an agreement between the United States and such foreign nation; or

"(B) an arrangement with the government of any foriegn nation under which written contracts for the employment of such workers are provided for and the enforcement thereof is provided for through the United States by an instrumentality of such foreign nation;

"(6) any full-time or regular employee of any person holding a certificate of registration under this Act; or

"(7) any common carrier or any full-time regular employee thereof engaged solely in the transportation of migrant workers."

SEC. 3. Section 3(d) of the Act is amended to read as follows:

"(d) The term 'agricultural employment' means employment in any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), or section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.".

SEC. 4. Section 5(a) is amended by—

(1) striking the word "and" after paragraph (2),

(2) striking the period at the end of paragraph (3) and inserting in lieu thereof a semicolon, and

(3) adding the following new paragraphs:

"(4) has filed proof of posting a bond in such manner and in such amount (but not less than the sum of $5,000), as the Secretary may from time to time prescribe, which bond shall provide security against liability in such farm labor contractor to any third person, including any employer, employee, or person recruited, solicited, or transported by him while engaging in activities as a farm labor contractor;

"(5) has filed, under such terms as the Secretary may prescribe, a statement identifying each vehicle to be used by the applicant for the transportation of migrant workers, and all real property to be used by the applicant for the housing of migrant workers, during the period for which registration is sought, along with proof that every such vehicle and all such housing currently conform to all applicable Federal and State safety and health standards to the extent that such vehicle and all such housing are under the applicant's ownership or control; and

"(6) has consented to designation of the Secretary as the agent available to accept service of summons in any action against such farm labor contractor at any and all times during which such farm labor contractor has departed from the jurisdiction in which such action is commenced or otherwise has become unavailable to accept service, under such terms and conditions as are set by the court in which such action has been commenced.".

SEC. 5. (a) Section 5(a)(2) is amended by striking the second sentence and inserting in lieu thereof the following: "In no event shall the amount of such insurance be less than the amounts currently applicable to vehicles used in the transportation of passengers in interstate commerce under the Interstate Commerce Act and regulations promulgated pursuant thereto, or amounts offering comparable protection to persons or property from damages arising out of the applicant's ownership of, operation of, or his causing to be operated any vehicle as provided herewith;".

SEC. 6. Section 5(b) is amended by—

(1) striking "or" at the end of paragraph (9);

(2) striking the period at the end of paragraph 10 and inserting a semicolon in lieu thereof; and

(3) adding after paragraph (10) the following new paragraphs:

"(11) is not in fact the real party in interest in any such application or certificate of registration and that the real party in interest is a person, firm, partnership, association, or corporation who previously has been denied a certificate of registration, has had a certificate of registration suspended or revoked, or who does not presently qualify for a certificate of registration; or

"(12) has used a vehicle for the transportation of migrant workers, or has used real property for the housing of migrant workers, while such vehicle or real property failed to conform to all applicable Federal and State safety and health standards, to the extent of any such vehicle or real property coming within the ownership or control of such farm labor contractor."

(4) adding at the end of paragraph (7) the following: "prostitution or peonage; where the date of the judgment of conviction of any crime as specified herein has been entered within a period of five years preceding the action of the Secretary under this subsection;"

(5) striking all after the words "of" in paragraph 6 and inserting in lieu thereof the following: "any person, who is an alien not lawfully admitted for permanent residence, or who has not been authorized by the Attorney General to accept employment."

SEC. 7. Section 5 is amended by adding at the end thereof the following new subsection:

"(d) Persons issued a certificate of registration under this section shall provide to the Secretary a notice of each and every address change within 10 days after such change. The Secretary shall maintain a public central registry of all persons issued certificates of registration under this section. Persons issued a certificate of registration under this section shall provide to the Secretary documentation required under section 5(a)(5) of the Act applicable to any vehicle which the applicant obtains for use in the transportation of migrant workers and any real property which the applicant obtains or learns will be used for the housing of migrant workers during the period for which the certificate of registration is issued, within ten days after he obtains or learns of the intended use of such vehicle or real property, to the extent that such vehicle or such real property is under the ownership or control of such persons who have been issued certificates of registration.".

SEC. 8. Section 6(a) of the Act is amended by inserting immediately before the semicolon at the end thereof the following: "and shall be denied the facilities and services authorized by the Act of June 6, 1933 (29 U.S.C. 49), upon refusal or failure to exhibit the same;".

SEC. 9. Section 6(b) of the Act is amended

by striking the word "and" before paragraph (5), and by striking the semicolon at the end of paragraph (5) and adding at the end thereof the following: "(6) the period of employment, (7) the existence of a strike or other concerted stoppage, slowdown, or interruption of operations by employees at a place of employment which he knows or would discover in the exercise of reasonable diligence, or which has been so certified by an authorized agency of Federal or State government, and (8) the existence of any arrangements with any owner, proprietor, or agent of any commercial or retail establishment in the area of employment under which he is to receive a commission or any other benefit resulting from any sales provided to such commercial or retail establishment from the migrant workers whom he recruits. The disclosure required under this subsection shall be in writing in a language in which the worker is fluent, and written in a manner understandable by such workers on such forms and under such terms and conditions as the Secretary shall prescribe."

SEC. 10. (a) Section 6 is amended by—

(1) striking "and" after paragraph (d),

(2) striking the period at the end of paragraph (e) and inserting in lieu thereof a semicolon, and

(3) adding at the end thereof the following new paragraphs:

"(f) refrain from recruiting, employing, or utilizing, with knowledge, the services of any person, who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment;

"(g) promptly pay or contribute when due to the individuals entitled thereto all moneys or other things of value entrusted to the farm labor contractor by any farm operator for such purposes; and

"(h) refrain from requiring any worker to purchase any goods solely from such farm labor contractor or any other person."

(b) Section 6(e) of the Act is amended by striking "interstate" each time it appears.

(c) Section 6(e) of the Act is further amended by striking the last sentence and substituting the following: "He shall additionally provide to the person to whom any migrant worker is furnished all information and records required to be kept by such contractor under this subsection, and all information required to be provided to any migrant worker under this subsection. The Secretary may prescribe appropriate forms for the recording of information required by this subsection;"

(d) Section 2(b) of the Act is amended by striking the word "interstate" the second time it appears.

SEC. 11. Section 7 is amended by adding at the end thereof the following: "The Secretary may issue subpenas requiring the attendance and testimony of witnesses or the production of any evidence in connection with such investigations. The Secretary may administer oaths and affirmations, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in this chapter, the provisions of sections 9 and 10 of the Federal Trade Commission Act of September 16, 1914 (15 U.S.C. 49, 50) (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Secretary. The Secretary shall conduct investigations in a manner which protects the confidentiality of any complainant or other party who provides information to the Secretary with respect to which the Secretary commences an investigation. The Secretary shall monitor and investigate activities of farm labor contractors in such manner as is necessary to enforce the provisions of this Act.".

SEC. 12. Section 9 of the Act is amended by inserting the subsection designation "(a)" at the beginning thereof and by striking the period at the end thereof and adding the following: ", sentenced to a prison term not to exceed one year, or both, and, upon conviction for any subsequent violation of this Act, shall be punishable by a fine not to exceed $10,000 or sentenced to a prison term not to exceed three years, or both. The Secretary shall report on enforcement of the provisions of this Act in the annual report of the Secretary required pursuant to section 9 of the Act entitled "An Act to create a Department of Labor", approved March 4, 1913 (37 Stat. 738, 29 U.S.C.). The reporting hereunder shall include, but shall not be limited to, a description of efforts to monitor and investigate the activities of farm labor contractors, the number of persons to whom certificates of registration have been issued, the number of complaints of violations received by the Secretary and their disposition, and the number and nature of any sanctions imposed.

"(b) Any farmer, processor, canner, ginner, packing shed operator, or nurseryman who indirectly engages in activity as a farm labor contractor either through an agent or by contract, and who fails to satisfy the requirements of section 3(b)(2)(B) of this Act shall be liable for any damages arising from the acts or omissions of anyone engaging on his behalf in activities as a farm labor contractor without a certificate of registration as required herein, in any action brought under the Act, regardless of whether the farm labor contractor is an independent contractor or an agent of such person.

"(c)(1) Any person who commits a violation of: (A) the notice or documentation provisions of subsection 5(d); (B) section 6; (C) or section 14 of this Act; or any regulations promulgated thereunder, may be assessed a civil money penalty of not more than $1,000 for each violation. The penalty shall be assessed by the Secretary upon written notice, under the procedures set forth herein.

"(2) In determining the amount of the penalty, the Secretary shall take into account the gravity of the violation, degree of culpability, any history of prior offenses, ability to pay, size of the business entity, effect upon ability to continue in business, and such other matters as justice may require.

"(3) The person assessed shall be afforded an opportunity for agency hearing, upon request made within thirty days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order subject to review only as provided in paragraph (4). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

"(4) Any person against whom an order imposing a civil money penalty has been entered after an agency hearing under this section may obtain review by the United States district court for any district in which he is located or the United States District Court for the District of Columbia by filing a notice of appeal in such court within 30 days from the date of such order, and simultaneousness sending a copy of such notice by registered or certified mail to the Secretary. The Secretary shall promptly certify and file in such court the record upon which the penalty was imposed. The findings of the Secretary shall be set aside if found to be unsupported by substantial evidence as provided by section 706 (2) (E) of title 5.

"(5) If any person fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the agency, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriations of the final order imposing the penalty shall not be subject to review.

"(6) All penalties collected under authority of this section shall be paid into the Treasury of the United States."

(d) Notwithstanding subsection (a) of this section, any farm labor contractor who commits a violation of subsection 6 (f) of the Act or any regulations promulgated thereunder shall upon conviction be fined not to exceed $10,000 or sentenced to a prison term not to exceed three years, or both, if the person committing such violation has failed to obtain a certificate of registration pursuant to this Act or is one whose certificate has been suspended or revoked by the Secretary.

SEC. 13. (a) The Farm Labor Contractor Registration Act of 1963 is amended by redesignating sections 12, 13, and 14 thereof as sections 15, 16, and 17, respectively, and by inserting after sectiton 11 the following:

"CIVIL RELIEF

"SEC. 12. (a) Any person claiming to be aggrieved by the violation of any provision of this Act or any regulation prescribed hereunder may file suit in any district court of the United States having jurisdiction of the parties without respect to the amount in controversy or without regard to citizenship of the parties and without regard to exhaustion of any alternative administrative remedies provided herein.

"(b) Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complianant and may authorize the commencement of the action without the payment of fees, costs, or security. If the court finds that the respondent has violated any provision of this Act or any regulation prescribed hereunder, it may award damages up to and including an amount equal to three times the amount of actual damages, reinstatement or other equitable relief, and a reasonable sum for attorney's fees and court costs to the presenting party. Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

"(c) If upon investigation the Secretary determines that the provisions of this Act have been violated, he may petition any appropriate district court of the United States for temporary or permanent injunctive relief.

"(d) Except as provided in section 518(a) of title 28 relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this chapter but all such litigation shall be subject to the direction and control of the Attorney General.

"PROHIBITED ACTIONS

"SEC. 13. (a) It shall be unlawful for any person to terminate, suspend, demote, transfer, or take adverse action against any migrant worker in retaliation for the exercise of any rights secured under this Act.

"(b) A presumption that an action is retaliatory shall arise from any action described in subsection (a) of this section which occurs within a period of 180 days following an action by a migrant worker which constitutes an exercise of a right secured under this Act.

"(c) Any person who believes that he has been subjected to retaliation as defined in subsection (a) may, within 180 days after such violation occurs, file a complaint with the Secretary alleging such retaliation. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation the Secretary detemines that the provisions of this section have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action, the United States district

courts shall have jurisdiction, for cause shown, to restrain violations of this section and order all appropriate relief including rehiring or reinstatement of the migrant worker to his former position with back pay. Within 90 days after receipt of a complaint filed under this section, the Secretary shall notify the complainant of his determination under this subsection.

"SEC. 14. Any person who is furnished any migrant worker by a farm labor contractor shall maintain all payroll records required to be kept by such person under Federal law, and with respect to migrant workers paid by a farm labor contractor such person shall also obtain from the contractor and maintain records containing the information required to be provided to him by the contractor under section 6(e) of the Act."

SEC. 14. The Act is amended by addition at the end thereof of the following new sections:

"WAIVER OF RIGHTS

"SEC. 18. Any agreement by an employee purporting to waive or to modify his rights hereunder shall be void as contrary to public policy, except a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 19. There are authorized to be appropriated to carry out the purposes of this Act, such sums as may be necessary for the effective enforcement of this Act for the fiscal year ending June 30, 1975, and for each fiscal year thereafter."

"EFFECTIVE DATE

"SEC. 20. Section 5(a)(4) of the Act as amended herein shall become effective on the one hundred and eightieth day following the date of enactment."

SEC. 15. Section 17 of the Act (as redesignated by the Act) is amended by striking "of sections 4, 5, 6, and 8."

SEC. 16 (a) Section 19(d) of the Longshoremen and Harbor Worker's Compensation Act (33 U.S.C. 901) as amended, is further amended by adding after the words "under the Act" the following: "including any amendment or extension thereto,".

(b) Persons appointed by the Secretary of Labor after December 30, 1969, and before September 1, 1974, for the purposes of conducting hearings under title IV of the Act of December 30, 1969, Public Law 91-173), shall for such purposes only, and not for the purposes of subsection (c) of this section and until they vacate their position, be deemed qualified hearing examiners within the meaning of section 19(d) of the Longshoremen and Harbor Worker's Compensation Act.

(c) All positions, within the Department of Labor, for hearing examiners qualified under section 3105 of title 5, United States Code, and appointed by the Secretary for the purposes of conducting hearings in accordance with section 554 of that title with respect to this Act and any law in effect on the date of enactment of this Act, shall be compensated at not less than the rate prescribed for GS-16 under section 5332 of title 5, United States Code. This subsection shall not require any individual who holds such a position at less than a grade GS-16 within the Department of Labor on the date of enactment of this Act and who does not qualify for a grade GS-16 under applicable law to be compensated at the rate prescribed under this subsection, nor shall it affect the eligibility of such persons to continue to exercise the duties of the position which they hold on the date of enactment of this Act, nor does it require such individuals who do not qualify for grade GS-16 to be removed or vacate the positions which they hold on the date of enactment. Notwithstanding any other law, the Secretary, in addition to positions within grades GS-16, GS-17, and GS-18 allotted or assigned to the Department of Labor in accordance with law, is authorized such additional positions within grade G-16 as may be necessary to effectuate the purposes of this subsection and subsection (d) of this section. The Secretary may appoint to such positions only hearing examiners qualified under section 3105 of title 5, United States Code, and employed by the Department of Labor at grade G-15 on the date of enactment of this Act, and who have been appointed for the purposes of conducting hearings in accordance with section 554 of title 5, United States Code, with respect to any law in effect on the date of enactment of this Act.

(d) Notwithstanding any other law, the members of the Benefit Review Board established under the Longshoremen and Harbor Worker's Compensation Act shall be placed in positions not less than grade GS-16.

Mr. WILLIAMS. Mr. President, I rise to voice my strong support of H.R. 13342, as amended by the Committee on Labor and Public Welfare.

Migrant and seasonal farmworkers have long been among the most exploited groups in the American labor force. Despite their hard toil and valuable contribution to our Nation's economy, their lot has historically been characterized by low wages, protracted hours, and horrid working conditions. The families, and particularly the children, of these workers have also suffered from the typical symptoms of chronic poverty being undereducated, ill-fed, poorly housed, and lacking even the most rudimentary health and sanitary facilities. The tragedy is further compounded when it is realized that the victims of this poverty are in fact the working poor, those who offer an honest day's labor, but are denied the full benefits such work ordinarily should provide and which are so desperately needed to provide the most basic necessities of life.

As chairman of the Senate's Subcommittee on Migratory Labor for some 8 years—1961-68—I have witnessed firsthand the hardship and suffering of farmworkers and their families.

During that period of my chairmanship I devoted a considerable effort toward accomplishing a single goal—to arouse a nation's conscience and focus its attention on the plight of those who were at the bottom rung of the country's economic ladder. I, of course, was not alone in this fight to gain social dignity and economic self-sufficiency for the migrant laborer. I was joined by many of my colleagues, some of whom continue with me today in the forefront to achieve these illusive goals.

Many of our efforts in this area have been indeed noteworthy and successful, while others admittedly have been less so.

I wish to point to two such endeavors which have, I believe, achieved a large measure of their purpose. The first is the Migrant Health Act of 1962, and the second is the Elementary and Secondary Education Act Amendments of 1966. In both cases significant Federal resources have been directed to help remedy specific problem areas of migrant farmworkers and their families.

During the early 1960's extensive hearings were held by the Migratory Labor Subcommittee on the emergence and evolution of the farm labor contractor to a position of prominence as the primary supplier of agricultural labor.

Although the specific functions of the farm labor contractor, often called a crew leader or crew pusher, might vary from job to job, his role essentially remains the same—a bridge between the operator and the worker. In many instances, the contractor is not only the recruiter, hirer, and transporter, but acts as the supervisor, foreman, and paymaster as well. In addition, the contractor frequently effectuates control over such things as housing and other items vital to the workers' everyday needs. In the vast majority of cases, the crew leader is the link between not only the worker and the grower, but also acts as an intermediary with the nonfarming community as well. In the latter role, the crew leader functions as a sort of cultural broker, mediating between the worker and the outside, often alien, community.

Because of these factors, the contractor has been permitted to exercise an inordinate amount of leverage over the workplace situation. The contractor's unchallenged bargaining position is clearly one of detriment to both the farmworker and operator.

It is unfortunately an all too common experience for workers to be abused by farm labor contractors. Evidence has also emerged of contractor exploitation of farmers.

In 1963, Congress sought to remedy some of these abuses by enacting the Farm Labor Contractor Registration Act, which I originally introduced.

In essence, that act requires that all contractors or crew leaders be registered with the Secretary of Labor, upon a showing of moral and fiscal responsibility. Registration is subject to denial if an applicant has been convicted of certain crimes, fails to perform contracts with farm operators, or gives false or misleading information to migrant workers concerning the terms of farm employment. The act requires all crew leaders to inform each worker at the time of recruitment of: First, the expected area of employment; second, the crops and operations on which he will be employed; third, the transportation facilities; fourth, the types and cost of housing upon arrival at each place of work; fifth, the wage rates to be paid; and sixth, any charges that the crew leader expects to make for his services.

In addition, the crew leader is required at each place of employment to post the terms and conditions of employment at that particular place. If he manages the housing facilities, he is required to post the terms and conditions of occupancy. If he is the paymaster, he is required to keep payroll records and deduct from the wages all payments required under Federal law. In regard to transportation, the crew leader is required to provide vehicle insurance. Violation of any of the above requirements can result in the revocation of the certificate or in criminal prosecution, with a fine up to $500, or both.

However, recent testimony before the Congress indicated that the act of 1963 has failed to achieve some of its original

objectives. Officials of the U.S. Department of Labor report that of an estimated 6,000 crew leaders operating across State lines, fewer than 2,000 are registered as required by the present law.

The purpose of H.R. 13342 is to remedy the deficiencies of the Farm Labor Contractor Registration Act of 1963. The bill extends the act's coverage, and strengthens its enforcement mechanisms.

H.R. 13342 deletes the act's limitation of coverage by including intrastate as well as interstate transactions, although dealings of a purely local and casual nature continue to be exempted. The bill also adds coverage for employment involving the proceeding of agricultural commodities in an unmanufactured state.

The Secretary of Labor is authorized to issue a certificate of registration to applicants who fully describe their activities, who show proof of having vehicle insurance, and who have not been convicted of certain specified crimes. All registered contractors are required to carry and disclose such certificates of registration at designated times. The bill broadens the information requirement that the farm labor contractor must provide migrant workers with regard to the nature of the worker's prospective employment. All such information must be in writing, in a language in which the worker is fluent, and be in a form prescribed by the Secretary of Labor.

The bill requires proof of posting of a security bond at the time of application; requires farm labor contractors to establish proof that their vehicles and property comply with Federal and State health and safety standards; and establishes amounts of vehicle insurance comparable to amounts applicable to vehicles operating under the Interstate Commerce Act.

H.R. 13342 also places responsibility for payroll recordkeeping on the person to whom workers are furnished by a contractor. However, contractors would still be required to provide migrant workers with specified payroll information.

In addition, H.R. 13342 creates a Federal civil remedy for persons aggrieved by violations of the act. It also empowers the Secretary of Labor to enforce the act through investigations, by the issuance of subpenas, and by the imposition of civil penalties for designated serious violations of the act, subject to administrative and judicial review. The bill raises the maximum criminal penalties, and prohibits discrimination against persons who exercise their rights under the act.

Mr. President, there is one new provision which I deem to be of such importance, that I wish to discuss it in some detail.

The bill redefines the act's existing prohibition on contractors regarding illegal aliens, and establishes a criminal penalty, in addition to the current sanction of registration revocation, for certain violators. Any farm labor contractor who has not registered under the act, or whose registration has been revoked or suspended, will be subject to a criminal penalty of up to a $10,000 fine or a prison sentence of up to 3 years (or both), if such contractor has knowingly engaged the services of an illegal alien. Illegal alien has been defined to mean any person who is an alien not lawfully admitted for permanent residence, or who has not been authorized by the Attorney General to accept employment.

I believe that a criminal penalty is warranted in this limited instance as past experience has indicated that the act's worst and most persistent offenders were generally those who have refused to register.

Illegal aliens have become an increasingly large source of farm labor in this country, and the services of a contractor are often utilized to procure this clandestine workforce. The existing act generally prohibits such activities by making it grounds for revoking or suspending the contractor's registration. However, if this tide of illegal immigration is to be stemmed, stricter enforcement and stronger penalties must be applied against those who violate the act. These additional steps are necessary in light of the adverse effect such importation of illegal aliens has had on the wages and job security of our own citizens, especially in times such as these of high unemployment.

This fact was dramatically underscored during a recent speech—September 18—by the Commissioner of the U.S. Immigration and Naturalization Service, Leonard F. Chapman, Jr. Commissioner Chapman noted:

> There are probably from six to 10 million illegal aliens in the country today. They are occupying jobs that unemployed Americans ought to have.

Commissioner Chapman went on to say that stricter law and more vigorous enforcement could save more than 1 million jobs for unemployed Americans generally. No doubt, illegal farm labor would account for a sizable share.

H.R. 13342, as amended, is intended to eliminate existing loopholes which arise from artificial distinctions between "farm labor contractors," crew leader," and "crew pusher," or between an ostensibly independent contractor and the employee of another who engages in substantially the same activity. All persons who engage in defined activity as a labor contractor are covered under the bill unless they do so on a basis purely incidental to other primary duties.

The bill will also vest in the Secretary of Labor an array of new enforcement weapons including the power to issue subpenas, to seek civil injunctive relief, to prefer violations for prosecution under tougher penalty provisions, and to impose civil money penalties. Past departmental practice of seeking compliance with the act largely on a voluntary basis among contractors can change under this bill in favor of affirmative efforts to secure registration among all persons covered and to secure compliance with the act's many substantive provisions. It empowers the Secretary with strong sanctions which may be imposed on a widespread basis where needed to make the law's protections a reality.

In addition, H.R. 13342, as amended, has created a private Federal judicial remedy which is independent of, and supplemental to, those provisions which strengthen governmental sanctions. Providing an aggrieved farmworker with a Federal forum will help secure the Federal protections to which he is entitled.

Mr. President, I urge a speedy adoption of the measure which will help so many of our citizens, who are unfortunately not always in a position to help themselves.

Mr. JAVITS. Mr. President, the depressing and degrading working conditions of migrant farmworkers in this country have been well documented through congressional hearings and other investigations over a period of many years. One of our responses was the enactment of the Farm Labor Contractor Registration Act of 1963, which was intended to check the exploitive practices of the crew leaders who recruit these workers.

After 10 years of experience, however, we find that this act has largely been ignored and cannot be effectively enforced. In hearings held by the Labor and Public Welfare Committee, overwhelming evidence was produced that the abuses we attempted to prevent are still widespread and that most farm labor contractors, often called crew leaders or crew pushers, have not even met the requirement of the 1963 act to register with the Department of Labor.

The bill before us today, the Farm Labor Contractor Registration Act Amendments of 1974, will provide an effective enforcement tool for the Department by:

First. Extending coverage of the act to crew leaders who recruit on an intrastate basis;

Second. Requiring that crew leaders post a bond of at least $5,000 as security to employers and migrant workers;

Third. Increasing the required insurance coverage of vehicles used to transport migrant workers;

Fourth. Requiring that the vehicles or housing provided for migrant workers meet applicable Federal and State health and safety standards;

Fifth. Providing migrant workers at the time they are recruited with a written statement describing the terms of their employment;

Sixth. Increasing the criminal penalty provisions to include imprisonment for up to 1 year for a first offense, and up to 3 years and a $10,000 fine for a subsequent offense;

Seventh. Establishing a new civil money penalty for violations of the act, an administrative remedy enforceable by the Secretary of Labor and subject to judicial review;

Eighth. Granting the Secretary of Labor authority to seek injunctive relief in Federal district courts to restrain violations of the act;

Ninth. Creating a private remedy for aggrieved workers who may bring suit for damages resulting from a contractor's violations of the act;

Tenth. Denying the services of the U.S. Employment Service to any crew leader who fails to register with the Department as required; and

Eleventh. Adding new penalties for

crew leaders who knowingly recruit aliens who have illegally entered the United States.

Mr. President, these are the highlights of this imporant bill, which I am pleased to report has the support of the administration.

Finally, I would like to note here that the committee has adopted several of my amendments to the bill as originally introduced (S. 3202), including the civil money penalty provision which I already mentioned. Another amendment concerns the exemption for growers and their employees. The original act covered only those contractors who transport 10 or more workers at any one time, a sometimes difficult test for compliance officials to prove. This has now been deleted entirely and in its place are two provisions which I believe are more suitable to the original purpose. The first is an exemption for "any full-time or regular employee of any entity—who engages in such activity solely for his employer on no more than an incidental basis." The second is an exemption for anyone who engages in such activity "solely within a 25-mile intrastate radius of his permanent place of residence—for not more than 13 weeks per year."

Mr. President, I believe that the passage of this bill is critical to the protection of migrant farmworkers, and I urge the support of my colleagues for it.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93-1206), explaining the purposes of the measure.

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

BACKGROUND AND NEED FOR THE LEGISLATION

Migrant agricultural labor has been used extensively in this country since the latter part of the nineteenth century. Typically the migrant labor force has been composed of large ethnic blocks. During the early part of this century, Chinese, Japanese, and Filipinos constituted the majority of those who worked the West Coast fields, while their East Coast counterparts included many Irish, Italian, and Scandinavian workers. Today, the bulk of the migrant workforce is made up of Mexican-Americans, Puerto Ricans, West Indians, and native born black Americans.

Migrant and seasonal farm workers have long been among the most exploited groups in the American labor force. Despite their hard toil and valuable contribution to our nation's economy, their lot has historically been characterized by low wages, protracted hours, and horrid working conditions. The families, and particularly the children, of these workers have also suffered from the typical symptoms of chronic poverty—being undereducated, ill-fed, poorly housed, and lacking even the most rudimentary health and sanitary facilities. The tragedy is further compounded when it is realized that the victims of this poverty are in fact the working poor, those who offer an honest day's labor, but are denied the full benefits such work should provide, which are so desperately needed to provide the most basic necessities of life.

Exploitation of migrant and seasonal farm labor has continued despite, or perhaps even because of the startling transformation in American agriculture that has taken place since World War I.

The small family farm, though, still many in number, has been effectively replaced because of productivity by large commercial operations. Indeed, it is "agribusiness" which is not the mainstay of modern American farming. Although the impact of mechanization and crop specialization has diminished the overall demand for farm workers generally, the periodic need for such seasonal labor unions remains acute.

Basically, there are two types of seasonal farm laborers: the migrants who travel from state-to-state along fairly established patterns and those who live permanently in the agricultural area where they work. In both cases, the primary users of such labor—farmers, growers, and packing shed operators, have experienced great difficulty in obtaining a sufficient supply of agricultural labor either directly or through the offices of the United States Employment Service.

The result has been the emergence and evolution of the farm labor contractor to a position of prominence as the primary supplier of agricultural labor. Although the specific functions of the farm labor contractor, often called a "crew leader" or "crew pusher", might vary from job to job, his role essentially remains the same—a bridge between the operator and the worker. In many instances, the contractor is not only the recruiter, hirer, and transporter, but acts as the supervisor, foreman, and paymaster as well. In addition, the contractor frequently controls housing and other vital aspects of the workers everyday needs. In the vast majority of cases, the crew leader is not only the link between the worker and the grower, but also acts as an intermediary with the non-farming community as well. In the latter role, the crew leader functions as a sort of cultural broker, mediating between the worker and the outside, often alien, community.

Because of these factors, the contractor has been permitted to exercise an inordinate amount of leverage over the workplace situation. The contractor's unchallenged bargaining position is clearly one of detriment to both the farmworker and operator. Patterns of abuse have been well documented in Congressional hearings over the years.

It is unfortunately an all too common experience for workers to be abused by farm labor contractors. Testimony revealed that in many cases the contractor: exaggerates conditions of employment when he recruits workers in their home base, or that he fails to inform them of their working conditions at all; transports them in unsafe vehicles; fails to furnish promised housing, or else furnishes substandard and unsanitary housing; operates a company store while making unitemized deductions from workers' paychecks for purchases, and pays the workers in cash without records of units worked or taxes withheld.

Evidence has also emerged of contractor exploitation of farmers. The contractor would agree to arrive with a crew on a designated date, and simply fail to show up because better opportunities presented themselves elsewhere. This would leave the farmer with no help to harvest his ripening crop. More common is the practice of leaving after the first picking when the second and third pickings become more difficult, and consequently less profitable.

In 1963, Congress sought to remedy some of these abuses by enacting the Farm Labor Contractor Registration Act. In essence, that Act requires that all contractors or "crew leaders" be registered with the Secretary of Labor, upon a showing of moral and fiscal responsibility. Registration is subject to denial if an applicant has been convicted of certain crimes, fails to perform contracts with farm operators, or gives false or misleading information to migrant workers concerning the terms of farm employment. The Act requires all crew leaders to inform each worker at the time of recruitment of (1) the expected area of employment, (2) the crops and operations on which he will be employed, (3) the transportation facilities, (4) the types and cost of housing upon arrival at each place of work, (5) the wage rates to be paid, and (6) any charges that the crew leader expects to make for his services. In addition, the crew leader is required at each place of employment to post the terms and conditions of employment at that particular place. If he manages the housing facilities, he is required to post the terms and conditions of occupancy. If he is the paymaster, he is required to keep payroll records and deduct from the wages all payments required under Federal law. In regard to transportation, the crew leader is required to provide vehicle insurance. Violation of any of the above requirements can result in the revocation of the certificate or in criminal prosecution, with a fine up to $500, or both.

However, testimony before the Congress has shown that the Act of 1963 has failed to achieve its original objectives. It has become clear that the provisions of the Act cannot be effectively enforced. Noncompliance by those whose activities the Act were intended to regulate has become the rule rather than the exception.

Officials of the United States Department of Labor report that of an estimated 6,000 crew leaders operating across state lines, fewer than 2,000 are registered as required by the present law. Department of Labor investigation of over 1,100 farm labor contractors last year revealed violation of the Act by more than 70% of those checked. While those found in violation were brought into compliance with the Act, including getting those unregistered to register, the Department was unable to locate thousands of unregistered crew leaders.

It is quite evident that the Act in its present form provides no real deterrent to violations. Since the Act's inception, only four persons have been referred to the Department of Justice for criminal prosecution; and only one person has ever been convicted and sentenced.

There are several causes for the Act's ineffective enforcement to date. These include the difficulty of proving that the contractor is engaged in recruitment across state lines; the absence of any requirement that those who benefit from the work of migrant laborers assume responsibility for engaging only registered farm labor contractors; the relatively mild penalties provided by the Act; and the lack of a private remedy for aggrieved workers. The Committee is deeply concerned about this situation, and seeks to provide the Department with a more realistic arsenal of remedies in order to deter and correct the widespread violations that now exist.

The lack of adequate statutory authority with which to deter and correct the abuses of migrant workers by farm labor contractors has been compounded by the relatively meager resources available to the Department for enforcement and administration of the Act. The Committee urges the Department to reallocate its resources to the maximum extent possible in order to assure a more effective enforcement effort.

The additional enforcement authority provided by the amendments should enable the Labor Department to select and apply corrective action as needed for the differing types of violations it discovers in its enforcement program. At present, the Department is basically limited to a choice between referral for prosecution, which carries a nominal penalty of $500, or suspension or revocation of a certificate of registration, in cases where the contractor has one. Such suspension

under the applicable provisions of the Administrative Procedure Act cannot be accomplished in the ordinary case without first giving the contractor the opportunity, over a period of time, "to demonstrate or achieve compliance with all lawful requirements."

It is the intent of the amendments that the Labor Department should no longer have to seek voluntary compliance with the law from a violator who has plainly disregarded it. The Department should clearly be able to institute proceedings to impose appropriate statutory sanctions without unnecessary delay where there is clear evidence of aggravated, serious, or repeated violations of the Act. In such instances, the public interest requires that the contractor be subject to immediate proceedings for suspension or withdrawal of his certificate unless he can show cause to the contrary. Such violators should not be permitted to obtain postponement or avoidance of this sanction on the unrealistic assumption that they will comply voluntarily in the future.

The Committee is aware that illegal aliens have become an increasingly large source of farm labor in this country, and that the services of a contractor are often utilized to procure this clandestine workforce. Although the existing Act generally prohibits such activities by making it grounds for revoking or suspending the contractor's registration, such sanction in itself is ineffective since the majority of contractors have in the past ignored the Act's registration requirement. Thus, if this tide of illegal immigration is to be stemmed, stricter enforcement and stronger penalites must be applied against those who violate the Act. These additional steps are necessary in light of the adverse effect such importation of illegal aliens has had on the wages and job security of native Americans and lawfully admitted aliens, especially in times of high unemployment.

The Committee has been informed by the Commissioner of Immigration and Naturalization Service that some government agencies have permitted the employment of illegal aliens as tree planters, thinners and other forest laborers by awarding contracts to forestry contractors who regularly employ aliens who have illegally entered the United States. The provisions of this bill and its penalties are intended to apply to such contractors. The Committee urges the appropriate authorities to investigate this matter and to take all steps necessary to assure that such contracts are not awarded to these contractors.

HISTORY OF THE LEGISLATION

S. 2070, on which S. 3202 was based, was introduced on June 26, 1973 by the Chairman of the Subcommittee on Employment, Poverty and Migratory Labor (Mr. Nelson). Hearings were held on February 8, 1974 in Fresno, California and on April 8 and 9 in Washington, D.C. Testimony was offered by representatives of growers, farm labor contractors and migratory and seasonal farm workers.

Numerous organizations presented favorable views including the United States Department of Justice, the International Brotherhood of Teamsters, the United Farm Workers of America, AFL-CIO, the California Department of Industrial Relations, and the Colorado Department of Labor and Employment. The Department of Labor has strongly endorsed the enactment of legislation to broaden and strengthen the provisions of the Farm Labor Contractor Registration Act, and during the Subcommittee's hearings expressed its support for the provisions of S. 3202.

Legislation seeking to remedy many of the same deficiencies has already been passed by the House of Representatives this session (H.R. 13342).

S. 3202 was reported out of Subcommittee, and after amendment by the Full Committee, its language was substituted for that passed by the House. H.R. 13342 as amended was then ordered reported by unanimous voice vote from the Full Labor and Public Welfare Committee on August 15, 1974.

There was no rollcall vote in Committee.

SUMMARY OF THE LEGISLATION

The purpose of H.R. 13342 (as reported) is to remedy the deficiencies of the Farm Labor Contractor Registration Act of 1963. The bill extends the Act's coverage, and strengthens its enforcement mechanisms.

H.R. 13342 deletes the Act's limitation of coverage by including intrastate as well as interstate transactions, although dealings of a purely local and casual nature continue to be exempted. The bill also adds coverage for employment involving the processing of agricultural commodities in an unmanufactured state.

The Secretary of Labor is authorized to issue a certificate of registration to applicants who fully describe their activities, who show proof of having vehicle insurance, and who have not been convicted of certain specified crimes. All registered contractors are required to carry and disclose such certificates of registration at designated times. The bill broadens the information requirement that the farm labor contractor must provide migrant workers with regard to the nature of the worker's prospective employment. All such information must be in writing, in a language in which the worker is fluent, and be in a form prescribed by the Secretary of Labor.

The bill requires proof of posting of a security bond at the time of application; requires farm labor contractors to establish proof that their vehicles and property comply with federal and state health and safety standards; and establishes amounts of vehicle insurance comparable to amounts applicable to vehicles operating under the Interstate Commerce Act.

H.R. 13342 also places responsibility for payroll recordkeeping on the person to whom workers are furnished by a contractor. However, contractors would still be required to provide migrant workers with specified payroll information.

In addition, H.R. 13342 creates a federal civil remedy for persons aggrieved by violations of the Act. It also empowers the Secretary of Labor to enforce the Act through investigations, by the issuance of subpoenas, and by the imposition of civil penalties for designated serious violations of the Act, subject to administrative and judicial review. The bill raises the maximum criminal penalties, and prohibits discrimination against persons who exercise their rights under the Act.

The bill redefines the Act's existing prohibition on contractors regarding illegal aliens, and establishes a criminal penalty, in addition to the current sanction of registration revocation, for certain violators. Any farm labor contractor who has not registered under the Act, or whose registration has been revoked or suspended, will be subject to a criminal penalty of up to a $10,000 fine or a prison sentence of up to 3 years (or both), if such contractor has knowingly engaged the services of an illegal alien. Illegal alien has been redefined to mean any person who is an alien not lawfully admitted for permanent residence, or who has not been authorized by the Attorney General to accept employment.

ESTIMATE OF COST

The Committee has determined the basis of the increased number of persons who would be defined as farm labor contractors under this legislation that it will be necessary to assign at least an additional 30 positions to the Department's Employment Standards Administration. The Committee therefore estimates the additional cost associated with the legislation to be $525,000 for fiscal year 1975, and $750,000 in each fiscal year through 1979.

AMENDMENT OF THE WILD AND SCENIC RIVERS ACT AND THE LOWER ST. CROIX RIVER ACT OF 1972

The Senate proceeded to consider the bill (S. 3022) to amend the Lower Saint Croix River Act of 1972 which had been reported from the Committee on Interior and Insular Affairs with an amendment to strike out all after the enacting clause and insert:

That the Wild and Scenic Rivers Act (82 Stat. 906), as amended, is further amended as follows:

(a) In subsection (a) of section 5 after paragraph (27) insert the following new paragraphs:

"(28) Au Sable, Michigan: The segment downstream from Foot Dam to Oscoda and upstream from Loud Reservoir to its source, including its principal tributaries and excluding Mio and Bamfield Reservoirs.

"(29) Manistee, Michigan: The entire river from its source to Manistee Lake, including its principal tributaries and excluding Tippy and Hodenpyl Reservoirs.

"(30) Wisconsin, Wisconsin: The segment from Prairie du Sac to its confluence with the Mississippi River at Prairie du Chien.

"(31) West Fork of the Sipsey Fork, Alabama: The segment, including its tributaries, from the impoundment formed by the Lewis M. Smith Dam upstream to its source in the William B. Bankhead National Forest.

"(32) Cahaba, Alabama: The segment from its junction with United States Highway 31 south of Birmingham downstream to its junction with the United States Highway 80 west of Selma.

"(33) Kettle, Minnesota: The entire segment within the State of Minnesota.

"(34) Upper Mississippi, Minnesota: The segment from its source at the outlet of Itasca Lake to its junction with the northeastern boundary of the city of Anoka.

"(35) American, California: The North Fork from Mountain Meadow Lake to the Auburn Reservoir and the lower 7.5 miles of the North Fork of the North Fork.

"(36) Tuolumne, California: The main river from its source on Mount Dana and Mount Lyell in Yosemite National Park to Don Pedro Reservoir.

"(37) Illinois, Arkansas and Oklahoma: The entire river from Tenkiller Ferry Reservoir upstream to its source, including the Flint and Barren Fork Creeks and excluding Lake Frances.

"(38) Shepaug, Connecticut: The entire river.

"(39) Colorado, Colorado and Utah: The segment from its confluence with the Dolores River, Utah, upstream to a point 19.5 miles from the Utah-Colorado border in Colorado.

"(40) Gunnison, Colorado: The segment from the upstream (southern) boundary of the Black Canyon of the Gunnison National Monument to its confluence with the North Fork.

"(41) Los Pinos, Colorado: The segment from its source, including the tributaries and headwaters within the San Juan Primitive Area, to the northern boundary of the Granite Peak Ranch.

"(42) Big Thompson, Colorado: The segment from its source to the boundary of Rocky Mountain National Park.

"(43) Green, Colorado: The entire segment within the State of Colorado.

"(44) Conejos, Colorado: The three forks from their sources to their confluence, thence the Conejos to its first junction with State Highway 17, excluding Platoro Reservoir.

"(45) Elk, Colorado: The segment from its source to Clark.

"(46) Cache la Poudre, Colorado: Both

forks from their sources to their confluence, thence the Cache le Poudre to the eastern boundary of Roosevelt National Forest.

"(47) Piedra, Colorado: The Middle Fork and East Fork from their sources to their confluence, thence the Piedra to its junction with Colorado Highway 160, including the tributaries and headwaters on national forest lands.

"(48) Encampment, Colorado: The Main Fork and West Fork to their confluence, thence the Encampment to the Colorado-Wyoming border, including the tributaries and headwaters.

"(49) Yampa, Colorado: The segment within the boundaries of the Dinosaur National Monument.

"(50) Dolores, Colorado: The segment from the west boundary, section 2, township 38 north, range 16 west, NMPM, below the proposed McPhee Dam, downstream to the Colorado-Utah border, excluding the segment from one mile above Highway 90 to the confluence of the San Miguel River; the segment of the main stem from Rico upstream to its source, including its headwaters; and the West Dolores from its source, including its headwaters, downstream to its confluence with the main stem.".

(b) In subsection (a) of section 4—

(1) in the third sentence strike "1978". and insert in lieu thereof "1978; with respect to all rivers named in subparagraphs 5(a) (28) through (49) of this Act no later than October 2, 1979; and with respect to the river named in subparagraph 5(a) (50) of this Act no later than October 2, 1975."; and

(2) in the fourth sentence: (A) between "rivers" and "with" insert "(i)", and (B) strike "system." and insert in lieu thereof "system, and (ii) which possess the greatest proportion of private lands within their areas.".

SEC. 2. Subsection (a) of section 6 of the Lower Saint Croix River Act of 1972 (86 Stat. 1174) is amended by deleting "$7,275,000" and inserting in lieu thereof "$19,000,000".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93-1207), explaining the purposes of the measure.

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

I. PURPOSE, BACKGROUND, AND SUMMARY OF S. 3022, AS ORDERED REPORTED

SUBSECTION (a); STUDIES OF 23 RIVERS

Subsection (a) of S. 3022, as ordered reported, would amend the Wild and Scenic Rivers Act (82 Stat. 906), as amended, to designate segments of twenty-three rivers in ten States for study to determine whether they should be added, by subsequent legislation, to the national wild and scenic rivers system established by that Act.

The studies would be authorized by amending subsection (a) of section 5 of the Wild and Scenic Rivers Act. This subsection contains a list of rivers designated for study. Under the Wild and Scenic Rivers Act, a river so designated is to be studied by either the Bureau of Outdoor Recreation of the Department of the Interior or the Forest Service of the Department of Agriculture to determine its suitability for inclusion in the national wild and scenic rivers system; whether administration should be undertaken by the State or Federal government, and if the latter, which agency should be given the administrative task; and in which of the three categories established by the Act—wild, scenic, or recreational—the entire segment of the river or portions thereof should be classified. The study, once completed, is submitted to the President who, in turn, transmits his recommendations to the Congress. Congress must then enact further legislation should it wish to designate the river as a component of the wild and scenic rivers system. (An exception to this procedure allows the Secretary of the Interior to designate a river without Congressional action if the relevant State or States assume responsibility for its management and recommend it to the Secretary for inclusion in the system.) During the period of study, the Wild and Scenic Rivers Act affords certain protection to a river, including a prohibition against the construction of water resource projects upon it.

The Wild and Scenic Rivers Act designated twenty-seven rivers for study and eight rivers to be immediately included in the system. Since the Act's enactment in 1968, two State-administered rivers have been added to the system by the Secretary of the Interior. In addition, Congress has enacted into law two measures which designated segments of the Lower St. Croix River in Minnesota and Wisconsin (the Lower St. Croix River Act of 1972, 86 Stat. 1174) and the Chattooga River in North Carolina, South Carolina, and Georgia (Act of May 10, 1974, 88 Stat. 122) as components of the system. These two river segments had both been on the original list of twenty-seven study rivers and the reports on them, submitted by the Administration, recommended the Congressional action which was subsequently taken.

The period of study provided for the 27 study rivers in the Wild and Scenic Rivers Act was ten years; however, the provisions in the Act which afforded protection to the study rivers from water resource projects contained a five year expiration date (October 2, 1973). When it became apparent that the studies of all 27 study rivers would not be completed prior to the deadline for protection against water resource projects, the Administration submitted proposed legislation (S. 921, introduced by Senator Jackson and Fannin (by request) on February 20, 1973) to extend the protection period for five more years (to October 2, 1978) to coincide with the study period. The Act of May 10, 1974, in addition to designating the Chattooga River and making several amendments to the Wild and Scenic Rivers Act, also provided this extension of the protection period.

Now that the study task mandated in the Wild and Scenic Rivers Act is nearing completion, numerous proposals for additional rivers to study have been made. Twenty-seven bills proposing a total of fifty-four rivers for study have been introduced by various Senators this Congress. Three bills (S. 1101, S. 1391, and 2439) proposing segments of the Wisconsin, Au Sable, Manistee, and New Rivers for study have already passed the Senate and are awaiting House action. Furthermore, on June 27, 1974, Senators Jackson and Fannin introduced (by request) S. 3708 proposing 32 new study rivers. This bill, an Administration measure, is the result of an inter-agency review to determine which potential wild and scenic rivers should next be studied.

The Subcommittee on Public Lands has held five days of hearings on most of the proposed bills. Subsequent to these hearings, on July 29, 1974, the Subcommittee, by unanimous voice vote, approved for full Committee action S. 3022, as amended. The full Committee gave unanimous, voice vote endorsement to the bill on September 10, 1974.

The twenty-three river segments designated for study in subsection (a) of S. 3022, as amended, contain river segments proposed in S. 30 (Moss), S. 449 and S. 2319 (Dominick), S. 2151 and S. 2216 (Allen and Sparkman), S. 2386 and S. 3186 (Cranston and Tunney), S. 2443 (Mondale), S. 2691 (Mondale, Humphrey, Nelson, and Proxmire), S. 3130 (Ribicoff), and S. 3628 (Bellmon and Bartlett), and the river segments contained in S. 1101 (Hart and Griffin) and S. 1391 (Nelson), as already passed the Senate. Six of these river segments were also proposed for study in S. 3708.

Section II of this report contains descriptions of the segments of the twenty-three rivers which would be studied pursuant to subsection (a) of S. 3022, as amended. Below is a list of those river segments, their approximate length, and the States in which they are located:

1. Au Sable, 75 miles, Michigan.
2. Manistee, 75 miles, Michigan.
3. Wisconsin, 74 miles, Wisconsin.
4. West Fork of the Sipsey Fork, 24 miles, Alabama.
5. Cahaba, 85 miles, Alabama.
6. Kettle, 58 miles, Minnesota.
7. Upper Mississippi, 330 miles, Minnesota.
8. American, 53.5 miles, California.
9. Tuolumne, 96 miles, California.
10. Illinois, 255 miles, Arkansas and Oklahoma.
11. Shepaug, 25 miles, Connecticut.
12. Colorado, 55.5 miles, Colorado and Utah.
13. Gunnison, 30 miles, Colorado.
14. Los Pinos, 18 miles, Colorado.
15. Big Thompson, 12 miles, Colorado.
16. Green, 35 miles, Colorado.
17. Conejos, 35 miles, Colorado.
18. Elk, 30 miles, Colorado.
19. Cache La Poudre, 70 miles, Colorado.
20. Piedra, 20 miles, Colorado.
21. Encampment, 50–55 miles, Colorado.
22. Yampa, 65 miles, Colorado.
23. Dolores, 265 miles, Colorado.

As subsection (a) of S. 3022, as amended, amends the Wild and Scenic Rivers Act, all the provisions of that Act concerning study procedures and management of rivers during study apply to the twenty-three rivers named in the subsection. Section III of this report contains a discussion of these provisions of the Wild and Scenic Rivers Act as well as the provisions which would apply to the rivers if, following completion of the studies, they are designated by Congress as components of the national wild and scenic rivers system.

SUBSECTION (b)(1): FIVE-YEAR STUDY PERIOD

As noted above, the Administration is now completing the 27 river studies which it was required to conduct by section 5(a) of the Wild and Scenic Rivers Act. The Committee, in reviewing this experience, attributed the extension beyond the 5-year protection period made necessary by the completion schedule for the original 27 studies to the slow start on the studies during the "start-up" period in which personnel to conduct the studies were being assigned, funds appropriated, and the study methodology designed. As no start-up period would be required for the 23 new studies which S. 3022, as amended, would mandate, the Committee determined that a little over 5 years would be sufficient time to complete those studies. The Administration estimates that now that funds are available and personnel are in place the average time necessary to complete a river study is 18 months. The Committee believes that the possibility of staggering the one and half year studies throughout the 5-plus years will further diminish any pressure which S. 3022, as amended, might exert on existing human and financial resources in the Bureau of Outdoor Recreation and the Forest Service.

For these reasons, subsection (b)(1) sets October 2, 1979, as the deadline for all but one of the 23 studies.

The one study to which this deadline does not apply is the Dolores River in Colorado. The importance of this river as a potential wild and scenic river is described below in section II of this report. However, the river and its water are also critical to the economy of the southwestern region of Colorado. A good number of private landowners, most of them engaged in ranching, have property along its banks. Furthermore, a major water resource project—the Dolores Project—is planned for portions of the river. Its most

important facility—the McPhee Dam—is well into the planning stage, and, although the stretch of river on which it would be located is not to be studied, the question of compatibility of the dam and the proposed wild and scenic river segments below it is not altogether certain. An early completion of the study will insure that the McPhee Dam is not delayed by this uncertainty. Furthermore, most observers believe the study will demonstrate that the construction and operation of the dam and designation of segments of the Dolores as components of the national wild and scenic rivers system are compatible—that the dam proponents can guarantee a minimum flow sufficient to reassure river runners and other recreationists that the Dolores will provide a true wild and scenic river experience.

To insure the desired quick completion of the Dolores study, subsection (b)(1) provides a 1-plus year deadline—October 2, 1975—for completion of the Dolores study.

Section (b)(1) sets both the 5-year and 1-plus year deadlines by amending subsection 4(a) of the Wild and Scenic Rivers Act to insert the two dates immediately after the deadline for the 27 original studies.

The study deadlines provided by subsection (b)(1) do not fully coincide with the period of protection provided study rivers. The Act of May 10, 1974 (88 Stat. 122) amended section 7(b) of the Wild and Scenic Rivers Act (82 Stat. 906, 914) to provide protection against water resource projects for rivers under study for a period of 10 years after the enactment of the Wild and Scenic Rivers Act (October 2, 1978) or 3 fiscal years after enactment of an Act providing for study of an additional river or rivers. S. 3022, however, allows the studies it mandates to run until October 2, 1979.

Thus, S. 3022, as amended, presents the same anomaly as that contained in the original Wild and Scenic Rivers Act—a shorter protection period than a study period. Of course, the reason for the difference between the study and protection periods in the present situation is that the 3 fiscal year protection limitation provided in the 1974 law for future legislation was based on the theory that each individual legislative proposal would, at most, name only two or three study rivers at a time. Although Congress could make the two periods coincide, at some future date, the Chairman of the Subcommittee on Public Lands has announced that he will consider offering an amendment to correct this anomaly when the Senate takes up S. 3022, as amended.

SUBSECTION (b)(2): PRIORITY OF STUDIES

The purpose of subsection (b)(2) of S. 3022, as amended, is to shorten the period of uncertainty landowners would experience when the rivers along which they live or work are designated for study under the Wild and Scenic Rivers Act.

Subsection (4)(a) of the Wild and Scenic Rivers Act, as amended by the Act of May 10, 1974 (88 Stat. 122), establishes a basis for determining the order in which rivers are to be studied. The fourth sentence of the subsection provides that "In conducting these studies the Secretary of the Interior and the Secretary of Agriculture shall give priority to those rivers with respect to which there is the greatest likelihood of developments, which, if undertaken, would render the rivers unsuitable for inclusion in the national wild and scenic rivers system."

Subsection (b)(2) would amend that sentence by providing a second basis for determining priority: early consideration is also to be given those rivers "which possess the greatest proportion of private lands within their areas". This basis for establishing priority would insure that those studies involving river segments which have a great number of private landowners along their borders will be completed quickly. This will serve to reduce the period of uncertainty landowners would otherwise experience while the study is being conducted and the President's recommendations determined.

A brief study period for rivers involving a high percentage of private land is particularly important in light of subsection 6(b) of the Wild and Scenic Rivers Act. This subsection is as follows:

"(b) If 50 per centum or more of the entire acreage within a federally administered wild, scenic or recreational river area is owned by the United States, by the State, or States within which it lies, or by political subdivisions of those States, neither Secretary shall acquire fee title to any lands by condemnation under authority of this Act. Nothing contained in this section, however, shall preclude the use of condemnation when necessary to clear title or to acquire scenic easements or such other easements as are reasonably necessary to give the public access to the river and to permit its members to traverse the length of the area or of selected segments thereof."

Clearly, landowners along any river segment designated for study the area of which is less than 50% federally-owned are placed in a particularly difficult situation during the study period. They do not know whether the river will be determined to meet wild and scenic river criteria and thus make condemnation of their property a distinct possibility. They do not know whether the proposed boundaries of the river will be redrawn to exclude their property or to establish an area which will include their property but which enjoys more than 50% Federal ownership. If the latter alternatives develop, then, of course, the threat of condemnation of fee title is eliminated. While the threat hangs over the landowners they will obviously be reluctant to improve their businesses or residences and they may very well experience difficulty in obtaining any loans using their property as collateral. This amendment to subsection 4(a) would insure that the periods of uncertainty for private landowners affected by S. 3022, as amended, and other legislation designating river segments for study will be as brief as possible.

SUBSECTION (c): AMENDING THE LOWER SAINT CROIX RIVER ACT

Subsection (c) amends section 6 of the Lower Saint Croix River Act of 1972 (86 Stat. 1174) by increasing from $7,275,000 to $19,000,000 the authorization for the acquisition and development of land and interests therein along the 27 mile segment of the Lower Saint Croix River to be administered by the Secretary of the Interior. This authorization increase will permit the National Park Service to acquire the necessary land and interests in land to provide the degree of protection to the Federal segment of the wild and scenic river which was intended in the Wild and Scenic Rivers Act and the Lower Saint Croix River Act of 1972.

The Lower Saint Croix River is one of the most intensely studied rivers in the Nation. Congress, itself, has devoted a great deal of attention to the river. Bills to protect the river were introduced by Senator Nelson in 1965, 1967, and 1971. Section 5(a)(21) of the Wild and Scenic Rivers Act specifically mandated the Federal Government to study the river and determine its suitability as a component of the national wild and scenic rivers system. In January 1970, a joint Federal-State team initiated the study. The preliminary findings of the study team contained the conclusion that the Lower St. Croix met the criteria for inclusion in the national system as set forth in section 2(a)(i) of the Wild and Scenic Rivers Act.

During the 1972 Subcommittee on Public Lands hearings on legislation to implement the recommendations of the study team's preliminary findings and designate the Lower Saint Croix River as a component of the national wild and scenic rivers system, a map was submitted by the study team. This map, entitled "conceptual development plan for the Lower St. Croix River" contained the recommendations of the Federal-State study team as to the best management for the river, recommendations which were concurred in by the Wisconsin and Minnesota congressional delegations. The development plan called for the Federal Government to acquire title and scenic easements for all of the land from the dam at Taylor Falls to the Washington County Line. From the Washington County line to Stillwater, Minnesota, a distance of approximately 17 miles, the development plan clearly contemplated that the Federal Government would acquire limited fee title and large amounts of scenic easements. The remainder of the river, from Stillwater to its confluence with the Mississippi would be managed jointly by the States of Wisconsin and Minnesota.

The preliminary findings included a $7-275,000 cost estimate for the implementation of the Federal portion of the development plan.

On October 25, 1972, Congress enacted the Lower Saint Croix River Act of 1972, which, based upon that development plan and cost estimate, added the river to the national wild and scenic rivers system.

The preliminary findings of the study team were reaffirmed in the Department of Interior's final report on the river entitled "Scenic River Study of the Lower St. Croix" published in February 1973, four months after enactment of 1972 Act. This report sets forth the conceptual guidelines for the classification, development, and management of the river as a component of the national wild and scenic river system. Page 93 of this report bears the statement that, in the 27 mile federal portion, 5,400 acres of land would be acquired in fee or easement. Within the recreational segment which will be protected by the states of Wisconsin and Minnesota an estimated 2,500 acres of land was to be protected including the acquisition of 2,470 acres of easements and 30 acres in title. The final report estimates the cost of the entire 52 mile project at $8,680,000; $1,405,000, to be spent by the States. The report estimates that $7,275,000 should be spent on the entire 27 mile Federal sector and $1,405,000 spent on the lower 25 miles.

The record time in which the Lower Saint Croix River Act of 1972 was passed—5 days from the initial mark-up by the Senate Interior Committee through Committee and floor action in the House—attests to the urgency Congress attached to protecting the river in view of the immediacy of the threat to it posed by potential development.

As noted by Senator Mondale in testimony at the June 20, 1974 hearing of the Subcommittee on Public Lands on S. 3022:

"This sense of urgency was fully justified. If the Congress had not moved as quickly as it did to pass the Lower Saint Croix River Act, cliff dwelling townhouses and a mid-rise apartment building might today scar the bluffs of the river. For even as Federal-State planners first met to develop the specific details of the protection program, one developer was proceeding with his own plans for the construction of a housing project which included townhouses and an apartment building to tower over the valley.

"Even with the Act, it took massive pressure from the Governors of the two States, members of the Congress, and a lawsuit filed by the Attorney General of Minnesota to force the developer to reconsider his plans. In the face of the lawsuit the developer signed an agreement last September 27th, resulting in the modification of his plans to conform to riverway guidelines.

"Although this project was stopped in time, there is nevertheless no assurance today that another developer could not attempt to press for a similar project and win even in the courts."

The basic reason for the statement made in

the last sentence of the quoted passage is the discovery that funding authorization in subsection 6(a) of the Act to provide for the protection of the 27-mile segment of the river to be administered by the Federal Government was only slightly more than one-third the actual funding necessary.

The initial estimate of the cost of the project which was included in the preliminary findings of the study team, the Department's final report, and the Act, itself, was developed by the Bureau of Outdoor Recreation. It was based upon the average per acre price of land in the Saint Croix Valley. Neither the Congress nor the States had any reason to question this estimate of $7.275 million of acquisition and development in the federal zone, and this figure was included as the authorization ceiling in the Lower Saint Croix River Act. Only later, after more detailed appraisals, was it discovered that the actual cost, based on the price of land per foot along the river, would be much higher.

The discovery of this cost discrepancy prompted Governors Wendell R. Anderson of Minnesota and Patrick Lucey of Wisconsin to write, on October 22, 1973, a letter to the Secretary of the Interior, Rogers C. B. Morton. The letter contained the following statements:

"As you know, the State governments of Minnesota and Wisconsin are participating with your Department through the National Park Service in the formulation of the Federal-State Comprehensive Master Plan for the protection of the Lower Saint Croix River under P.L. 92-560.

"We are, however, distressed that the funding provided by last year's Lower Saint Croix River Act for acquisition and development of lands in the 27-mile federally administered river zone appears to be inadequate. Nearly two-thirds of that segment will have to be controlled through a fragmented system of local zoning codes, rather than through full or partial public interest in lands by your department. We are concerned as to how this serious gap occurred since there seemed to be no question at the State or Federal levels during negotiations on the bill that the $7,275,000 sought for the federally administered segment would be sufficient to protect the full 27 miles of the river valley through fee or easement purchase on river front lands, except within four small municipalities and State-owned areas."

The Governors requested Secretary Morton's assistance in seeking additional funds from the Congress. But in its reply, dated December 6th, the Department rejected this plea. Instead, the National Park Service circulated for discussion a draft master plan which sets forth the protection efforts possible within the constraints of the $7,275,000 authorization ceiling. The plan provides for acquisition of land and easements in the first 10 miles of the Federal zone. However, except for the proposed purchase of a few acres for a visitors' center above Stillwater, the plan provides for no acquisition of land or easements along the shore of the remaining 17-mile stretch, which comprises almost two-thirds of the Federal portion of the riverway. In effect, the plan would require the States of Minnesota and Wisconsin and their subdivisions to assume responsibility for protecting the additional 17-mile segment of the river which the lower Saint Croix River Act of 1972 made the responsibility of the Federal Government.

This draft master plan and the response of the Department to the Governor's letter prompted members of the Minnesota and Wisconsin Congressional Delegations on December 20, 1973 to request a meeting with Ronald H. Walker, Director of the National Park Service. The meeting was held in the Capitol on February 6, 1974. Assistant Secretary John Kyl, Dr. Richard Curry, Robert Chandler, Richard Whittpen and others represented the Department of the Interior. Governor Wendell R. Anderson, Commissioner Robert Herbst and Assistant Commissioner Archie Chelseth of the Minnesota Department of Natural Resources attended on behalf of Minnesota. Farnum Alston appeared for Governor Lucey and James Harrison and James Johnson for the Minnesota-Wisconsin Boundary Area Commission. Finally, Senators Nelson, Humphrey and Mondale and Representatives Blatnik, Fraser, Karth, Quie and Thomson took part in the discussion.

Subsequent to this meeting, on May 17, 1974, Assistant Secretary John Kyl wrote to each of the Congressional participants. His letter indicated that $18,775,000 would be required to carry out the program of full protection for the entire 27 mile Federal segment of the river suggested in the preliminary report of the study team and clearly envisioned by Congress in enacting the Lower St. Croix River Act of 1972.

The letter states:

"In response to your suggestion that the draft master plan be modified, we are preparing an amendment to the master plan which would provide for this alternative regarding the protection of the lower 17 miles of the Federal portion of the riverway. The amendment would be applicable if additional funding is secured. However, I have under advisement the following recommendations of the Land Planning Group:

"1. The National Park Service be instructed to direct the field planners to reevaluate the areas proposed for acquisition and to identify those areas in the Federal sector of the Lower Saint Croix that are under immediate threat and would be lost if acquisition is not made immediately.

"2. The National Park Service begin immediate acquisition with the money authorized by Public Law 92-560 ($7.275 million) and to acquire on a first priority basis those 18 areas identified by the States that are under immediate threat and would destroy the resources of the river.

"3. Wherever possible, less than fee title to the lands be acquired

"4. The Department of the Interior, at this time, submit a negative report on the legislation H.R. 12690 (S. 3022), amending the Lower Saint Croix Act of 1972 until there is sufficient evidence resulting from the National Park Service acquisition of the areas along the Saint Croix to show that funds available under Public Law 92-560 are not sufficient to carry out the acquisition program for these areas.

"5. As soon as it becomes evident and experience is available that as a result of the land acquisition in the Lower Saint Croix area that the costs of acquiring the land will exceed the monies authorized for the acquisition, the Department should advise Congress that additional funding is needed and request such additional authorization and funds needed to carry out the acquisition to protect the resources of the Lower Saint Croix according to Public Law 92-560.

The Committee firmly believes that to await further recommendations of the Administration as to what, if any, additional funding may be required is to run the risk that the intent of Congress as embodied in the Lower Saint Croix River Act of 1972 will not be fulfilled. If the draft master plan is followed, nearly two-thirds or 17 miles of the Federal segment of the river will not be protected by Federal acquisitions of land or interests in land. Under the plan, the only controls on land use in the 17-mile stretch would be through zoning. The reason for reliance on zoning in this segment is clearly articulated on page 28 of the draft master plan, which states, "The provisions of Section 6 [Ceiling on Appropriations] have exerted the greatest constraints on preserving a significant portion of the Federal segment of the riverway."

Yet, the deficiencies in the use of zoning were recognized on page 51 of the draft master plan:

"Historically, zoning has proven to be the weakest tool available for the protection of riverway corridors. At times, zoning laws can be changed by political and economic pressures. A few variances, if incompatible with the National Wild and Scenic River Program, could jeopardize the environmental quality of the Lower Saint Croix Riverway. In addition, it has been extremely difficult in the courts to justify zoning primarily on the basis of esthetics."

Furthermore, the zoning power was declared to be clearly inadequate to protect the scenic zone. Page 33 of the plan contained the statement that:

"Given the level of funding authorized in Public Law 92-560, it is not possible to acquire lands in fee or scenic easements in the Federal recreation zone without seriously compromising the preservation intent of the scenic zone."

In reply, Senator Mondale noted:

"If the absence of fee and easement acquisition would compromise the preservation intent in the scenic zone, it is obvious that the lack of such acquisition would seriously jeopardize protection for the 17-mile Federal recreation zone.

"The Federal Government should not be in the position of abandoning all protection of two-thirds of the area it is supposed to administer in order to save the upper one-third. While there is just enough development in the lower segment to require that it be legally defined as recreational rather than scenic, there is in fact no abrupt change in the river environment below the boundary between the two classifications. On the contrary, the river maintains for the most part the intimate island and slough setting and the essentially unspoiled natural beauty which led to its designation as a component of the national wild and scenic rivers system."

As, under the draft master plan, aggressive land and easement acquisition programs will be conducted by the Federal Government on the upper 10 miles of its 27-mile segment and by the two States on their 25 mile segment, the 17-mile gap, to be protected only by zoning, will be subjected to intense development pressures.

A study developed by the Minnesota-Wisconsin Boundary Area Commission has revealed some 19 current proposals for development along the Lower Saint Croix. Six of these proposals involving 3,280 acres are already targeted for the 17-mile unprotected corridor in the Federal zone. They would involve 500 or more units of housing and a commercial recreation complex with possible construction of a hotel and restaurant facilities for skiing and a trails network.

This development pressure cannot easily be forestalled while Congress awaits new Park Service cost estimates, particularly when the Department has not evinced a firm commitment to a program of full protection of the 27 mile Federal segment of the river envisioned by the Congress in the Lower Saint Croix River Act of 1972.

This Committee believes that the intent of Congress must be effected and that the only way to insure this result is to promptly raise the authorization level in the 1972 Act. Furthermore, if the Congress is to be responsible the Committee believes that it must match the funding level to the program which it has mandated. The raising of the authorization has the full support of the Governors of the two States, the Minnesota-Wisconsin Boundary Area Commission, the Saint Croix River Association (representing local residents), and State and national conservation organizations.

II. Descriptions of the 23 Rivers To Be Studied

Set forth below are brief descriptions of the 23 rivers of which segments would be

designated by subsection (a) of S. 3022, as amended, for study to determine their suitability for inclusion in the national wild and scenic rivers system. Designation of these river segments for study does not, of course, constitute a Congressional determination that they meet all the criteria for wild and scenic river designation. Instead, it does indicate a Congressional finding that the testimony of the hearings has made at least a prima facie case for such a determination. The studies themselves will prove or disprove that case.

1. AND 2. THE AU SABLE AND MANISTEE RIVERS, MICHIGAN

(28) Au Sable, Michigan: The segment downstream from Foot Dam to Oscoda and upstream from Loud Reservoir to its source, including its principal tributaries and excluding Mio and Bamfield Reservoirs.

(29) Manistee, Michigan: The entire river from its source to Manistee Lake, including its principal tributaries and excluding Tippy and Hodenpyl Reservoirs.

Together the Au Sable and Manistee Rivers span nearly the entire State of Michigan. Each river is approximately 75 miles in length and has its headwaters in the north central portion of Michigan's lower peninsula.

The Au Sable River has its source in the Gaylord-Grayling area and flows halfway across the lower peninsula to its mouth on Lake Huron at the city of Oscoda. The entire river is proposed for study with the exception of the reach between Foote Dam and Loud Reservoir and the Banfield and Mio Reservoirs. A major portion of the river is within the Huron National Forest.

Conditions vary widely along the various segments of the river dependent on land ownership and topography. Segments of the river are relatively remote with limited access, while other areas have easy access with roads paralleling portions of the river. The Au Sable River and adjacent areas support a good fishery and diversified wildlife population. Brown, rainbow, and brook trout predominate in the main river area and northern pike, walleye, small and largemouth bass, and panfish are present in the impounded areas.

The Manistee River flows west from north central Michigan through the Manistee National Forest before emptying into Manistee Lake, which in turn drains into Lake Michigan at the city of Manistee. The entire river is proposed for study with the exception of Tippy and Hodenpyl Reservoirs. Between the reservoirs and below the lowest dam, the river flows through some ruggedly glaciated areas, offering a spectacular view of varied land forms and vegetation. The drainage is served by an excellent system of roads which provide access to river areas from the downstate population centers. The Manistee River offers one of the best combinations of cold and warm water fisheries which exist in the State of Michigan. The free flowing segments provide quality cold water fishing.

At the July 16, 1973 hearing on S. 1101, all witnesses, including representatives of the administration and a number of environmental organizations, concurred in the judgment that the Manistee and Au Sable Rivers are deserving of study for possible inclusion in the national wild and scenic rivers system. In fact, these rivers had already been identified by the administration in 1970 as appropriate for study. No opposition to S. 1101 was communicated to the Committee.

3. THE WISCONSIN RIVER, WISCONSIN

(30) Wisconsin, Wisconsin: The segment from Prairie du Sac to its confluence with the Mississippi River at Prairie du Chien.

The seventy-four mile segment of the lower Wisconsin designated for study is situated in the southwestern portion of the State of Wisconsin, beginning at Prairie du Sac and flowing west to its confluence with Mississippi River at Prairie du Chien. The river corridor contains some 98,500 acres, of which about 16,000 acres are public lands, 3,603 acres are public utilities land, 55,000 acres are private land, and approximately 21,000 acres are covered by water. At the hearing on S. 1391 before the Subcommittee on Public Lands, Senator Gaylord Nelson, author of S. 1391, described the proposed study river, as follows:

"The lower Wisconsin is one of the most beautiful and unspoiled rivers in the nation. It was first discovered in 1673, during the travels of two French explorers. The travels of Father Jacques Marquette and Louis Joliet from Green Bay to the mouth of the Mississippi River led them to travel down the length of the Wisconsin River, and to note the vast and varied resources which grace the shoreline.

"The discovery of the Mississippi River by Marquette and Joliet enhanced the use of that river as a means of transportation for material from the heartland of the nation to the port at New Orleans. But the Wisconsin River, although a tributary of the Mississippi, did not fit into the pattern of transportation, because of its west to southwest direction. . . .

"So while the Mississippi River, over the past 300 years, has been substantially developed as a major transportation resource, the Wisconsin River has remained in its natural state, presenting to the people a unique recreational and environmental resource.

"The value of the lower Wisconsin as an asset to the nation has been recognized by both government and the public. Those who worked hard to prevent the kind of development which leads to the ultimate destruction of a shoreline, and the State of Wisconsin owns some 16,000 acres of land along the river, utilizing the area in four state parks and a number of smaller state-owned recreational and hunting areas.

"16 communities dot the shore line of the river, although only four actually touch the river. There are no impoundments at present on the river, and development by private citizens has not gone beyond the construction of simple cottages, of which there are few.

"Thus . . the addition of the lower Wisconsin River to the Wild and Scenic River study list would afford an excellent opportunity for a full-scale study of the river, and of the most effective means to protect its valuable resources for the enjoyment and benefit of future generations."

Witnesses representing the Administration and a number of environmental organizations concurred in the judgment that this segment of the lower Wisconsin River is deserving of study for possible inclusion in the wild and scenic rivers system. No opposition to the proposal was communicated to the Committee.

4. AND 5. THE WEST FORK OF THE SIPSEY FORK AND THE CAHABA, ALABAMA

(31) West Fork of the Sipsey Fork, Alabama: The segment, including its tributaries, from the impoundment formed by the Lewis own private property along the river have M. Smith Dam upstream to its source in the William B. Bankhead National Forest.

(32) Cahaba, Alabama: The segment from its junction with United States Highway 31 south of Birmingham downstream to its junction with United States Highway 80 west of Selma.

As stated by Senator Sparkman in the June 20, 1974 hearing of the Subcommittee on Public Lands:

"The enactment of S. 2151 and S. 2216 is important to the people of Alabama because these bills offer protection to two unique rivers. Both the Cahaba and the West Fork Sipsey are beautiful rivers which flow through scenic forests. If these rivers are to be preserved, action is needed now. Timber cutting, strip mining, and the growth of the areas along these rivers pose threats that could destroy their special character."

The *West Fork of the Sipsey Fork*, proposed for study meanders through deep canyons with vertical sandstone cliffs bordering both sides of the river in many cases. Bottomland hardwoods and hemlock are the most common trees. The area is very rich botanically and a unique species of fern has been discovered along the river banks. The area abounds in archeological areas, including a cliff overhang dwelling which shows evidence of long-time Indian habitation and sandstone carvings made by primitive man sharpening stone tools.

Extensive measurements of water quality and flow have been made by the U.S. Geological Survey at their benchmark gauging station near Grayson, Alabama. The major results of the study can be summarized as follows:

"Based on the fecal coliform count, the river is well within Public Health Service standards for swimming all year long, even at low flow in the summer; much of the time the river water quality will probably meet drinking water standards; the river is clear and silt-free except at flood stage; and pesticide and mineral content are very low. There are few streams with higher water quality in the east and southern United States."

The river is canoeable, with perhaps only 2 or 3 short portages, from Thompson Creek at Northwest Road (FS 208) to the highway 33 bridge for approximately 5 to 6 months during the year, a canoe trip which can be made in 2 or 3 days. In this stretch of river there are several shoals which offer a beginning canoeist a safe but exciting white water experience. December through May is the best canoe period, although the river can be floated on a tube during other months. the December–May period coincides with the most enjoyable time for backpacking and canoeing in Alabama.

Fishing in the study area is good. The primary game fish are black bass and spotted bass. The world-record spotted bass was taken in Smith Lake adjoining the study area. Fly and spin-fishing for bass in the study area is productive year round. The streams are easily waded. The area is famous among the local residents for *trotline* fishing for catfish at night. A favorite family weekend for nearby residents is to hike into the river for catfishing during the spring and summer.

The area has an extremely high recreational potential for Alabama and the Southeastern United States.

A portion of the river runs through the Spisey area of Bankhead National Forest. This area is proposed as a wilderness area in the Eastern Wilderness Areas Act which this Committee reported and the Senate passed earlier this Congress.

In addition to its renowned beauty, the *Cahaba River* has great historical significance. The first permanent capital of the State of Alabama was located on its banks. The Cahaba also served as a major means of transport during the settlement of Alabama and the development of the cotton trade of the Old South. Indian canoes, settlers' barges and rafts, and steamboats plied the river. It was especially important to the Indians of Alabama, and derives its name from the language of those who lived along its banks. The Cahaba too has fine potential for canoeing and other forms of recreation.

6. THE KETTLE RIVER, MINNESOTA

(33) Kettle, Minnesota: The entire segment within the State of Minnesota.

Originating in Carlton County, the Kettle River winds its way southward toward the

town bearing its name and then flows into the Saint Croix. Essentially a wild river with only a few scattered dwellings throughout most of its length, it is a spectacular area enjoying a national reputation for its excellence, as a white water canoe river. Rapids interspaced with long tranquil pools offer a challenge to even the most experienced canoeists, as well as a chance for quiet reflection. Deep gorges, moraines, glacial outwash, plains, kettle holes and caves illustrate the glacial geology of the area. Deer, muskrats, beaver, herons and hawks are only a few examples of the abundant wildlife that inhabit the valley. In the clear waters of the Kettle, fishing is excellent, especially for walleyes, sturgeon and small mouth bass.

From its headwaters in Carlton County, the Kettle flows in a generally north-south direction. For the first six miles the river flows through an area of glacial moraine where pools and rapids are closely interspaced. Heavy forests of aspen and birch, dotted with occasional stands of Norway and white pine, extend almost to the water's edge, enclosing the river and creating an intimate and intensely natural setting.

As the river widens, the pools and rapids become longer and deeper. Islands become a dominant feature of landscape, and the main channel soon becomes difficult to distinguish. Below the point where the Moose River joins the Kettle, the ever-widening stream flows through a valley of farmland and open woods.

At Banning State Park the Kettle flows through a gorge approximately 130 feet deep, which forms the nationally celebrated Hell's Gate Rapids. These rapids, approximately one mile in length, consist of four major drops of about five feet each.

Further downstream the river passes through several short rapids and pools of up to 20 feet in depth. It widens out below this point to a series of rapids that are of moderate difficulty and very popular with canoeists.

Nearly two-thirds of the Kettle River basin is forested. There are some farms along the river and a number of small communities. From the town of Sandstone some 53 miles to the mouth of the Kettle at the St. Croix, there are only about five homes visible from the river. Public land ownership in the General C. C. Andrews State Forest, Banning State Park, the Sandstone Game Refuge, Chengwatan State Forest and St. Croix State Park has helped to protect the primitive values of the area.

Nevertheless, conditions favoring future development of the Kettle are rapidly emerging. Two-thirds of the land along the Kettle is in private ownership. Taxes are escalating, and it is becoming more and more expensive for people to maintain undeveloped property. The populous Twin Cities and Twin Ports areas are exerting increased pressure for second home development, and visitor use in the major State Parks along the Kettle has tripled during the past five years. Finally, Federal protection under the Wild and Scenic Rivers Act of the Saint Croix (into which the Kettle flows) and of the Saint Croix's other major tributary, the Namekagon, will inevitably heighten development interest in the Kettle.

The Kettle River has been designated for study under the 1973 Minnesota Wild and Scenic Rivers Act. The State study is now nearing completion, and all indications are that the Minnesota Department of Natural Resources will be prepared to move ahead with a program for the Kettle.

In light of this State study, Senator Mondale, sponsor of S. 2691, which proposes the Kettle for Federal study described the prospective role to be played by the Federal study:

"A study of the features of the Kettle most deserving of national protection is clearly warranted. The fact that the State study is now almost complete should not serve as a deterrent to action, but rather as a means to expedite a federal evaluation. The work of the federal study team would be greatly facilitated by drawing upon the analysis already done by the Minnesota Department of Natural Resources. This study, I would hope, would focus primarily on what the appropriate roles of Federal, State and local government should be in providing for an effective preservation program. If the study findings reveal that the State of Minnesota has all of the financial and management tools required to avoid any destruction of the scenic and primitive values of the Kettle, the federal government's responsibilities might be confined merely to recognizing the unique nature of this resource. But if the study reveals that federal back-up protection is required to safeguard the Kettle, then an appropriate State, Federal and local government management program could be devised."

7. THE UPPER MISSISSIPPI, MINNESOTA

(34) Upper Mississippi, Minnesota: The segment from its source at the outlet of Itasca Lake to its junction with the northwestern boundary of the city of Anoka.

The Mississippi River, America's best known river, needs no introduction. For most of its 2,350 mile length, however, the Mississippi today could scarcely be considered an untouched natural resource. In many areas it has been heavily impacted by pollution. Competing commercial uses have by and large overshadowed attention to the recreational potential of the river. But, winding from its source at Lake Itasca south to the City of Anoka, Minnesota, the 330-mile stretch of the river offers opportunities for visitors to enjoy a variety of excellent wild, scenic and recreational qualities. In this area much of the river still warrants Mark Twain's description, written nearly a century ago:

"The majestic bluffs that overlook the river, along through this region, charm one with the grace and variety of their forms, and the soft beauty of their adornment. The steep verdant slope, whose base is at the water's edge, is topped by a lofty rampart of broken, turreted rocks, which are exquisitely rich and mellow in color—mainly dark browns and dull greens, but splashed with other tints. And then you have the shining river, winding here and there and yonder, its sweep interrupted at intervals by clusters of wooded islands threaded by silver channels; and you have glimpses of distant villages, asleep upon capes; and of stealthy rafts slipping along in the shade of the forest walls; and of white steamers vanishing around remote points. And it is all as tranquil and reposeful as dreamland, and has nothing this-worldy about it—nothing to hang a fret or a worry upon."

Today, as it was a century ago, it is possible to float down stretches of the Mississippi's still serene waters, to enjoy untouched forests and plains, and to swim and fish in water of superb quality.

From the standpoint of a wild river experience, Itasca State Park, at the source of the Mississippi, embraces roughly 50 square miles of exceptional wilderness, forested with virgin Norway and white pine. The Chippewa National Forest adjacent to the Mississippi offers miles of clear northern water with excellent stands of pines and an abundance of wildlife. Rugged beauty can be seen near Ball Club Lake where the river becomes exceedingly tortuous, and a double stream of water encloses a series of large islands.

The early history of Minnesota and the conquest of the frontier unfold mile by mile along the riverway. Ancient Indian mounds and battlefields, early routes of exploration, and pioneering trading posts. Fort Ripley, Minnesota's second oldest military post, from which Zebulon Pike, Sieur Duluth, Father Hennepin and Jonathan Carver set out upon their historic voyages, can be found along the banks of this stretch of the river.

The geologic origins of Minnesota are also traced along the Mississippi from the ancient bed of glacial Lake Aitken, where the river meanders across a broad alluvial plain to the glacial till stretching south toward St. Cloud and further downstream to the Anoka Sand Plain where fine sand through the years has formed striking dunes visible from the river.

At least 52 different species of fish have been identified in the Upper Mississippi, including Walleye, Northern Pike, Yellow Perch, Smallmouth Bass, Black Crappie, and Muskie. Wildlife of all shapes and sizes abound in the river valley, and rare and endangered species native to the North Central Region of the United States are frequently sighted there.

The entire river segment proposed for study under the National Wild and Scenic Rivers Act enjoys excellent scenery. Clear, tree-lined lakes, waterfalls, pine forests and valleys offer at times a quiet and spectacular view of the river as it has remained untouched for centuries. Even the community of St. Cloud, one of the most developed along this stretch of the river, still largely fits the description of a special correspondent from Harpers Magazine who wrote the following in 1859:

"St. Cloud is today of only three years growth and though it has a couple of fine hotels, a large number of stores and is tastefully laid out, it is less remarkable for its size, its rapid progress and the good quality of its components than for its natural beauties and picturesque location. It stands on a high wooded bluff, at the bend of the Mississippi, and is on all sides surrounded by trees."

Some 1,700 resorts located within easy access of the river attest to the appeal this area holds for recreationists. The Mississippi offers opportunities for fishing, camping, hiking, canoeing, swimming, boating and many other water based sports. Given the proximity of the Upper Mississippi to the Twin Cities Metropolitan area and to the Duluth-Superior ports, the demand for such recreational activities is high and rapidly growing.

But the increasing recognition of the Upper Mississippi as a high quality recreational resource constitutes a threat to its wild and scenic river characteristics. This is especially true in the counties nearest Minneapolis-St. Paul where the character of the river valley is expected to rapidly change from agricultural to residential-commercial. Anoka, at the southern boundary of the proposed study area, is, according to the latest figures, the fastest growing county in the State. To get an idea of the tremendous development pressures on the river, one need look only to the figures on building permits and plats in 1973. For Wright County there were 90 such permits and 14 plats containing up to 250 lots per plat in 1973. For Stearns County there were 181 permits and 15 plats. In Sherburne County there were 160 permits and 6 plats. Existing plats alone could lead to 10,000 or more new housing units in the lower segment of the valley.

The State of Minnesota, in approving the 1973 State Wild and Scenic Rivers Act, officially responded to the obvious need for action on behalf of the Upper Mississippi by selecting it as one of 16 rivers in the State to be studied for possible protection under that Act. The Minnesota Department of Natural Resources is moving forward on the evaluation of the Mississippi between Anoka and St. Cloud—the segment that is under the most intensive pressure for development. But this study in itself constitutes a formidable task for that Department, and even after the State study is complete, there are severe limitations on the ability of the Department to effectively control development along the river. Currently, there are no funds

whatsoever for acquisition, and the State lacks the condemnation authority provided under the National Wild and Scenic Rivers Act. Voluntary cooperation through zoning and willingness not to develop on the part of thousands of private landowners and numerous communities would be required to preserve the Mississippi under such circumstances. A Federal study will help determine whether these protective tools alone are sufficient to hold the actions of developers in check without the fee title and easement acquisition authority and funding provided by the Federal Wild and Scenic Rivers Act.

8. THE AMERICAN RIVER, CALIFORNIA

(35) American, California: The North Fork from Mountain Meadow Lake to the Auburn Reservoir and the lower 7.5 miles of the North Fork of the North Fork.

The North Fork of the American River originates in the Tahoe National Forest in eastern Placer County at an elevation of 7,000 feet, and joins the Middle Fork at Auburn to form the American River. The 46 miles between the Cedars, a private resort near Soda Springs, and the Auburn Reservoir, under construction by the Bureau of Reclamation, would be studied. This portion of the North Fork has both wild and scenic characteristics, comprising a landscape of contrasting beauty and a variety of scenic features, including broad panoramas, views of the steep canyon, numerous tributaries, great gorges, waterfalls, wooded canyons, and many wildflowers.

The North Fork of the American River from the Cedars to Colfax remains one of the last undisturbed stretches of wild river in the Northern Sierra Nevada. For nearly forty miles, the river winds through a scenic canyon, inaccessible except by foot trails which wind precipitously along tributaries and through notches to the canyon floor. Except during heavy spring runoffs, the water runs perfectly clear on its pebble bed, potable throughout and free from contamination. The North Fork originates in the western part of Placer County near Lake Tahoe and joins the Middle Fork at Auburn to form the American River. The river generally flows west to southwest and is bounded on the north by the watershed between the American and Yuba River basins along which runs Interstate 80, and on the south by the Foresthill Divide, whose back country separates the North Fork from the Middle Fork and Rubicon Rivers.

From the towering cliffs of Royal Gorge and Giant Gap to the spacious meadows and pine forest of Green Valley, the entire length of the North Fork affords unparalleled vistas of Northern Sierra terrain. The river here forms an important wilderness river fishery for native rainbow trout and other species, and lies within the heart of the Blue Canyon winter deer range. Along the tributaries, picturesque mines and placers long abandoned and reclaimed by nature testify to the rich human history of the area. On river camps and bars, remnants of old vineyards and orchards bring to mind the fluorishing settlements of mining days where some of the most prominent men of the state and some of the roughest went to seek their fortunes.

There appears to be little controversy over the proposed study of the North Fork. The State of California already has demonstrated its support for wild river protection as the State Legislature added a portion of the river to the California Wild Rivers System in 1972.

The State statute, however, applies only to State and private lands, while in the case of the North Fork canyon more than 50 percent of the property is Federally owned. S. 3022 would insure that the entire stretch would be considered as a unit. And if the study is favorable and Congress responds that both the Federal and State segments would receive protection.

As the Department of Agriculture has concluded from a field examination that the North Fork of the American River above the Cedars and extending to Mountain Meadow Lake and the lower 7½ miles of the North Fork of the North Fork also are undisturbed and should be studied, they have been added to the description of the river segments to be studied.

9. THE TUOLUMNE RIVER, CALIFORNIA

(36) Tuolumne, California: The main river from its source on Mount Dana and Mount Lyell in Yosemite Park to Don Pedro Reservoir.

The 158-mile long Tuolumne River begins in mountainous Tuolumne County, California, and then meanders through agriculturally-rich Stanislaus County. The upper 96 miles are proposed as a study river.

This river, which is the fifth largest flowing from the Sierra Nevada, has its source on 13,053 foot Mt. Dana in Yosemite National Park and on Mt. Lyell, the highest peak in the Park.

The first flowing water can be seen near 12,000 feet where it emerges from the Lyell Glacier. The John Muir Trail and the Pacific Crest Trail follow the Lyell Fork for more than 11 miles. The Lyell and Dana Forks join near a campground in Tuolumne Meadows and continue as a placid high mountain stream of exceptional clarity, which is often filled with small trout.

Suddenly the river starts its swift descent, passing over Waterwheel Falls and enters the Muir Gorge, passes through Hetch Hetchy Valley, the smaller twin of Yosemite Valley. Hetch Hetchy is now a reservoir supplying drinking water to 8% of California's population. It contains numerous waterfalls, both thunderous and light.

As the river leaves the Park and enters the Stanislaus National Forest, the vegetation in the 2000-foot deep canyon changes from bare granite slab to chaparral and scattered pine. Still descending at 100 feet per mile, the 12-mile stretch below Hetch Hetchy and the 8-mile stretch below Cherry Creek confluence is deserted except for wildlife and an occasional fisherman.

The next 15 miles in the Stanislaus National Forest below Lumsden Campground, followed by 3 miles administered by the Bureau of Land Management, comprise what many regard as the best white water canoe and kayak stretch in California. With a gradient of from 45 to 35 feet per mile, this stretch provides a truly exciting white water raft run.

The Federal agencies regulate commercial raft operations at a level that preserves the wild environment as well as the feeling of solitude. The commercial raft use of this stretch was 2300 paid customer days in 1973.

Fishermen carefully guard the location of the pools that contain trophy-size native trout.

Next the river passes under Wards Ferry Bridge and enters the Don Pedro Reservoir with water level about 830 feet above sea level. This reservoir is a multipurpose project owned and operated by the Modesto and Turlock Irrigation Districts and the City and County of San Francisco.

Nearly all of the 96 miles of the river designated for study and the land within sight of it is federally owned or administered by the City and County of San Francisco, except about one mile of scattered inactive mine claims. No commercial timber is within sight of the river. In this 96-mile stretch 10 bridges span the stream; five of these are wooden footbridges and one other has no floor. San Francisco administers portions of the river at Hetch Hetchy Reservoir and for about 2 miles at Early Intake where their powerhouse, aqueduct intake dam, switchyard, overhead transmission lines, one of the road crossings, and the only permanent dwellings within sight of the river are located. Also there are also a number of mine buildings and historical structures along the 96 miles, plus two or three stream gauges, four campgrounds, two concessioner-operated camps, and a rumor of Indian caves in the steep canyon side. The general feeling, however, is of a rugged and remote place, largely unchanged by man.

In some areas along the river there is pressure by people desiring freer access to the river and for increased use by commercial raft companies and private white water boaters. Proposals for construction of dams and diversions of water for power generation have been in the early stages of investigation by the City and County of San Francisco for the last seven years.

10. THE ILLINOIS RIVER, ARKANSAS AND OKLAHOMA

(37) Illinois, Arkansas and Oklahoma: The entire river from Tenkiller Ferry Reservoir upstream to its source, including the Flint and Barren Fork Creeks and excluding Lake Frances.

The Illinois River originates in northwest Arkansas and flows first northerly, then curves westerly through the Ozark National Forest, and finally flows southwesterly into east central Oklahoma. The main stem is approximately 125 miles long and the major tributaries run for approximately 130 miles.

The upstream areas are in forested Ozark mountain country of exceptional beauty. The watershed is sparsely populated and has abundant wildlife including the great blue and green herons and egrets. Above Lake Frances the stream would appear to be an excellent candidate for wild river classification.

Below Lake Frances the river becomes more pastoral and the threat of commercialization more imminent. Agricultural activities and summer homes sometimes intrude to the water's edge. Here the water quality is still good and the fishing excellent, especially for black and spotted bass.

Seventy-five canoe liveries are reported on the river with several hundred canoes being rented. There is considerable use by boating and fishing enthusiasts as well as swimmers and hikers.

About 25 to 30 percent of the river appears to be national forest and the balance essentially in private ownership. The Oklahoma Scenic Rivers Act of 1970, designates the river from above Tenkiller Ferry Reservoir and its tributaries, Flint and Barren Fork Creeks, as initial components of the system.

S. 3628, as introduced by Senators Bellmon and Bartlett on June 12, 1974, proposed only the Oklahoma portion of the river for study. Subsequently, however, the Administration submitted its proposal, S. 3708, which would designate the Arkansas segment, as well. At the request of Senators Fulbright and McClellan, the Arkansas segment, the segment of truly exceptional beauty which bears the characteristics of a wild river, was added to S. 3022, as amended.

11. THE SHEPAUG RIVER, CONNECTICUT

(38) Shepaug, Connecticut: The entire river.

The Shepaug is a surprisingly untouched river located close to several of the country's major population centers. It is within an hour's drive of 10 Connecticut cities. Along most of its 25 mile length it is bordered by forest, and the only homes are well back from the river or screened by vegetation. Water quality is excellent. The Appalachian Mountain Club's canoe guide says the river "provides some very fine, not too difficult white water running." While most of the remaining areas are accessible only by unpaved access roads, there is one 10 mile stretch below Washington Depot on which there is no road access and the setting is one of wilderness character. In some spots, the river becomes a torrent of white water and

rapids running through a series of gorges which rise up more than 700 feet.

The Shepaug River valley remains if not the only, at least one of the very last, largely undeveloped major watersheds in southern New England. Over twenty-five miles of forested hills are scarcely broken by three small, essentially rural communities.

The American Indian has lived in this region for at least 9,000 years—at times in vast numbers and with a highly evolved culture. One five-mile stretch of the river now being explored by local archaeologists contains eight Indian sites, most of which were occupied for 5,000 years or longer.

The Shepaug is now threatened by development. Four sites for damming it are already sketched on topographical maps—along with projected 345 kv transmission lines which would cut a path parallel to the river.

12. THE COLORADO RIVER, COLORADO AND UTAH

(39) Colorado River, Colorado and Utah: The segment from its confluence with the Dolores River, Utah, upstream to a point 19.5 miles from the Utah-Colorado border in Colorado.

The Colorado, like the Mississippi which is also among the rivers which have segments for study under S. 3022, as amended, needs no introduction to anyone remotely familiar with American geography or history. Like the Mississippi, the Colorado has been subject to intense developmental pressures. However, unlike its sister, the Colorado has also always been recognized for its recreational qualities.

The Colorado is a wide river, averaging upwards of 400 feet, of navigable depth (up to 20 feet). The flow is subject to rapid and extreme fluctuations somewhat regulated by upstream and tributary impoundments. The entire length is boatable in the spring season and does enjoy considerable boating use. The course is stable, but there are changeable sandbars. Together with the Dolores River, also to be studied under S. 3022, as amended, the river offers entrenched and colorful canyon areas, white water, and rugged canyon country terrain. The segment of the Colorado River to be studied includes a flat water stretch through the Ruby Canyon of the Colorado side and a wild water stretch in Westwater Canyon on the Utah side. Vegetation is sparse and features principally desert types with some cases of cottonwood and other water-loving types at springs. There is a modest sport fishery, with catfish the dominant catch. Mule deer, rodents, reptiles are common; bighorn sheep, rabbits and chukar occur along the river.

In addition, the River and its side canyons possess unique geological and paleontological values beyond the semiarid desert canyon atmosphere it presents to the visitor. Dinosaurs were one prolific in the area and gastroliths can still be found there. The ages revealed by the river's carvings engender a sense of timelessness to the river traveler.

Water quality is still relatively good. Access is available by roads, but portions of the river are relatively inaccessible.

13 THROUGH 23. THE GUNNISON, LOS PINOS, BIG THOMPSON, GREEN, CONEJOS, ELK, CACHE LA POUDRE, PIEDRA, ENCAMPMENT, YAMPA, AND DOLORES RIVERS, COLORADO

(40) Gunnison, Colorado: The segment from the upstream (southern) boundary of the Black Canyon of the Gunnison National Monument to its confluence with the North Fork.

(41) Los Pinos, Colorado: The segment from its source, including the tributaries and headwaters within the San Juan Primitive Area, to the northern boundary of the Granite Peak Ranch.

(42) Big Thompson, Colorado: The segment from its source to the boundary of Rocky Mountain National Park.

(43) Green, Colorado: The entire segment within the State of Colorado.

(44) Conejos, Colorado: The three forks from their sources to their confluence, thence the Conejos to its first junction with State Highway 17, excluding Platoro Reservoir.

(45) Elk, Colorado: The segment from its source to Clark.

(46) Cache la Poudre, Colorado: Both forks from their sources to their confluence, thence the Cache la Poudre to the eastern boundary of Roosevelt National Forest.

(47) Piedra, Colorado: The Middle Fork and East Fork from their sources to their confluence, thence the Piedra to its junction with Colorado Highway 160, including the tributaries and headwaters on national forest lands.

(48) Encampment, Colorado: The Main Fork and West Fork to their confluence, thence the Encampment to the Colorado-Wyoming border, including the tributaries and headwaters.

(49) Yampa, Colorado: The segment within the boundaries of the Dinosaur National Monument.

(50) Dolores, Colorado: The segment from the west boundary, section 2, township 38 north, range 16 west, NMPM, below the proposed McPhee Dam, downstream to the Colorado-Utah border, excluding the segment from one mile above Highway 90 to the confluence of the San Miguel River; the segment of the main stem from Rico upstream to its source, including its headwaters; and the West Dolores from its source, including its headwaters, downstream to its confluence with the main stem.

The rivers of the State of Colorado are of vital importance to the nation. Six major rivers of the West have their sources in Colorado's mountains: Colorado, Rio Grande, Arkansas, North and South Platte, and Republican Rivers. The waters of these rivers flow out of the State into eighteen neighboring States, Colorado, itself, has 231 rivers, traveling a total of 14,000 miles within the State. The Bureau of Outdoor Recreation of the Department of the Interior has found that only 90 of these Colorado rivers, totalling 3,400 miles, remain, which have significant free-flowing waters. Yet even these 90 rivers are under constant threat of impoundment or diversion.

Of course, impoundment and diversion lessens the opportunity for canoeing, kayacking, rafting and other forms of river-running recreation. However, other recreational pursuits are also threatened by such development. According to the Colorado Division of Wildlife, fish life has been, virtually eliminated from over 2,800 miles of Colorado streams by dams, channelization, stream alteration, and pollution. Since 1900, 220 miles of prime trout streams have been lost to onstream construction of reservoirs. The Division estimates that within the next three decades between 250 to 500 stream miles where fishing now occurs will be eliminated by water resource projects. The fishery values of such streams range from $28,500 to $50,000 per stream mile and are increasing rapidly.

In short, these remaining freeflowing rivers provide countless hours of recreation and peace of mind for many Coloradoans, as well as tourists from all over the United States. Summer tourism brings in over $550 million per year and a substantial part of Colorado's image revolves around its mountain streams.

Despite the importance of Colorado's rivers and the increasing pressure to impound and divert them, not one of them is a component of the wild and scenic rivers system. Nor have any of them been designated for study.

S. 3022, as amended, would designate, in addition to a segment of the Colorado River, segments of eleven of these ninety remaining rivers with freeflowing waters. All eleven rivers were on the list of fourteen rivers contained in S. 2319, introduced by Senator Dominick on August 1, 1973, and two of those are also contained in the Administration proposal, S. 3708. In several cases, to be discussed below, alterations were made in the segments to be studied. The three rivers in S. 2319 deleted from S. 3022, as amended, are the North Platte, Laramie, and Michigan. These rivers were withdrawn at the joint request of Senator Dominick, sponsor of S. 2319, and Senator Haskell, Chairman of the Subcommittee on Public Lands which gave the initial consideration to both bills. The reason for the deletion was the very high percentage of private land along the three rivers and the excellent voluntary efforts by the landowners—most of whom are ranchers—to preserve those rivers' wild and scenic river characteristics which they themselves cherish. The other Colorado river in S. 3708—the White—was dropped because of the lack of a hearing record on it in this Congress. It will be the subject of hearings when S. 3708 is given consideration in the next Congress.

The eleven Colorado rivers were discussed more fully in hearings than any of the other twelve rivers which subsection (a) of S. 3022, as amended, would designate for study. S. 2319, which contains all eleven rivers was considered in a field hearing by the Subcommittee on Public Lands in Durango, Colorado on May 13, 1974, as well as the Washington, D.C., hearing on June 20, 1974. None of the other twelve rivers were the subject of field hearings.

The eleven Colorado rivers possess a unique variety of plant and wildlife, scenic, historic, archeological and recreational values and display an extraordinary range of environments from desert to alpine, from forested mountains to rock canyons.

The *Dolores River*, known to Indians for centuries and first visited by the Fathers Escalante and Dominques on August 11, 1776, in the course of their wanderings toward the settlements of Monterey, still contains today much of the mystical charm it held then. The river is best known for its striking desert environment, its red brown waters, its natural sandstone canyons, and its primitive cliff dwellings and pictographs.

The most popular stretch is that between Cahone and Bedrock. From Cahone to Slickrock, the river undergoes a startling transition from a subalpine to a desert stream. It is rare to be able, in a single day's journey, to travel so abruptly from one zone to the next. Its value is further heightened by the consideration that this is one of the very few remaining rivers anywhere in the United States with this type of character and which is still largely in its natural state.

Between Slickrock and Bedrock, the Dolores becomes a true desert river, with many interesting side canyons to explore. However, its most spectacular feature is its narrow, deep, sandstone canyon of sheer red walls and fantastic overhangs. It is the only known example of a Glen Canyon type formation with a navigable river flowing through it in the United States. In contrast to the part from Cahone to Slickrock, which requires expert boatmanship to run, this part provides a most beautiful 3-day trip which an amateur can easily make.

The Dolores differs from other desert rivers in that its flood waters are icy cold, its descent rapid, its channels more rock cluttered, and its lability of flow more extreme.

S. 2319 originally called for a study of the entire Dolores and its West Fork from their sources to the Utah border. However, the Committee gave consideration to a point made by a representative of the Dolores Water Conservancy District at the Durango hearing:

"We suggest that the Dolores River above the proposed McPhee Dam be excluded from S. 2319 in that essentially all of this reach of stream valley is currently developed and used for ranching enterprises."

Because of the high percentage of private ownership above the proposed McPhee Dam and in light of the desire of the two Colorado

Senators not to interfere in any way with the Dolores Reclamation Project (see discussion below), the request of the District was honored when the Subcommittee on Public Lands ordered S. 2319 reported to the full Committee on July 29, 1974 with only the stretch below the McPhee Dam designated for study.

Subsequent to the Subcommittee's action, the Subcommittee Chairman received the following communication from the Dolores Water Conservancy District.

"In response to proposed Senate bill 2319 as it would affect the Dolores Reclamation Project, the board of directors of the Dolores Water Conservancy District, is vitally interested and it is the concensus of the board that the inclusion of that part of the Dolores River approximately 1 mile below McPhee Dam: described as, beginning at the west boundary of section 2, township 38 N, range 16 West, NMPM to the river bridge near Cahone, Colo., would be necessary and advantageous to the Project development.

"The reason for the inclusion of this part of the Dolores River in Senate bill 2319 is that it would be compatible with the proposed storage release of water for the enhancement of fisheries and wildlife which is an intregal part of the Project development.

"In addition, it is also the consensus of the board of directors of the Dolores Water Conservancy District, that the inclusion of the West Fork of the Dolores River from Dunton, Colo., to its headwaters and the east fork of the Dolores River from Rico, Colo., to its headwaters should receive consideration in Senate bill 2319, for study under the national wild and scenic rivers act as these rivers afford excellent fishing and recreation areas, and we do not believe that they should in any way interfere with the Dolores Reclamation Project.

"We hope this information will be of value to you and your committee and the final draft of the proposed study bill. If we can be of assistance to you in any way, please let us know."

Reflecting this suggestion, the full Committee, in its mark-up of S. 2319, added the headwaters of the main stem upstream from Rico to its source. However, the Committee also added the entire West Dolores from Forks to its source, not just the headwater above Dunton as suggested by the District. Although the West Dolores does contain a good percentage of private land, a close study of the map revealed that, as easy access to the river is possible, the land would not be threatened by easement condemnation.

Finally, the Subcommittee and full Committee excluded a stretch of river in the Paradox Valley in Montrose County so as not to interfere with the Paradox Valley unit of the Colorado River basin salinity control program. The unit was authorized in section 202(1) of the Colorado River Basin Salinity Control Act (Act of June 24, 1974, 88 Stat. 266, 271).

Paradox Valley is underlain by a collapsed salt dome known to be 14,000 feet thick. Within the valley, the pure salt source is within 60 to 100 feet of the ground surface. The Dolores crosses the valley near its midpoint and picks up over 200,000 tons of salt annually from rising groundwater entering the river. This area has been under consideration as a salinity control project for many years.

Detailed investigations began in 1972 with the installation of stream gauging and water quality stations. Data from these stations verified earlier estimates of the quantities of salt being added to the river system. Geophysical surveys and exploratory drilling conducted in 1972 and 1973 defined the area of salt pickup and the movement of saline groundwater into the river. At about mid-valley there is a sharp interface between the saline and fresh groundwaters which appears to be stable. A test well has been drilled into the fractured salt dome cap and pumping tests performed to evaluate the proposed control plan.

The results of this testing indicate that the salt being added to the Dolores in Paradox Valley can be effectively controlled by pumping saline groundwater from the brine zones. The estimated annual removal of salt by the proposed program is 180,000 tons.

The project plan for the unit calls for the installation of a field of about 8 brine wells, 250 feet deep, that would lower the fresh water-brine interface by pumping, thus preventing the brines from rising to the ground surface and entering the river. The pumped brines would be conveyed about 20 miles from the well field at an elevation of 4,940 feet, through a series of pumping stations, to the proposed Radium evaporation reservoir at about 7,000 feet elevation. Radium reservoir would be constructed on an impervious, marine shale. Tests indicate that there would be no leakage from either the dam or reservoir.

The U.S. Bureau of Reclamation estimated cost of construction, based on 1973 prices, for the brine wells, pumping plants, pipeline, and evaporation reservoir is $16 million, and interest during construction raises the total capital costs to $17,650,000. The annual operation, maintenance and replacement costs based on the expected life of equipment and a 6⅞% interest rate is $350,000. Total annual costs, including amortization of the capital costs over 100 years at an interest rate of 6⅞% would be $1,600,000.

The importance of the unit and the reason for deletion of this portion of the Dolores from study can be demonstrated by the following statistics: The unit, once constructed, could remove 180,000 tons per year of salts from the Colorado River system. This would reduce the river's salinity at Imperial Dam by 20 ppm in the year 2000. This would result in a reduction in damages to users of $4,600,000 per year, for a benefit/cost ratio of 2.9 to 1.

The *Green and Yampa Rivers* also offer desert type canyon experiences, though rather different from the Dolores. The Upper Green River actually cuts through the east-west Uinta Mountain Range, rather than run along it as rivers conventionally do. This is analogous to the Lower Dolores River cutting across Paradox Valley (thus its name) rather than threading its length. Both the Green and Yampa are rather large rivers, possessing exciting, heart-stopping rapids. The Yampa, one of the few Colorado rivers which is free-flowing throughout its entire length, is characterized by high canyon walls, cactus, and pinyon trees. The Green is a beautiful desert river with medium-to-wide stretches bounded by sandstone cliffs. The upper portion of the Green is an excellent natural fishery. Bighorn sheep and mountain lions inhabit the isolated canyons which the two rivers have carved in the Dinosaur National Monument. Taken together, the Dolores, Yampa, and Green offer the first opportunity to preserve examples of desert river eco-systems in the national wild and scenic rivers system. Both rivers are exceptionally popular for boating. The segment of the Yampa designated for study lies entirely within the National Monument. A stretch above the Monument was deleted because of the extensive private holdings along its banks. Approximately 70% of the Green lies within the National Monument and much of the remainder is on the lands of the Browns Park National Wildlife Refuge.

Not all rivers deserve protection due to their recreational potential. Some, like the *Gunnison River* as it fights its torturous path through the famed Black Canyon National Monument and BLM's Gunnison Gorge, have unique natural attributes unequaled elsewhere in the Nation. This stretch grinds its way through spectacular canyons and Precambrian formations. The isolation provided by these canyons makes them prime wildlife habitat. Bobcat, mountain lion, prairie falcon, ravens, and golden and bald eagles are all residents of the canyons, but the most significant species found in the lower sections are peregrine falcon and ospreys. The Colorado Division of Wildlife has identified the Gorge area as an exceptional habitat for peregrine falcon and ospreys. Dr. Anderson of Colorado College, a raptor expert, has reported that fewer than half a dozen pairs of peregrine or ospreys exist in the entire State. The topography of the canyons, the delicate soils, and the solitude required for the eagle, peregrine, osprey, bobcat, and Bighorn sheep make the Gunnison a river imminently suitable for study as a potential wild and scenic river.

Most of the remaining streams—the Los Pinos, the Poudre, the Conejos, the Elk, the Piedra and the Encampment—are primarily noted for their scenery and wildlife and fishing opportunities.

The *Conejos River* originates along the Continental Divide east of Pagosa Springs and flows approximately 50 miles before its junction with the highway. It is a good trout stream with naturally propagating populations of brown trout, cutthroat, and eastern brook trout. The river ecosystem supports a variety of wildlife including the especially rare and endangered peregrine falcon. One pair of peregine falcon has been sighted in the main canyon of the Conejos River.

The early portion of the segment borders the South San Juan roadless area and the entire segment lies within the Rio Grande National Forest. The Platoro Reservoir (built in 1951 for irrigation and flood control purposes) was excluded from, and the three forks were added, to the river description in S. 2319.

Both the *Los Pinos River* and the *Piedra River* have their sources high in the mountain peaks of the proposed Weminuche Wilderness (S. 1863, passed the Senate on February 7, 1974, and H.R. 12884, passed the Senate on August 1, 1974). The segment of Los Pinos to be studied lies entirely within the proposed wilderness, while the Piedra flows south through the First Fork Roadless Area. The First Fork Roadless Area is a presently untouched section of the San Juan National Forest with an exceptional stand of virgin timber. Except for the rugged box canyons of the Piedra, it is generally characterized by relatively wild terrain with comparatively easy accessibility. The timber contained here is an unusual example of the original terrain found in the State. Due to the absence of roads in the river drainages, very excellent fisheries have been maintained in both the Los Pinos and the Piedra. Both river systems support large and growing populations of elk and black bear. Consequently, in this area there is intensive outdoor recreation in the form of elk and bear hunting. Rocky Mountain goats have been sighted on Pyramid Peak at the northern end of the Piedra drainage. Bald and golden eagles winter in the southern Los Pinos River area. As their natural diet is fish, these eagles use sections of the Los Pinos, Piedra, and the Animas River as a food source during the winter. The Colorado Division of Wildlife in Durango states that recent evidence indicates that the grizzly bear still survives on a limited population in these two drainages. The San Juan National Forest is the only forest in Colorado in which grizzlies are believed to exist, and the Los Pinos and the Piedra River drainages are two of these prime grizzly areas.

Ranking as one of the two best recreational rivers in the Denver area, the *Poudre River* sports the dual advantage of possessing prime white water and an excellent fishery. One of the best white water rivers in Colorado, the Poudre accommodates a wide range of boating skills. Beginner and intermediate boating capabilities are suitable for the

lower reaches. Further upstream is the site of the 1972 Olympics qualifying slalom course where, for the past four years, the Poudre wildwater and slalom race has been sponsored by the Colorado White Water Association. An excellent natural spawning stream for trout, the Poudre is the subject of fishery research conducted by Colorado State University and the Colorado Division of Wildlife. A major portion of the Poudre is located in the Rocky Mountain National Park and Commanche Roadless Area. Virtually all of the segment lies within the park boundaries and the boundaries of the Roosevelt National Forest.

The *Encampment River* flows north to the Wyoming border through a choice wilderness setting of heavy virgin forest adorning gently rolling hills and with occasional openings into verdant parks. Much of the area is proposed as an extension to the Mt. Zirkel Wilderness. The Encampment and its tributaries boast not only an outstanding and singular wilderness environment, but also large self-sustaining populations of brown and rainbow trout. There is no private property along the segment designated for study.

The *Elk River* originates just across the continental divide from the Encampment in the Routt National Forest and flows 30 miles south and southwest within the national forest until it reaches Clark, the termination for the segment designated for study. A beautiful stream, bordered by conifers and narrow canyons, the Elk possesses a medium flow of quality water. It offers excellent fishing for rainbow trout and enjoyable boating through fairly continuous rapids.

None of these rivers has escaped totally from suggestions of alternative use, whether it be mining (e.g., Piedra, Los Pinos, and Dolores), timbering (e.g., Encampment and Piedra), or impoundments (e.g., Gunnison and Dolores).

The Committee took special recognition of three impoundment possibilities. The first is the Dolores Reclamation Project authorized by the Congress on September 30, 1968 as a part of the Colorado River Basin Project Act (P.L. 90-537). Through storage at the McPhee Reservoir site, located immediately downstream from Dolores, Colorado, it would develop surplus flows of the Dolores River for municipal, industrial, rural, domestic, irrigation, flood control, recreation, and fish and wildlife purposes. It would include a substantial development of the resources of Ute Mountain Indian land and would aid an area of Southwestern Colorado which is in need of economic development.

As noted earlier, because this project is in the advanced planning stage and the question of compatibility of the McPhee Dam and the proposed wild and scenic river segments below it has not been determined with certainty, the study of the Dolores would be limited to a one plus year period. In addition, the McPhee Dam and Reservoir are specifically excluded from the segments under study. Although the Committee felt this deletion was unnecessary. Senators Haskell and Dominick requested this action in order to reassure local residents of their intention that the wild and scenic river study was not to interfere with the Dolores Project.

Also on the Dolores in the Paradox Valley is the proposed Paradox Valley project authorized in section 202(1) of the Colorado River Basin Salinity Control Act (88 Stat. 266). As discussed above in this section of the report, a segment of the Dolores in the valley has been deleted to accommodate this project.

Finally, the Committee noted that the City of Delta, Colorado, has a conditional decree out of the Gunnison River for domestic water purposes. The point of diversion is located on the left bank of the Gunnison River south of the South Fork at a point 1,420 feet west and 1,000 feet south of the east one-quarter corner of Section 24, Township 15 South Range 94 West of the 6th P.M. The Committee believed that exclusion of this diversion point should not be made at this time, because unlike the Dolores, the Gunnison is not otherwise divided into separate segments for study and unlike the McPhee dam, the Delta diversion is not in as an advanced state of planning. However, the Committee wishes it clearly understood that the entire segment of the Gunnison is designated for study only at this time. The Committee will take a fresh look at the proposed diversion at such time as it might consider legislation to designate the Gunnison a permanent component of the wild and scenic rivers system.

III. THE WILD AND SCENIC RIVERS ACT AND ITS RELATIONSHIP TO THE RIVERS TO BE STUDIED PURSUANT TO S. 3022

Very few of the 3 million miles of rivers and tributaries of the United States appear as they did two or three centuries ago. Rivers have been altered and dammed for flood control, navigation, hydroelectric power, water supply, and irrigation. These uses of rivers were clearly necessary for the development and settlement of this nation. Our modern economy, despite its intensive use of advanced technology, has not lost its dependence on our water resource.

Early in the sixties, however, there developed a new concept in our national management of water resources; the protection of free-flowing rivers. In 1965 a study by the Secretaries of Agriculture and the Interior recommended that rivers be protected from dam construction and be preserved in a "wild and free-flowing" state. In 1968, under the leadership of Senator Frank Church and Representatives Wayne Aspinall and John Saylor, Congress enacted legislation which embodied this recommendation—the Wild and Scenic Rivers Act (82 Stat. 906).

The new management concept of preserving free-flowing rivers was forcefully expressed as national policy in the Act's introductory provisions:

". . . certain selected rivers of the Nation which, with their immediate environments, possess outstanding remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes." (Section 1(a).)

The Act fleshes out the management concept in the following manner:

1. *The River Study.* Even if S. 3022, as amended, were to be enacted by Congress, it would not automatically place the segments of the 23 rivers named in subsection (a) in the national wild and scenic rivers system. The Wild and Scenic Rivers Act requires that each river be reviewed in great detail, with full participation of the public involved, before a decision is made to include or exclude it in or from the system.

First either the Forest Service in the Department of Agriculture or the Bureau of Outdoor Recreation in the Department of the Interior must conduct a study of each river segment to determine if it meets the qualifications for inclusion. Each study must not only discuss the river's qualifications but also show, among other things, the current status of land ownership and use; reasonable, foreseeable, potential uses of the land and water which would be enhanced, foreclosed or curtailed if the area were included; and the estimate of the cost of acquiring necessary lands and interests in land and administering the area as a wild and scenic river.

Furthermore, the Act specifically states that each study "shall be coordinated with any water resources planning involving the same river which is being conducted pursuant to the Water Resources Planning Act."

Before each study can be transmitted to the President and the Congress, it must be submitted for comments to the Secretary of Agriculture, Secretary of the Army, Chairman of the Federal Power Commission, the head of any other affected Federal department, and the Governors of the relevant States.

Most important, the Wild and Scenic Rivers Act requires that, as an integral part of each study, a hearing, with full advance notice, must be held in the vicinity of the river segment. All interested parties are to be heard.

Finally, even if the President's recommendations to Congress on a particular river segment are favorable, the Interior Committees of both the House of Representatives and the Senate must hold additional hearings and both Houses of Congress must pass a bill before that particular segment can officially become a component of the national wild and scenic rivers system.

2. *The Multiple Use Approach.* Because the word "wild" is a part of the Wild and Scenic Rivers Act, many assume that the wild and scenic rivers areas are treated like wilderness areas. It is completely erroneous to make an analogy between the Wild and Scenic Rivers Act and the Wilderness Act. The Wild and Scenic Rivers Act should more properly be considered a multiple-use act, save one use. The only use strictly prohibited is impoundment; the river segment must remain free flowing.

The Wild and Scenic Rivers Act sets forth three management categories into which various sections of a wild and scenic river may be placed:

The "recreational" river category refers to river sections readily accessible by road or railroad which may have some development along shorelines and which may have undergone some impoundment or diversion in the past.

The "scenic" river category is given to sections of rivers free of impoundments with shorelines and watersheds largely undeveloped but accessible in places by roads.

The "wild" river category is reserved for these sections of river segments which are free of impoundments and generally inaccessible except by trail, with watershed and shorelines essentially primitive and unpolluted.

In the first two categories, most traditional uses—roads, bridges, residences, farming, grazing, timber harvesting, hunting and fishing, and various commercial activities—may be allowed. Even the most restrictive management category—that of "wild" river—limits development activities less than is done in areas under the Wilderness Act.

The Wild and Scenic River Act does not interfere substantially with the mining and mineral leasing laws, except under the "wild" river category where mineral development may be limited within a quarter mile from the bank of the river. The Act provides that claims perfected and leases let in a river corridor after its inclusion in the system may be operated subject to regulations designed to protect the natural values of the river. Prior claims and leases are not subject to such regulation.

The designation of any river segment is not a reservation of its waters for purposes other than to preserve the river in a free-flowing state. The State's jurisdiction over waters of any river is not affected, and the Act in no way changes established principles

of existing water law. The waters above or below a wild and scenic river are not affected as long as water projects do not invade or significantly detract from the scenic status of the designated river segment.

The Act's only prohibition concerns water resource projects within the wild and scenic river segment. The segment of the river must continue in its "free-flowing state to be a part of the system though some minor impoundments may be allowed. But the decision to include the river segment in the wild and scenic rivers system will be made only after it has been decided that the segment is more important for its value as a free-flowing river than the value for a proposed alternative use of its water.

Generally, the Federal lands within wild and scenic river corridors under the jurisdiction of the Agriculture Department are managed according to the principles of the Multiple Use-Sustained Yield Act which are applied to the National Forests. The Federal lands within rivers under the jurisdiction of the Department of the Interior are managed in conformance with the laws relating to that Department's lands.

3. *Effect on Landowners.* The Federal government's authority to acquire land—particularly by condemnation—along wild and scenic rivers is greatly restricted.

First, the boundaries of a designated wild and scenic river are limited to an average of not more than 320 acres per mile on both sides of the river. However, Federal acquisition of lands *by any means* cannot occur everywhere within this corridor. The Act prohibits the Federal government from acquiring land beyond an even narrower corridor of 100 acres per mile on both sides of the river. Beyond that point, the Federal government's acquisition authority would be limited to scenic easements only.

Of course, most landowners are concerned about only one means of land acquisition—condemnation. The Wild and Scenic Rivers Act prohibits Federal condemnation of private property within the 100 acres per mile corridor if 50 percent or more of the corridor's land is in public ownership. Even on rivers where less than 50 percent of the land is publicly owned, condemnation cannot occur freely. First, the Federal government is stopped from further exercising the eminent domain authority as soon as the 50 percent mark is reached. And, second, even if less than 50 percent of the land is publicly owned, private land cannot be condemned if it is within a city or town which has a valid zoning ordinance which conforms to the purposes of the Wild and Scenic Rivers Act. The only exception to these limitations is that condemnation of easements in land (but not fee title) may be employed for the purpose of obtaining access to the river without regard to the percentage of land in Federal ownership.

IV. COST

S. 3022, as amended, does not authorize the appropriation of any funds to conduct the 23 river studies. Experience suggests that the total cost of the studies will be approximately $3,450,000 or an average of $690,000 per year. (The river studies are averaging $150,000 apiece.) These sums will be divided between, and included, as required, in the annual budget submissions of, the Forest Service and the Bureau of Outdoor Recreation.

Whereas the practice has been not to specifically authorize appropriation of funds to conduct river studies in the legislation mandating those studies, authorizations have been included in all legislation designating wild and scenic rivers. These authorizations are for the purpose of land acquisitions in the river corridors. Subsection (c) of S. 2033 amends the Lower St. Croix River Act of 1972 (86 Stat. 1174) by increasing the $7,275,000 authorization in subsection 6(a) of that Act to $19,000,000. The result is that S. 3022, as amended, provides for an $11,725,000 increase in obligational authority.

V. LEGISLATIVE HISTORY

The twenty-three rivers of which segments are designated for study in subsection (a) of S. 3022, as amended, were originally proposed for study in the following bills:

S. 30, Colorado River in Utah, introduced by Senator Moss, January 4, 1973;

S. 449, Colorado River in Colorado, introduced by Senator Dominick, January 18, 1973;

S. 1101, Au Sable and Manistee Rivers in Michigan, introduced by Senators Hart and Griffin, March 6, 1973;

S. 1391, Wisconsin River in Wisconsin, introduced by Senator Nelson, March 27, 1973;

S. 2151, Cahaba River in Alabama, introduced by Senators Allen and Sparkman, July 12, 1973;

S. 2216, West Fork of the Sipsey Fork in Alabama, introduced by Senators Allen and Sparkman, July 20, 1973;

S. 2319, Gunnison, Los Pinos, Big Thompson, Green, Canejos, Elk, Cache La Poudre, Piedra, Encampment, Yampa, and Dolores (also North Platte, Laramie, and Michigan, deleted from S. 3022, as amended) in Colorado, introduced by Senator Dominick, August 1, 1973;

S. 2386, American River in California, introduced by Senators Cranston and Tunney, September 6, 1973;

S. 2443, Upper Mississippi River in Minnesota, introduced by Senator Mondale, September 19, 1973;

S. 2691, Kettle River in Minnesota, introduced by Senators Mondale, Humphrey, Nelson, and Proxmire, November 13, 1973;

S. 3130, Shepaug River in Connecticut, introduced by Senator Ribicoff, March 7, 1974;

S. 3186, Tuolumne River in California, introduced by Senators Cranston and Tunney, March 19, 1974;

S. 3628, Illinois River in Oklahoma, introduced by Senators Bellmon and Bartlett, June 12, 1974; and

S. 3708, Au Sable and Manistee Rivers in Michigan, Green River in Utah and Colorado, Ilinois River in Arkansas and Oklahoma, American River in California, and Colorado (including the Dolores) River in Colorado and Utah (and 26 other rivers), introduced by Senators Jackson and Fannin (by request), June 27, 1974.

The following Subcommittee on Public Lands hearings were held on legislation related to wild and scenic rivers:

1. July 16, 1973, Washington, D.C., on S. 101 and S. 1391.

2. October 10, 1973, Washington, D.C., on a bill to designate the Chattooga River a component of the national wild and scenic rivers system (Act of May 10, 1974, 88 Stat. 122).

3. May 11, 1974, Durango, Colorado, on S. 30, S. 449 and S. 2319.

4. June 20, 1974, Washington, D.C., on S. 30, S. 449, S. 2319, S. 2151, S. 2216, S. 2386, S. 2443, S. 2691, S. 3130, S. 3186, and S. 3628.

5. August 15, 1974, Washington, D.C., on S. 3835 (Hatfield, introduced July 30, 1974) and S. 3708.

S. 101 and S. 1391 were ordered reported to the Committee by the Subcommittee on Public Lands on July 30, 1973. They were ordered reported to the Senate by the full Committee on September 14, 1973, and were passed by the Senate on September 21, 1973.

S. 1101, S. 1391, and the other measures listed above were ordered reported in a single legislative package to the full Committee by the Subcommitee on July 29, 1974. The Committee ordered reported the package, bearing the number S. 3022, as amended, on September 10, 1974.

S. 3022 was introduced by Senators Nelson, Humphrey and Mondale, on February 19, 1974. It was ordered reported by the Subcommittee as subsection (c) of the legislative package on July 29, 1974. The full Committee ordered the entire package reported with S. 3022's bill number. (For a more comprehensive legislative history of S. 3022 and the Lower Saint Croix River Act of 1972, see Section I of this report.)

All votes taken by the Subcommittee and the full Committee were unanimous, by voice vote, in open mark-up sessions.

The principal changes in the river segments as proposed in the original bills are as set forth below. All changes except the first one were requested by the Senators who sponsored those bills:

1. Colorado River in Utah and Kettle River in Minnesota: S. 30 and S. 2691 would have immediately designated the rivers as components of the national wild and scenic rivers system. The Subcommittee and full Committee followed the policy that all rivers should first proceed through the study procedures established by the Wild and Scenic Rivers Act to determine their potential as wild and scenic rivers before they are so designated.

2. American River in California: The lower 7.5 miles of the North Fork and the upstream portion of the North Fork were added to the segment proposed in S. 2386 for the reasons discussed in secton II of this report.

3. Illinois River in Oklahoma and Arkansas: S. 3628 did not contain the Arkansas segment, whereas S. 3708 did. The Arkansas segment was included in S. 3022, as amended, for the reasons discussed in section II of this report.

4. Conejos River in Colorado: The three forks were added, and the Platoro Reservoir excluded, from the segment proposed in S. 2319.

5. Los Pinos and Piedra Rivers in Colorado: The headwaters and tributaries are added to the segments proposed in S. 2319 because they are on naitonal forest land and largely within defacto wilderness.

6. Yampa River in Colorado: The portion of the segment proposed in S. 2319 upstream from Dinosaur National Monument was excluded for the reasons stated in section II of this report.

7. Dolores River in Colorado: The numerous changes from the segments proposed in S. 2319 and S. 3708 are discussed in the description of the Dolores River in section II, and the summary of subsection (c) in section I, of this report.

VI. COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, in open mark-up session on September 10, 1974, by voice vote, unanimously recommended that S. 3022, as amended, be enacted.

Mr. HASKELL. Mr. President, I send an amendment to the desk.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. HASKELL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 5, between lines 12 and 13, insert the following language:

"(c) In clause (i) of subsection (b) of section 7 strike the final comma and the fololwing word 'and' and insert in lieu thereof a colon and the following proviso:

'Provided, That if any Act designating any river or rivers for potential addition to the national wild and scenic rivers system provides a period for the study or studies which exceeds such three complete fiscal year period the period provided for in such Act shall be

substituted for the three complete fiscal year period in the provisions of this clause (i); and'."

Mr. HASKELL. Mr. President, this amendment, although it effects a substantive change in the bill, is technical in nature.

The Wild and Scenic Rivers Act, as amended by the act of May 10, 1974, provides protection to any river designated for study by an Act of Congress for a full 3-fiscal-year period after enactment of that act. This protection period was provided in the 1974 amendments to the Wild and Scenic Rivers Act. At the time these amendments were enacted we expected that the full 3 fiscal year protection period would be sufficient in that most legislative proposals would only designate one or two study rivers and thus would mandate only one or two studies at a time.

However, S. 3022 has combined all these various individual study bills and provides for a total of 23 studies. Because of the large number of studies the committee agreed to a 5-plus year study period. However, with only a 3 fiscal year period of protection provided under the Wild and Scenic Rivers Act, these rivers would be exposed to developmental pressures for perhaps as much as 2 years prior to the completion of the studies and submission of the President's recommendations to Congress.

My amendment simply limits the application of the full 3 fiscal year protection period to any legislation proposing rivers for study which does not establish its own study period. Under my amendment, whenever legislation provides a study period different from the 3 fiscal year period then the protection would run for the period established in the legislation. This will insure that the rivers designated for study under S. 3022 will be protected for the full 5-plus year protection period.

This is a technical amendment. I say to the distinguished Senator from Michigan that I have not discussed this amendment with the minority on the Interior Committee. I am informed that the staff has discussed it. In my view, it is a technical amendment, and I ask that it be adopted.

Mr. GRIFFIN. Mr. President, if the Senator will yield, I will say for the RECORD that I appreciate the very candid explanation of the Senator. I am informed, however, that the minority has no objection to the amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Colorado.

The amendment was agreed to.

Mr. HASKELL. Mr. President, I am informed that the distinguished Senator from Oregon (Mr. HATFIELD) has an amendment and that he is on his way to the Chamber. Before he arrives, I should like to mention what this bill does and why I think it is very important both for the Nation and for my State of Colorado.

Subsection (a) amends the Wild and Scenic Rivers Act by designating 23 rivers in 10 States for study to determine whether they should be designated as components of the national wild and scenic rivers system.

Subsection (b) provides a 5-year deadline for 22 of the studies and a 1-year deadline for the study of the Dolores River in Colorado.

In addition—and I believe this is extremely important—subsection (b) provides that rivers that have the most private lands on both sides be studied first. I think it is important to the private landowners these rivers be studied first.

Additionally, subsection (c) raises the authorization in the Lower Saint Croix River Act of 1972 from $7.275 million to $19 million.

I am pleased to note that 12 of these 23 rivers designated for study, are in Colorado. We had hearings on the Colorado river both in Washington and in Colorado. As a result of the hearings in Durango, Colo., we both extended and contracted the segments of certain of these rivers to be studied. We also eliminated three rivers because of the testimony taken there. These were the North Platte, Laramie, and Michigan Rivers.

Mr. President, pending the arrival of the Senator from Oregon, 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. HATFIELD. 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. HATFIELD. Mr. President, I send to the desk an amendment to S. 3022 and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 3, between lines 7 and 8, insert the following new subparagraphs:

"(39) South Fork Owyhee, Oregon: The main stem from the Oregon-Idaho border downstream to the Owyhee Reservoir.

"(40) John Day, Oregon: The main stem from Service Creek Bridge (at river mile 157) downstream one hundred and forty-seven miles at Tumwater Falls (at river mile 10)."

On pages 3 and 4, renumber subparagraphs (39) through (50) as subparagraphs (41) through (52).

On page 5, line 4, strike "49" and insert in lieu thereof "51".

On page 5, line 6, strike "50" and insert in lieu thereof "52".

Mr. HATFIELD. Mr. President, I thank the Senator from Colorado for yielding at this point. I commend him on the fine hearings and the manner in which he has conducted development of this bill.

The amendment I am proposing today to S. 3022 would provide for the study of two Oregon rivers for possible inclusion in the national wild and scenic rivers system.

In November of 1970, Oregon voters approved an initiative measure providing for the creation of a State scenic waterways system to protect several of the outstanding streams in our State. Included in the system were segments of the Rogue, Illinois, Dechutes, Minan, John Day, and Owyhee Rivers. In June of 1971, Governor McCall of Oregon requested that the Oregon rivers be included in the national system under section 2(a)(ii) of the National Wild and Scenic Rivers Act, which provides for the inclusion of rivers—

That are designated as wild, scenic or recreational rivers by or pursuant to an act of the Legislature of the State or States through which they flow, that are to be permanently administered as wild, scenic or recreational rivers by an agency or political subdivision of the State or States concerned without expense to the United States, that are found by the Secretary of the Interior, upon application of the Governor of the State or States concerned . . . to meet the criteria established in this Act. . . .

Secretary of the Interior Morton turned down the State's request, stating that—

We do not believe it was the intent of Section 2(a)(ii) to provide this Department authority to add free-flowing rivers to the national system whenever substantial blocks of Federal land are involved.

Secretary Morton stated that it would be necessary for separate Federal legislation to accomplish this.

It is important, Mr. President, for rivers which have been included in the Oregon scenic waterways system to be considered for inclusion in the national wild and scenic rivers system precisely because there are substantial blocks of Federal land surrounding them. There is no guarantee that these lands will be managed in a manner compatible with the State designation and there is no guarantee that Federal licensing of dam projects on these rivers would be prohibited.

Therefore, Mr. President, I introduced S. 3835 on July 30 of this year, which would provide for the inclusion of three of these Oregon rivers in the study category—the Minam, the South Fork of the Owyhee, and a segment of the John Day. Other rivers which are presently protected by the State are being considered in one way or another for Federal protection now.

The Senate Subcommittee on Public Lands, which the Senator from Colorado chairs, conducted a hearing on my proposal on August 15. At that time, administration spokesmen supported inclusion of the John Day and Owyhee Rivers in the study category. However, they opposed inclusion of the Minam. Thomas C. Nelson, Deputy Chief of the U.S. Forest Service, indicated that because 28 miles of the 45-mile river are within the Eagle Cap Wilderness Area and with 19 within the National Forest boundary and currently being studied for wilderness suitability, only 8 miles of the Minam could possibly be in any danger of development. These lands are owned by the Boise Cascade Corp., and the Forest Service is presently negotiating with Boise Cascade to acquire these lands through an exchange program. Also, there are no major impoundment proposals for the Minam. Mr. Nelson concluded that—

Under present authorities, we believe the river will be fully protected. We could at some future time consider the more com-

prehensive wild and scenic river study if major conflicting uses of the river are identified or if the current study and planning indicate major consideration should be given to addition of the Minam River to the National Wild and Scenic Rivers System.

Because of the large number of rivers which the administration is presently being directed to study, and because the Minam River does not appear to face any imminent threat of development, I will not push for study of this river at this time. However, should the situation change, I will again introduce legislation to protect the Minam. I expect the Forest Service to keep me and other members of the Public Lands Subcommittee apprised of any actions which may affect this river.

The amendment I am proposing today would provide for the study of the main stem of the John Day River from Service Creek Bridge downstream to Tumwater Falls, the portion which is included in the Oregon Scenic Waterways System. I should point out that my amendment would not provide for the study of the North Fork of the John Day, as proposed by the administration. I do not necessarily oppose study of this portion, but we have not had the opportunity to have the proper local input on this proposal. The hearings were held on my legislation, not on an administration bill. Perhaps at some point in the future the Subcommittee on Public Lands can hold full hearings on the administration's proposal.

My amendment would also provide for the study of the South Fork of the Owyhee River, from the Oregon-Idaho border downstream to the Owyhee reservoir. Most of this area is included in the State scenic waterways system. According to Mr. Dave Talbot, Oregon State Parks Superintendent, a middle section of the river was inadvertently omitted by the State and I have included this portion in my amendment.

Mr. President, there is a great deal of support for my proposals in Oregon. Governor McCall supports Federal study of these rivers, as does Mr. Talbot. Senator PACKWOOD was a cosponsor of S. 3835. The administration approves of the study of these two rivers. I urge adoption of my amendment.

Basically, Mr. President, my amendment proposes that we include in the study the sections of the Owyhee River in the State of Oregon to which I have made reference and sections of the John Day from Service Creek Bridge downstream to the Tumwater Falls.

The reason that I am offering this amendment from the floor is that when the Subcommittee on Public Lands which Senator HASKELL of Colorado chairs, marked up several wild and scenic rivers bills, hearings had not been conducted on my proposals. Since that time I introduced my proposals as a separate bill and the hearing by the Senate Public Lands Subcommittee was held I have discussed the matter with the Senator from Colorado. This will comply with the criteria set by the Senator for the inclusion of these Oregon rivers for the comprehensive study that the Wild and Scenic Rivers Act provides.

I ask that the amendment be accepted or that we have a vote on it, as will please the Senator from Colorado.

Mr. HASKELL. I thank the distinguished Senator from Oregon. I am very pleased to accept this amendment.

Merely for the RECORD, I reiterate what the Senator has said. The Senator asked that these two rivers be added at the July 29, 1974, markup of S. 3022 in the Public Lands Subcommittee. At that time, there had not been a hearing, so we could not add them. I stated to my colleague that I would be happy to hold a hearing on these rivers if he would introduce his amendment in the form of a bill; and, after completion of the hearing, we could then add the rivers during the full committee markup of S. 3022. I am happy to say my colleague was satisfied with this approach and he did introduce his amendment as S. 3835 on the following day, July 30, 1974. As these same two rivers were in the administration's proposal, S. 3708, the testimony at the August 15 hearing was unanimous in favor of adding the rivers to the list of study rivers in subsection (a) of S. 3022.

Unfortunately, when the full committee marked up S. 3022 on September 10, my colleage was unable to appear and propose his amendment.

I am happy now to accept the amendment in light of the hearing and unanimous testimony in its favor.

Mr. HATFIELD. I thank the Senator from Colorado for his cooperation.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Oregon.

The amendment was agreed to.

Mr. HASKELL. Mr. President, before making a motion to pass the bill, I reiterate that, in my opinion, there is great value to field hearings, because it was as a result of field hearings in Durango, Colo., on May 11, 1974, that it became evident that rivers that have the most private lands on each side of them should be given priority of study. Subsection (b) of S. 3022 contains such a provision which I offered as an amendment during full committee markup. In addition, as I said earlier, certain rivers in Colorado were eliminated because they went almost entirely through private lands. I believe that this bill, with the amendment of the Senator from Oregon, is deserving of passage. I move its adoption.

Mr. GRIFFIN. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the senior Senator from Colorado (Mr. DOMINICK).

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

STATEMENT BY SENATOR DOMINICK

S. 3022, to amend the Wild & Scenic Rivers Act, which has been reported by the Senate Interior Committee, has my full support.

The bill, which proposes several rivers in the United States for study as possible additions under the National Wild and Scenic Rivers Act, contains twelve rivers located in my state of Colorado. Although other Senators may have a different opinion, all Coloradans agree that they live in a state and area of this country that has been uniquely blessed as a place of beauty by the creator of the universe. It is entirely proper that we protect certain of Colorado's mountain streams from federal encroachment and impoundment. It is also fitting that Colorado assume a leadership position in the protection of its environment. Because of the state in which they live, Coloradans are the most environmentally conscious people in the country.

This bill contains with certain modifications—which I will discuss in more detail—twelve of the fifteen rivers that I had proposed in legislation previously introduced. These bills have had the benefit of hearings in Durango, Colo., as well as in Washington, D.C. This bill, which will pass the Senate today, represents the foundation of our efforts to protect certain of our free-flowing streams for future generations.

Mr. President, on August 1, 1973, I introduced S. 2319, the Colorado Rivers Preservation Act, which proposed that fourteen stretches of stream in Colorado be studied as possible additions to the National Wild and Scenic Rivers Act. This bill is a companion and followup to S. 4109, which I introduced in the 92nd Congress and S. 449, which I introduced earlier in the 93rd Congress. These bills propose a section of the Colorado River downstream from Loma to the Utah border be included for study as a possible addition to the National Wild and Scenic Rivers Act.

The inception of the idea that special attention should be given to the dwindling number of American streams that are still in a relatively natural state dates back at least as far as 1960. At that time, the National Park Service recommended to the Senate Select Committee on National Water Resources "that certain streams be preserved in their free-flowing condition because their natural, scenic, scientific, esthetic and recreational values outweigh their value for water development and control purposes" and that a study be made to determine what streams in America possess such values as these.

The Senate passed the Wild and Scenic Rivers Act in 1966 and 1967, and I voted in favor of that bill. Under the leadership of former Congressman Wayne Aspinall, the House Interior Committee reported and the House passed a Wild and Scenic Rivers bill. The President signed the bill into law on October 2, 1968. At that time, eight rivers were placed in the Wild and Scenic Rivers System, and 27 rivers were designated for possible incorporation. The studies on these rivers are to be completed within ten years of enactment.

Mr. President, it should be emphasized that the National Wild and Scenic Rivers Act is a multiple use Act. Water resource projects are prohibited while other uses, such as mining, hunting, fishing, timber harvesting, grazing of domestic livestock, and agricultural uses, may continue. It does not prohibit the construction of roads and bridges.

The National Wild and Scenic Rivers Act provides that if more than 50% of the land along the river unit is privately owned, the Secretary of Agriculture or Interior is authorized to condemn the fee title to land for an average of no more than 100 acres per river mile on both sides of the river. Because of the concern expressed to me, I asked that the North Platte, Laramie and Michigan Rivers be excluded from this omnibus bill. From the testimony at the hearings, it appeared that more than 50% of the land bordering these rivers was privately owned. Inclusion of these streams would raise the potential for acquisition of these lands by eminent domain. That possibility has been eliminated by my request.

In the case of each of the twelve Colorado streams in the bill, whcih we are considering today, more than 50% of the land along the river unit is in public ownership. Accordingly, condemnation of the fee title to any of the private land would be prohibited.

The Wild and Scenic Rivers Act barred

Federal Power Commission licensing of any power project on a river or river segment designated as part of the national rivers system and placed a five-year moratorium on licensing of projects on any of the 27 rivers designated for study. Provision was made, however, for licensing of power projects above or below designated components if the natural values of the unit would not be directly and adversely affected.

The Wild and Scenic Rivers Act introduced a new concept to our national management of water resources. In the words of the legislation—

"It is hereby declared to be the policy of the United States that certain selected rivers of the nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes."

The passage of the Wild and Scenic Rivers Act provides us with the opportunity to assure the protection of the natural quality of another key element of the American landscape. Like the Wilderness System, a few rivers will remain as they were for the enjoyment of generation after generation of Americans. The National Wild and Scenic Rivers Act complements the Wilderness Act of 1964 and the National Trails System Act, which I cosponsored with Senators Jackson and Nelson in 1967.

Further, Mr. President, the Wild and Scenic Rivers Act provides that nothing contained in it shall affect the jurisdiction or responsibilities of the states with respect to fish or wildlife. Hunting and fishing shall be permitted on lands and waters administered under the Act unless in the case of hunting, land is within a national park or monument. The jurisdiction of the states and the United States over waters of any stream included in the Wild and Scenic Rivers System shall be determined by established principles of law. Designation of any stream or portion thereof shall not be construed as a reservation of the waters of such streams for purposes other than those specified in the Act.

Mr. President, at the turn of the century, it is estimated that Colorado had 13,500 miles of free-flowing streams that support fishlife. Today, we have 9,000 miles of fishing streams. A 1970 Wildlife Management Institute report indicated that Colorado supports more nonresident fresh water fishermen than any of the other thirteen western states.

Colorado has 231 rivers, traveling a total of 14,000 miles in the state. The Bureau of Outdoor Recreation has pointed out that over 90 Colorado rivers, totaling 3,400 miles, have been identified as having significant free-flowing values, yet not one river in the state has been given protection under the Wild and Scenic Rivers Act. Many of these 90 streams and rivers are under constant threat of having their flows impeded in one way or another, by diversion or impoundment. Demands on the state's rivers are numerous including those for flood control, power development, industrial, municipal, and irrigation use and nearby subdivisions. Thus, decisions must be made now as to which rivers or sections of rivers should be included in and protected by the Wild and Scenic Rivers Act.

When the Act was passed, it would have been impossible, of course, to include all the nation's rivers which at that time were worthy of being a part of the National Wild and Scenic Rivers System. Many of them had not been studied at any great length in order to determine their qualities and even with the several that are now proposed additions to the System, the Departments of the Interior and Agriculture have difficulty in finding the time and the manpower to conduct the necessary studies.

Yet, Mr. President, it is still hard to believe that not one river in Colorado is now a part of the national system. Six major rivers in the Western part of the United States have their sources in the mountains of Colorado. They are the Colorado, Rio Grande, Arkansas, North and South Platte Rivers, and the Republican River. The waters of these rivers leave Colorado and spread out through 18 neighboring states. This fact alone indicates the vital importance of Colorado's rivers not only to the state itself, but to the entire nation. There is no question that a serious error has been made in not including up to this time many of the Colorado rivers which are important tributaries to the rivers mentioned before or are valuable for various other reasons.

The Wild and Scenic Rivers Act states that eligible rivers will be classified, designated and administered as a wild river, scenic river, or recreational river or as a combination of those categories depending on the character of the segments of the eligible rivers. To be classified as "wild", the river or segment must be free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America. The definition of "scenic river areas" is those that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads. The third category is "recreational" river areas and those are rivers or river segments that may have some development along their shorelines and may have undergone some impoundments or diversion in the past.

Mr. President, a study as required by this bill would determine into which of the three categories—wild, scenic or recreational—a river belongs. Also, one river may have segments which fall into all three categories. The rivers set forth represent a vast cross-section of the rivers located in Colorado. There are great differences in geographic location, physical dimensions and potential use.

The twelve Colorado rivers set forth in this bill possesses a vast cross-section of characteristics and are more specifically described in the report of the Senate Interior Committee. Those rivers are—

Colorado River—The segment from its confluence with the Dolores River, Utah, upstream to a point 19.5 miles from the Utah-Colorado border in Colorado;

Gunnison River—The segment from the upstream (southern) boundary of the Black Canyon of the Gunnison National Monument to its confluence with the North Fork;

Los Piños River—The segment from its source, including the tributaries and headwaters within the San Juan Primitive Area, to the northern boundary of the Granite Peak Ranch;

Big Thompson River—The segment from its source to the boundary of Rocky Mountain National Park;

Green River—The entire segment within the State of Colorado;

Conejos River—The three forks from their sources to their confluence, thence the Conejos to its first junction with State Highway 17, excluding Platoro Reservoir;

Elk River—The segment from its source to Clark;

Cache la Poudre River—Both forks from their sources to their confluence, thence the Cache la Poudre to the eastern boundary of Roosevelt National Forest;

Piedra River—The Middle Fork and East Fork from their sources to their confluence, thence to the Piedra to its junction with Colorado Highway 160, including the tributaries and headwaters on national forest lands;

Encampment River—The Main Fork and West Fork to their confluence, thence the Encampment to the Colorado-Wyoming border, including the tributaries and headwaters;

Yampa River—The segment within the boundaries of the Dinosaur National Monument; and

Dolores River—(1) The segment from the West boundary, Section 2, Township 38 No, Range 16 West, NMPM, below the proposed McPhee Dam, downstream to the Colorado-Utah border, excluding the segment one mile above Highway 90 to the confluence of the San Miguel River; (2) The segment of the main stem from Rico upstream to its source, including the headwaters; (3) West Dolores from its source, including its headwaters, to its confluence with the main stem.

Mr. President, if one looks at the map, one will see that the large majority of the rivers I have proposed are already located within federally owned parks, forests or monuments. Therefore, by this bill there will be little effect on individuals who own land bordering on the rivers in this bill, yet at the same time, many miles of beautiful Colorado rivers will receive maximum attention and protection which is available only under the Wild and Scenic Rivers Act.

Mr. MONDALE. Mr. President, I would like to commend the distinguished chairman of the Parks and Recreation Subcommittee and the chairman and members of the Senate Interior Committee for their prompt and favorable action on S. 3022. As reported by the committee, this measure contains two provisions with which I am especially concerned.

The first provision would increase the funding for the lower St. Croix River protection program from the current ceiling of $7.275 million to a level of $19 million. This additional authorization is essential if the National Park Service is to carry out the legislative mandate of the 1972 Lower St. Croix River Act to assure the perpetual preservation of this important scenic and recreational resource.

In passing the original Lower St. Croix River Act, the Congress established a unique approach to the preservation of a scenic and recreational riverway. This approach involved a sharing of responsibility for the riverway among the Federal Government and the States of Minnesota and Wisconsin. At the time that the law was enacted in 1972, it was understood that the Federal Government would purchase lands and scenic easements to protect the upper 27 miles of the riverway and that the States through parallel programs would protect the lower 25 miles of the riverway.

Unfortunately, as a result of an error in the cost estimates prepared by the Bureau of Outdoor Recreation, the initial authorization approved by the Congress was far too low to carry out a full program of protection in the Federal management zone. In fact, subsequent appraisals showed that a funding level of $7.275 million would permit protection of only about one-third of the Federal segment of the river.

At a meeting last February, members of

the Minnesota and Wisconsin congressional delegations together with Gov. Wendell Anderson of Minnesota and a representative of Governor Lucy of Wisconsin discussed this problem with officials of the Park Service and the Department of the Interior. From the discussion it was obvious that there was no feasible method of living up to the mandate of the 1972 act without a substantial increase in funding. Neither concentrating the funds exclusively in the upper 10-mile scenic zone of the river, nor buying property on a patchwork basis throughout the 27-mile Federal segment provided a workable alternative. Developers would have a field day in either case. We, therefore, requested an estimate from the National Park Service of the cost of a program of full protection for the riverway. It is this figure that provided the basis for the introduction of S. 3022 upon which the Senate is voting today.

At a hearing last June, the Parks and Recreation Subcommittee received testimony from State and local government officials, conservation groups and others unanimously in support of this bill. In cross questioning, officials of the National Park Service even stated that they had advocated a favorable report on the bill from within the Department of the Interior.

In approving S. 3022 today, the Senate can insure that the priceless natural values of the lower St. Croix River are not destroyed but preserved for people today and for generations to come.

The second provision of this bill that I am particularly interested in relates to the designation of new rivers for study as potential additions to the National Wild and Scenic Rivers System. I am very pleased that the Senate Interior Committee has included in the list of study two rivers in Minnesota, the upper Mississippi and the Kettle, in accordance with legislation which I introduced last year.

The Kettle is among the finest canoe rivers in America. It is a wild river abounding in fish and wildlife and only barely touched by residential development. The State of Minnesota has already conducted a preliminary study of the Kettle under the State wild and scenic rivers act, and it is prepared to cooperate fully with the Federal Government in avoiding any duplication of effort in connection with the national study. Making use of the information already collected by the State of Minnesota, I would hope that the Federal-State study could concentrate on what Federal resources might be necessary to adequately insure the protection of the Kettle.

With respect to the upper Mississippi River, there can be no doubt of the unique national interest in this waterway. From its source at Lake Itasca to the boundary of the city of Anoka, the upper Mississippi is predominantly a wild and scenic river with some stretches that might be classified recreational.

This past summer I had an opportunity to personally visit the Mississippi at Monticello, Minn. I was impressed by the remarkable quality of the water, by the serenity of the scenic view, and especially by the fact that these natural values can still be found on the Mississippi within 30 miles of a major urban center.

In the case of the Mississippi, like the Kettle, the State of Minnesota has already initiated a study under its scenic rivers program. But with a river segment more than 400 miles long, there is no hope that Minnesota can safeguard this resource wthout substantial Federal help. Cooperation between Federal and State agencies could, however, expedite the national study so that a full-scale protection program can be launched before development pressures become insurmountable.

In passing S. 3022 today, the Senate has an opportunity to begin the process toward what I hope will eventually be permanent protection of the Mississippi and the Kettle, as well as the lower St. Croix.

As further evidence of the need for such action, I should like to have included in the CONGRESSIONAL RECORD today copies of my statements before the Parks and Recreation Subcommittees last June.

Mr. President, I ask unanimous consent that the following statements be printed in full at this point in the RECORD.

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

TESTIMONY OF SENATOR WALTER F. MONDALE ON LOWER ST. CROIX RIVER

Mr. Chairman, I am grateful for this opportunity to testify before the Committee on S. 3022, the bill Senators Nelson, Humphrey and I have introduced to increase the authorization for the Lower St. Croix River Preservation program.

This Committee has probably devoted as much or more attention to the Lower St. Croix as it has to any other river in the country. Interior Committee consideration of legislation affecting the river dates back to 1965, and you are by now well aware of the natural attributes to this unique resource. Qualities such as the spectacular rock formations of the Dalles of the St. Croix, the intimate islands threading the river between Taylor Falls and Stillwater, and the majesty of Lake St. Croix, in 1972 prompted the Congress to designate the Lower St. Croix as the first federally protected addition to the original National Wild and Scenic Rivers System.

An unprecedented agreement for cooperative federal-state river management was adopted in the Lower St. Croix Act. The federal government was designated as the administering agent for the upper 27 miles of the river while the states of Minnesota and Wisconsin were to share administrative responsibility for the lower 25 miles of the river. A coordinated approach to the overall protection program was to be achieved through a joint master plan to be developed within one year of the date of enactment (October 25, 1972) and submitted for consideration by the Congress.

The obvious aim of the Congress in passing the Lower St. Croix River Act (P.L. 92-560) was to assure the perpetual preservation of the scenic and recreational opportunities afforded by this remarkably unspoiled metropolitan river.

This concept of perpetual preservation lies at the heart of the wild and scenic rivers system, and it is a guarantee, backed by the resources of the federal government, that however man's intrusion may destroy or desecrate other natural resources, rivers included within the system will be fully protected for people living today, for their children, and for generations to come.

Embodied in the form of legislation, this objective of permanent preservation of the Lower St. Croix won the near unanimous endorsement of State and local officials representing the river valley, of residents, of conservation groups, and ultimately of both Houses of the Congress and the Administration.

The record time in which the Lower St. Croix River Act was passed—five days from the initial mark-up by the Senate Interior Committee through Committee and floor action in the House—attests to the urgency Congress attached to protecting the river in view of the immediacy of the threat posed by developers.

This sense of urgency was fully justified. If the Congress had moved as quickly as it did to pass the Lower St. Croix River Act, cliff dwelling townhouses and a mid-rise apartment building might today scar the bluffs of the river. For even as federal-state planners first met to develop the specific details of the protection program, one developer was proceeding with his own plans for the construction of a housing project which included townhouse and an apartment building to tower over the valley.

Even with the Act, it took massive pressure from the Governors of the two States, members of the Congress, and a lawsuit filed by the Attorney General of Minnesota to force the developer to reconsider his plans. In the face of the lawsuit the developer signed an agreement last September 27th, resulting in the modification of his plans to conform to riverway guidelines.

Although this project was stopped in time, there is nevertheless no assurance today that another developer could not attempt to press for a similar project and win even in the courts.

It is against this backdrop that today's hearing takes place. Less than a month after the agreement with the developer was reached, two new obstacles emerged to jeopardize the immediate goal of completing the master plan and implementing the preservation program. The first and relatively minor problem was the unanticipated need for an environmental impact statement on the project. The second and by far the most serious obstacle was the discovery of a major deficiency in the funding for the federal share of the program.

The initial estiamte of the cost of the project was developed by the Bureau of Outdoor Recreation. It was based upon the average per acre price of land in the St. Croix Valley. Neither the Congress nor the States had any reason to question this estimate of $7.275 million for acquisition and development in the federal zone, and this figure was included as the authorization ceiling in the Lower St. Croix River Act. Only later, after more detailed appraisals, did we discover that the actual cost, based on the price of land per front foot along the river, would be much higher.

This discovery on October 22, 1973 prompted Governors Wendell R. Anderson and Patrick Lucey to write the following letter to the Secretary of the Interior.

"As you know, the State governments of Minnesota and Wisconsin are participating with your Department through the National Park Service in the formulation of the Federal-State Comprehensive Master Plan for the protection of the Lower St. Croix River under P.L. 92-560.

"We are, however, distressed that the funding provided by last year's Lower St. Croix River Act for acquisition and development of lands in the 27-mile federally administered river zone appears to be inadequate. Nearly two-thirds of that segment will have to be controlled through a fragmented system of local zoning codes, rather than through full or partial public interest

in lands by your department. We are concerned as to how this serious gap occurred since there seemed to be no question at the State or Federal levels during negotiations on the bill that the $7,275,000 sought for the federally administered segment would be sufficient to protect the full 27-miles of the river valley through fee or easement purchase on river front lands, except within four small municipalities and State-owned areas."

The Governors requested Secretary Morton's assistance in seeking additional funds from the Congress. But in its reply, dated December 6th, the Department rejected this plea and effectively told the States that notwithstanding the federal commitment to protect the zone, Minnesota and Wisconsin would have to assume the full responsibility for preservation of two-thirds of the federal segment.

Interior's letter prompted members of the Minnesota and Wisconsin Congressional Delegations on December 20th to request a meeting with Ronald H. Walter, Director of the National Park Service.

The meeting was held in the Capitol on February 6, 1974. Assistant Secretary John Kyl, Dr. Richard Curry, Robert Chandler, Richard Whittpen and others represented the Department of the Interior. Governor Wendell R. Anderson, Commissioner Robert Herbst and Assistant Commissioner Archie Chelseth of the Minnesota Department of Natural Resources attended on behalf of Minnesota. Farnum Alston appeared for Governor Lucey and James Harrison and James Johnson for the Minnesota-Wisconsin Boundary Area Commission. Finally, Senators Nelson, Humphrey and myself and Representatives Blatnik, Fraser, Karth, Quie and Thomson took part in the discussion.

Our common goal was to seek assurances of Administration support for legislative action to afford adequate and timely funding for the project at a level which would guarantee perpetual protection of the entire river corridor. We also sought an assurance that high priority handling would be granted by the Department at all levels for both the completion of the environmental impact statement and the approval of the master plan.

At this point I should like to have inserted in the hearing record a copy of a letter from Assistant Secretary John Kyl received by each of the Congressional participants in the February 6th meeting. This letter indicates that $18,775,000 would be required to carry out a program of full protection for the entire 27-mile federal segment of the river. This estimate is, incidentally, based upon the level of protection envisioned by the Congress when the Lower St. Croix River Act was passed. At that time a conceptual development plan had been prepared by the federal-state Lower St. Croix study team and made available to members of the Congress and the public. This plan appears on page 103 of the Interior Committee's hearing recorded on S. 1928, the Lower St. Croix River Act. It shows federal acquisition of lands on both sides of the river throughout the upper 12-mile segment of the river classified recreational.

Unquestionably, this is the program for the federal segment which the States and the Congress had in mind when the Lower St. Croix River Act was passed.

Turning back to Secretary Kyl's letter, we find what I believe to be tacit recognition of the total inadequacy of a program, based on the $7.275 million ceiling, which would rely on local zoning as the sole tool for protection of the lower 17 miles of the federal segment of the river.

Assistant Secretary Kyl states:

"In response to your suggestion that the draft master plan be modified, we are preparing an amendment to the master plan which would provide for this alternative regarding the protection of the lower 17 miles of the Federal portion of the riverway. The amendment would be applicable if additional funding is secured. However, I have under advisement the following recommendations of the Land Planning Group:

1. National Park Service be instructed to direct the field planners to reevaluate the areas proposed for acquisition and to identify those areas in the Federal sector of the Lower St. Croix that are under immediate threat and would be lost if acquisition is not made immediately.

2. The National Park Service begin immediate acquisition with the money authorized by Public Law 92-560 ($7.275 million) and to acquire on a first priority basis those 18 areas identified by the States that are under immediate threat and would destroy the resources of the river.

3. Whenever possible, less than fee title to the lands be acquired.

4. The Department of the Interior, at this time, submit a negative report on the legislation H.R. 12690 (S. 3022), amending the lower St. Croix Act of 1972 until there is sufficient evidence resulting from the National Park Service acquisition of the areas along the St. Croix to show that funds available under Public Law 92-560 are not sufficient to carry out the acquisition program for these areas.

5. As soon as it becomes evident and experience is available that as a result of the land acquisition in the Lower St. Croix area that the costs of acquiring the land will exceed the monies authorized for the acquisition, the Department should advise Congress that additional funding is needed and request such additional authorization and funds needed to carry out the acquisition to protect the resources of the Lower St. Croix according to Public Law 92-560."

Mr. Chairman, if it were possible to adequately protect the Lower St. Croix for less than the $18.7 million figure provided by the National Park Service, the sponsors of S. 3022 would not have requested this hearing today. But it is the unanimous view of the Governors of Minnesota and Wisconsin, the Minnesota-Wisconsin Boundary Area Commission, the St. Croix River Association and a host of conservation groups in the two states that it cannot.

Without legislation to increase the authorization for the Lower St. Croix Protection Program, we are essentially faced with two alternatives. The first alternative is reflected in a draft master plan prepared by State and Federal field representatives and submitted to the Departmental officials in Washington and Philadelphia on October 23, 1973. The second alternative is that outlined in Secretary Kyl's letter.

Mr. Chairman, I should like to have inserted at this point in the Record a copy of the map which appears on page 145 of the draft master plan. This map, entitled Federal Boundary, illustrates the proposed program for protection of the federal segment of the riverway based on a funding level of $7.275 million. As you will note, the map provides for acquisition of land and easements in the first 10 miles of the federal zone to be classified scenic. However, except for the proposed purchase of a few acres for a visitors' center above Stillwater, the plan provides for no acquisition of land or easements along the shore of the remaining 17-mile stretch of the federal zone. It is this segment, which comprises almost two-thirds of the federal portion of the riverway, that would be jeopardized unless an additional authorization is secured. For the only controls on land use in this area would be through zoning. The reason for reliance on zoning in this segment is clearly articulated on page 28 of the draft master plan, which states, "The provisions of Section 6 [Ceiling on Appropriations] have exerted the greatest constraints on preserving a significant portion of the Federal segment of the riverway." Simply put, this means without more money the National Park Service cannot do the job Congress directed it to do.

Here is why a lesser program will not work. In an area which is already heavily impacted by development, zoning can be an adequate and appropriate tool to guide future development. But for areas that are essentially natural in character, zoning authority is not sufficient to prevent the loss of existing scenic and recreational values.

National Park Service field personnel, as well as the Governors of Minnesota and Wisconsin, recognized the inadequacy of zoning powers to preserve scenic areas and commented on page 33 of the draft master plan, "Given the level of funding authorized in Public Law 92-560, it is not possible to acquire lands in fee or scenic easements in the Federal recreation zone without seriously compromising the preservation intent of the scenic zone."

In the absence of fee and easement, acquisition would compromise the preservation intent in the scenic zone. It is obvious that the lack of such acquisition would seriously jeopardize protection for the 17-mile federal recreation zone.

The federal government should not be in the position of abandoning all protection of two-thirds of the area it is supposed to administer in order to save the upper one-third. While there is just enough development in the lower segment to require that it be legally defined as recreational rather than scenic, there is in fact no abrupt change in the river environment below the boundary between the two classifications. On the contrary, the river maintains for the most part the intimate island and slough setting and the essentially unspoiled natural beauty which led to its designation as a component of the National Wild and Scenic Rivers System.

Regarding the adequacy of zoning, the draft master plan states on page 51:

"Historically . . . zoning has proven to be the weakest tool available for the protection of riverway corridors. At times, zoning laws can be changed by political and economic pressures. A few variances, if incompatible with the National Wild and Scenic River Program, could jeopardize the environmental quality of the Lower St. Croix Riverway. In addition, it has been extremely difficult in the courts to justify zoning primarily on the basis of esthetics."

Because of this problem, Minnesota and Wisconsin in the management plan for the State administered segment of the Lower St. Croix will be purchasing easements on all riverfront property in private ownership outside of incorporated villages; and in the case of critical areas in the State zone, easements would be sought even within incorporated municipalities.

In considering the potential effectiveness of Interior's draft master plan, it is important to note that either fee title or easement will be purchased along the upper 10 miles and that at a minimum easements will be purchased by the States in the lower 25 miles of the river. This leaves a 17-mile gap in the protective program where only zoning, the weakest preservation tool, stands between the developers and the scenic character of the riverway. It is inevitable that all of the development pressures along the river would be funneled into this 17-mile gap, and it is to combat these very pressures that the Congress designated the Lower St. Croix for preservation.

A study developed by the Minnesota-Wisconsin Boundary Area Commission has revealed some 19 current proposals for development along the Lower St. Croix. Six of these proposals involving 3280 acres are already targeted for the 17-mile unprotected corridor in the federal zone. They would involve 500 or more units of housing and a

commercial recreation complex with possible construction of a hotel and restaurant facilities for skiing and a trails network.

These proposals were brought to the attention of Departmental and Park Service officials at the February 6th meeting, and it is the information presented at this briefing that provided the impetus for the alternative recommendations of the Land Planning Group discussed in Secretary Kyl's letter.

That alternative contemplates a program of spot purchases of easements where possible and of lands where necessary to protect areas throughout the 27-mile federal segment of the riverway. But because of limitations on program funding, such a plan would necessarily involve compromising the preservation of the upper 10-mile scenic segment of the river. And in the absence of a guarantee of full protection for even two small contiguous segments of the federal zone, the developers would be given an invitation to speculate on properties throughout the upper 27 miles of the river. By moving from one potential site to another before the Park Service could react, it would be the developers, rather than the federal government, who would dictate the fate of the river. Thus, without any form of overall guidance, such a program would result in a checkerboard pattern of developed and scenic areas with no rational relation to the spirit of preservation which is basic to the wild and scenic rivers system.

The lower St. Croix River program depends for its success on the cooperation of Federal, State and local government. Each level must do its share or the entire effort will collapse. The States of Minnesota and Wisconsin have each passed implementing legislation to assure that they have the authority to safeguard the segment of the river entrusted to their administration. Both States are committed to purchase easements and to manage existing State owned lands in a manner which will provide for the perpetual preservation of this unique resource.

It is now for the federal government, for the Administration and the Congress, to live up to their part of the agreement. A plan to utilize the $18.775 million in funding has already been prepared. It is ready for implementation as soon as Congress gives the word. The bill before you today to carry out this plan has the support of the Governors of the two States, of the Minnesota-Wisconsin Boundary Area Commission, of the St. Croix River Association representing local residents, and of state and national conservation groups.

The responsibility lies here with us today. I am hopeful that this Committee and the Congress will react swiftly and favorably. There is not much time left, and it would be a tragedy for the citizens who have worked so hard to secure protection for the Lower St. Croix to have the battle lost at this late stage for lack of funds. But above all, it would be a tragedy for the river and for the millions of people who are by law entitled to use and enjoy it.

There is no need for extended debate on this legislation. We are dealing not with a question of priorities, but of our obligation to honor our own commitment firmly written into the Lower St. Croix River Act. We must meet this obligation.

TESTIMONY OF SENATOR WALTER F. MONDALE ON UPPER MISSISSIPPI AND KETTLE RIVERS

Mr. Chairman, I am grateful for this opportunity to appear before the Committee to testify on behalf of wild and scenic rivers system studies of two outstanding rivers in my State.

The first river I should like to discuss hardly needs an introduction, it is the best known river in the United States, the Mississippi. For most of its 2,350 mile length the Mississippi today could scarcely be considered an untouched natural resource. In many areas it has been heavily impacted by pollution. Competing commercial uses have by and large overshadowed attention to the recreational potential of the river. But, winding from its source at Lake Itasca south to the City of Anoka, Minnesota, the river offers opportunities for visitors to enjoy a variety of wild, scenic and recreational qualities that are among the finest in our nation. In this area the river still warrants Mark Twain's description, written nearly a century ago:

"The majestic bluffs that overlook the river, along through this region, charm one with the frace and variety of their forms, and the soft beauty of their adornment. The steep verdant slope, whose base is at the water's edge, is topped by a lofty rampart of broken, turreted rocks, which are exquisitely rich and mellow in color—mainly dark browns and dull greens, but splashed with other tints. And then you have the shining river, winding here and there and yonder, its sweep interrupted at intervals by clusters of wooded islands threaded by silver channels; and you have glimpses of distant villages, asleep upon capes; and of stealthy rafts slipping along in the shade of the forest walls; and of white steamers vanishing around remote points. And it is all as tranquil and reposeful as dreamland, and has nothing this-worldly about it—nothing to hang a fret or a worry upon."

Today, as it was a century ago, it is possible to float down stretches of the Mississippi's still serene waters, to enjoy untouched forests and plains, and to swim and fish in water of superb quality.

Whether for its fish and wildlife, geologic, scenic, wild, historic or recreational values, the Mississippi River in Minnesota fully satisfies the criteria for recognition under the National Wild and Scenic Rivers Act.

Throughout its 330 mile course from Lake Itaska to Anoka, the river offers a great variety of scenic and recreational advantages rivaling those provided by the finest rivers in America.

From the standpoint of a wild river experience, we find Itasca State Park at the source of the Mississippi, embracing roughly 50 square miles of exceptional wilderness, forested with virgin Norway and white pine. The Chippewa National Forest adjacent to the Mississippi offers miles of clear northern water with excellent stands of pines and an abundance of wildlife. Rugged beauty can be seen near Ball Club Lake where the river becomes exceedingly tortuous, and a double stream of water encloses a series of large islands in its sinuous folds.

The early history of Minnesota and the conquest of the frontier unfold mile by mile along the riverway. Ancient Indian mounds and battlefields, early routes of exploration, pioneering trading posts and Fort Ripley, Minnesota's second oldest military post, can be found along the banks of the Mississippi. Here Zebulon Pike, Sieur DuLuth, Father Hennepin and Jonathan Carver set out upon their historic voyages.

The geologic origin of Minnesota are also traced along the Mississippi from the ancient bed of glacial Lake Aitken, where the river meanders across a broad alluvial plain to the glacial till stretching south toward St. Cloud and further downstream to the Anoka Sand Plain where fine sand through the years has formed striking dunes visible from the river.

At least 52 different species of fish have been identified in the Upper Mississippi, including Walleye Northern Pike, Yellow Perch, Smallmouth Bass, Black Crappie, and even Muskie. Wildlife of all shapes and sizes abound in the river valley, and rare and endangered species native to the North Central Region of the United States are frequently sighted there.

The entire river segment proposed for study under the National Wild and Scenic Rivers Act is draped by unparalleled scenery. Clear, tree-lined lakes, waterfalls, pine forests and valleys offer at times a quiet, at times a spectacular view of the river as it has remained untouched for centuries.

Even the community of St. Cloud, one of the most developed along this stretch of the river, still largely fits the description of a special correspondent from Harpers Magazine who wrote the following in 1859:

"St. Cloud is today of only three years growth and though it has a couple of fine hotels, a large number of stores and is tastefully laid out, it is less remarkable for its size, its rapid progress and the good quality of its components than for its natural beauties and picturesque location. It stands on a high wooded bluff, at the bend of the Mississippi, and is on all sides surrounded by trees."

Some 1700 resorts located within easy access of the river attest to the appeal this area holds for recreationists. The Mississippi offers opportunities for fishing, camping, hiking, canoeing, swimming, boating and many other water based sports.

Given the proximity of the Upper Mississippi to the Twin Cities Metropolitan area and to the Dututh-Superior ports, the demand for such recreational activities is high and rapidly growing.

But the increasing recognition of the Upper Mississippi as a high quality recreational resource constitutes a threat to the very values people admire. This is especially true in the counties nearest Minneapolis-St. Paul where the character of the river valley is expected to rapidly change from agricultural to residential-commercial. Anoka, at the southern boundary of the proposed study zone, is, according to the latest figures, the fastest growing county in the State. To get an idea of the tremendous development pressures on the river, one need look only to the figures on building permits and plats in 1973. For Wright County there were 90 such permits and 14 plats containing up to 250 lots per plat in 1973. For Stearns County there were 181 permits and 15 plats. In Sherburne County there were 160 permits and 6 plats. Existing plats alone could lead to 10,000 or more new housing units in the lower segment of the valley.

Recognizing the priceless value of the river corridor, local units of government have tried to provide protection through the only mechanism available to them—zoning. Nevertheless, with scores of villages, counties, and townships involved, the difficulties of achieving a common and effective zoning standard are obvious. Under these circumstances the accepted level of protection often becomes the lowest, rather than highest, common denominator; for the mistake of one municipality will inevitably jeopardize the best efforts of all.

The State of Minnesota, in approving the 1973 State Wild and Scenic Rivers Act, officially responded to the obvious need for action on behalf of rivers that possess outstanding natural values. The Upper Mississippi was selected as one of 16 rivers in the State for study for possible protection under the Act. At the present time, the Minnesota Department of Natural Resources is moving forward on the evaluation of the Mississippi between Anoka and St. Cloud—the segment that is under the most intensive pressure for development.

But this study in itself constitutes a formidable task for the Minnesota Department of Natural Resources, and even after the State study is complete, there are severe limitations on the ability of the Department to effectively control development along the river. Currently, there are no funds whatsoever for acquisition, and the State lacks the condemnation authority provided under the National Wild and Scenic Rivers Act. Voluntary cooperation on the part of thousands of private landowners and countless communi-

ties would be required to preserve the Mississippi under such circumstances. But without the resources to check the actions of unscrupulous developers or the ability to offer compensation to private landowners for protection of the corridor through purchase of scenic easements, it is unrealistic to expect that such a degree of cooperation could be achieved.

I have received indications from the Interior Department that they are not prepared to support S. 2443. As I understand it, they are unwilling to assign priority to a study of the Mississippi because they believe that the section of the river above St. Cloud does not need additional protecton, and the segment below St. Cloud is developed to such an extent that it does not warrant protection. There is ample evidence to dispute both conclusions.

Anyone who has travelled the Mississippi between St. Cloud and Anoka knows that it possesses natural qualities that are nearly unique in a river located so near a major metropolitan area. There are thickly forested stretches in this segment that provide a near wilderness experience for visitors. The waters teem with fish, and scenic bluffs overlook the Mississippi's broad expanse. These qualities exist today, but they will not exist forever unless action is taken to protect them.

Turning to the argument that the portion of the river above St. Cloud is not in need of study, I would like to call the Committee's attention to letters from government officials in this region that I will submit for the record at the end of my statement. Officials representing the communities of Brainerd, Crow Wing County, St. Cloud, Pine River, Little Falls and Itaska County have all indicated that they feel the study is not only warranted, but necessary.

The choice is therefore not between Federal protection or State and local protection. The choice is between a major effort—utilizing the resources of Federal, State and local units of government—or a minor effort to preserve the last relatively unspoiled portions of our country's most famous and most beloved river. It is obvious that this choice warrants the careful study contemplated by S. 2443. For these reasons the Governor of Minnesota and the Department of Natural Resources, the Twin Cities Metropolitan Council, conservation groups including the American Rivers Council, the Minnesota Wildlife Federation, the National Audubon Society, the Sierra Club, the Izaak Walton League, and valley residents represented by the Central Minnesota Supporters of the Wild and Scenic Rivers Act, have all expressed their enthusiastic endorsement of this proposal. For these reasons I am hopeful that it will receive favorable consideration by the Committee.

Mr. Chairman, I should like to have included in the hearing record copies of letters which I have received from residents of the Mississippi Valley about the river, the advantages it offers, and the pressures that threaten to destroy it.

The second river I would like to discuss today is the Kettle River. Also located in Minnesota, the Kettle is essentially a wild river area with only a few scattered dwellings throughout most of its length.

Originating in Carlton County, the river winds its way southward toward the town bearing its name where it flows some 57 miles to empty into the St. Croix.

It is a spectacular area with a national reputation for its excellence as a white water canoe river. Rapids interspaced with long tranquil pools offer a challenge to even the most experienced canoeists, as well as a chance for quiet reflection.

Deep gorges, moraines, glacial outwash, plains, kettle holes and caves illustrate the glacial geology of the area.

Deer, muskrat, beaver, herons and hawks are only a few examples of the abundant wildlife that inhabit the valley. In the clear waters of the Kettle, fishing is excellent, especially for walleyes, sturgeon and small mouth bass.

From its headwaters in Carlton County, the Kettle flows in a generally north-south direction. For the first six miles the river flows through an area of glacial moraines where pools and rapids are closely interspaced. Heavy forests of aspen and birch, dotted with occasional stands of Norway and white pine, extend almost to the water's edge, enclosing the river and creating an intimate and intensely natural setting.

As the river widens, the pools and rapids become longer and deeper. Islands become a dominant feature of landscape, and the main channel soon becomes difficult to distinguish. Below the point where the Moose River joins the Kettle, the ever-widening stream flows through a valley of farmland and open woods.

At Banning State Park the Kettle flows through a gorge approximately 130 feet deep, which forms the nationally celebrated Hell's Gate Rapids. These rapids, approximately one mile in length, consist of four major drops of about five feet each. I should like to have inserted in the hearing record an article by Mike Link, resident naturalist of the Kettle River area, about the Hell's Gate. As Mr. Link describes, this breathtaking scene: "The waters from the Kettle take their time approaching the rapids, but once they reach the canyon, they take off on a terrific downhill run that seems to explode through the canyon." The enthusiasm expressed by this writer is fully justified for a river that offers rapids as exciting to the veteran canoeist as it does to the novice.

Further downstream the river passes through several short rapids and pools of up to 20 feet in depth. It widens out below this point to a series of rapids that are of moderate difficulty and very popular with canoeists.

Nearly two-thirds of the Kettle River basin is forested. There are some farms along the river and a number of small communities. From the town of Sandstone some 53 miles to the mouth of the Kettle at the St. Croix, there are only about five homes visible from the river.

A number of factors have helped to maintain the Kettle as a wild river. Past concentration of development interest in the St. Croix coupled with the Kettle's low lying character and inaccessibility have helped to discourage large-scale development. Public land ownership in the General C. C. Andrews State Forest, Banning State Park, the Sandstone Game Refuge, Chengwatan State Forest and St. Croix State Park has helped to protect the primitive values of the area. But by far the greatest contribution to the preservation of the river has been made by many private landowners who have traditionally been unwilling to sell to developers.

Nevertheless, conditions favoring future development of the Kettle are rapidly emerging. Two-thirds of the land along the Kettle is in private ownership. Taxes are escalating, and it is becoming more and more expensive for people to maintain undeveloped property. The populous Twin Cities and Twin Ports areas are exerting increased pressure for second home development, and visitor use in the major State Parks along the Kettle has tripled during the past five years. Finally, new public ownership of the St. Croix will inevitably heighten development interest in the Kettle.

Like the Upper Mississippi, the Kettle River has been designated for study under the Minnesota Wild and Scenic Rivers Act. The State study is now nearing completion, and all indications are that the Minnesota Department of Natural Resources will be prepared to move ahead with a program for the Kettle.

However, the Department of Natural Resources faces many of the same problems with the Kettle as it does with the Mississippi. In the case of rivers that are of purely State, rather than national significance, the tools available under the Minnesota Wild and Scenic Rivers Act should be adequate. But a wild river like the Kettle deserves at the very least a federal study as envisioned in my bill.

Aside from the beauty and quality of the recreational opportunities afforded by the Kettle, there is also significant national interest already established on this river by virtue of its status as a major tributary of the St. Croix. Like the Namekagon, the other principal river flowing into the St. Croix, the Kettle is unspoiled. Like the Namekagon, the quality of the waters contributed by the Kettle will have a major impact on the St. Croix. Like the Namekagon, the Kettle is within easy reach of the Twin Ports of Duluth and Superior, and it is easily accessible to the 1.8 million residents of the Twin Cities metropolitan area. But unlike the Namekagon and the St. Croix, the Kettle today exists without any form of national protection.

A study of the features of the Kettle most deserving of national protection is clearly warranted. The fact that the State study is now almost complete should not serve as a deterrent to action, but rather as a means to expedite a federal evaluation. The work of the federal study team would be greatly facilitated by drawing upon the analysis already done by the Minnesota Department of Natural Resources. This study, I would hope, would focus primarily on what the appropriate roles of Federal, State and local government should be in providing for an effective preservation program. If the study findings reveal that the State of Minnesota has all of the financial and management tools required to avoid any destruction of the scenic and primitive values of the Kettle, the federal government's responsibilities might be confined merely to recognizing the unique nature of this resource. But if the study reveals that federal back-up protection is required to safeguard the Kettle, then an appropriate State, Federal and local government management program could be devised.

Local residents, government officials, and the Governor of Minnesota have communicated to me their strong support for this type of study. I should like to have inserted in the hearing record a sample of the letters I have received attesting to this support. During the hearing you will hear the American Rivers Council endorsement of the proposal.

One of the arguments that might be raised by some officials in Washington against federal studies of the Kettle and even of the Mississippi is that since Minnesota already has a State Scenic Rivers Act, why should the federal government become involved with these rivers? The Minnesota program was passed with two views in mind, one of protecting those rivers which are strictly of State significance, the other of providing essential interim protection for nationally significant rivers until they can be considered for inclusion in the Federal Wild and Scenic Rivers System.

Should the federal government adopt the view that rivers should be precluded from national consideration because the States have tried to provide some interim help, this policy would undoubtedly hasten the destruction of critical resources. If anything, our policy should be the reverse; we should encourage the States to act whenever possible.

At the beginning of my statement I quoted Mark Twain, who said of the Mississippi:

"And it is all as tranquil and reposeful as a dreamland, and has nothing this worldly about it—nothing to hang a fret or worry upon."

Unless we do a bit of worrying about rivers

like the Mississippi and translate our concern into action, the tranquility and repose of which Twain so eloquently spoke could all too literally become but dreams and distant memories.

I hope that the Committee will act promptly and positively on studies of the Mississippi, the Kettle, and the many other deserving rivers that are under consideration today.

Mr. NELSON. Mr. President, S. 3022 amends the Lower St. Croix River Act of 1972 by increasing the authorization from $7,275,000 to $18,725,000 for the protection of the 27-mile Federal sector of the river that runs from Taylor Falls, Wis. to Stillwater, Minn.

This bill will permit the National Park Service to amend the current master plan for the Lower St. Croix thus protecting the scenic and outstanding recreational values of a river that was added to the National Wild and Scenic Rivers System almost 2 years ago. This additional money will finally provide sufficient funds to acquire limited fee title and extensive scenic easements in the section of the river that runs from the Washington County line to Stillwater, and culminate a 10-year effort to provide perpetual Federal protection for this outstanding natural resource.

The increased authorization will give perpetual Federal protection to the last scenic and recreational river that is surrounded by a major urban area. The Twin Cities are just a short distance away from the St. Croix. This area of the country is the 14th largest metropolitan area in the entire Nation.

The total increase is high because this is the only segment of the entire national system that is composed primarily of private lands. All other segments of the National Wild and Scenic Rivers System are largely composed of either national forest lands, National Park Service lands, or other lands the Federal Government already owns.

The increased authorization is clearly in the public interest for the people of Wisconsin and Minnesota as well as the countless people across the country who come by droves to enjoy the unique and superb scenic and recreational values of the Lower St. Croix. It was specifically for these reasons that in 1965, 1967, and 1971, I introduced legislation to protect this river. The people who live along the river want a perpetual Federal interest in the Federal zone. They want to be sure the river stays as it is today. S. 3022 provides these assurances.

The proposed master plan that was circulated to the Wisconsin and Minnesota congressional delegations by the Park Service continues despite two meetings with high-ranking Park Service personnel to be a matter of controversy and concern because it does not fulfill the needs of the people of the St. Croix and the intent of the Congress. The plan the Park Service has presented provides protection only in the upper 10-mile section of the river. The lower 17 has no Federal protection. This plan is not acceptable.

This river is one of the most studied rivers in the Nation. Bills to protect the St. Croix were introduced in 1965, 1967, and 1971. The parent act, the Wild and Scenic Rivers Act of 1968, specifically mandated the Federal Government to study the lower St. Croix and determine its suitability as a component of the national system.

Pursuant to this mandate a Federal-State study team convened in January 1970, to evaluate the potential of the river and to draft management guidelines. The study team concluded that the lower St. Croix met the criteria for inclusion in the national system as outlined in section 2(a)(i) of the 1968 act.

Field hearings were conducted in Wisconsin during October 1971. Washington hearings followed in April 1972.

The congressional intent as to what kind of protection is to be afforded to the 27-mile Federal sector of the river is clear and concise. Page 102 of the hearing record of the Senate Subcommittee on Public Lands contains a map that served as an overall guide that contained the congressional intent and the recommendations of the Federal-State study team. This study also served as the basis for the cost estimate for adding the lower St. Croix to the national system.

The map, entitled "conceptual development plan for the lower St. Croix River" combines the recommendations of the Federal-State study team as to the best management for the river as well as correctly reflecting the views of the Wisconsin and Minnesota congressional delegations. The development plan calls for the Federal Government to acquire title and scenic easements for all of the land from the dam at Taylor Falls to the Washington County line. From the Washington County line to Stillwater, Minn., a distance of approximately 17 miles, the development plan clearly calls for the Federal Government to acquire limited fee title and large amounts of scenic easements. The remainder of the river, from Stillwater to its confluence with the Mississippi will be managed jointly by the two States.

The study report estimated that the cost of the project would be $7,275,000. The Congress then proceeded to authorize that amount in the St. Croix's enabling legislation realizing that this amount would be spent acquiring title and easement in the upper 10 miles and limited title and scenic easements in the lower 17.

The preliminary findings of the study team were reaffirmed in the Department of Interior's final report on the river entitled "Scenic River Study of the Lower St. Croix" published in February 1973, 4 months after the river was added to the national system. This report sets forth the conceptual guidelines for the classification, development, and management of the river as a component of the National Wild and Scenic Rivers System.

Page 93 of this report states that in the 27-mile Federal portion, 5,400 acres of land will be acquired by fee or easement. Within the recreational segment that will be protected by the States of Wisconsin and Minnesota an estimated 2,500 acres of land should be protected including 2,470 acres by easement and 30 acres in title.

The final report estimates the cost of the entire 52-mile project at $8,680,000, $1,405,000 to be spent by the States. The report estimates that the entire $7,275,000 should be spent on the 10-mile Federal sector and $1,405,000 spent on the lower 25 miles.

We are now faced with a situation where the National Park Service has circulated for discussion a master plan that meets the protective requirements for the upper 10 miles but does nothing to the lower 17. This is not what the Congress had in mind.

We are now told that if the river is to have its primitive areas from Taylor Falls to the Washington County line protected and the outstanding recreational values in the lower 17 enhanced and properly managed, as envisioned by the 1968 and 1972 laws, the cost will be almost $19,000,000.

In the meantime, $2.5 million became available July 1, 1974, for the river but nothing can be done. The Congress has not been able to come to some agreement with the Interior Department concerning the scope and direction of Federal activity. S. 3022 provides that scope and direction. Someone made a serious mistake in estimating the cost of the program. The $7,275,000 figure does not represent really a ceiling on Federal spending; rather it is the figure that the study team determined would be necessary to fully protect the upper 10 miles and acquire easements and limited acquisition of fee title in the lower 17. In other words, that figure was to be spent to meet the mandate of the legislation and the intent of the Congress.

S. 3022 corrects the estimate for the cost of meeting the protection envisioned by the Congress when this scenic and recreational river was added to the National Wild and Scenic Rivers System.

S. 3022 speaks to several important points. First, the intent of the Congress dating back to 1968 was for perpetual Federal preservation of the 27-mile Federal zone. Second, in the professional opinion of the Park Service to achieve the intent of the Congress and the optimum management of the river for its scenic and recreational qualities would require the Federal Government to acquire in fee most of the land from Taylor Falls to the Washington County line and to acquire many scenic easements from that line to Stillwater as described by appendix D of the proposed master plan. Third, that this type of protection will cost approximately $19 million. And finally, the area is threatened with development and only swift congressional action can avoid permanent degradation.

This legislation that now goes to the House meets the intent of the Congress and keeps the promises made in 1972.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment, as amended, was agreed to.

The bill was ordered to be engrossed for a third reading, read a third time, and passed, as follows:

S. 3022

An Act to amend the Wild and Scenic Rivers Act (82 Stat. 906), as amended, to designate segments of certain rivers for possible inclusion in the national wild and scenic rivers system; to amend the Lower Saint Croix River Act of 1972 (86 Stat. 1174), 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 Wild and Scenic Rivers Act (82 Stat. 906), as amended, is further amended as follows:

(a) In subsection (a) of section 5 after paragraph (27) insert the following new paragraphs:

"(28) Au Sable, Michigan: The segment downstream from Foot Dam to Oscoda and upstream from Loud Reservoir to its source, including its principal tributaries and excluding Mio and Bamfield Reservoirs.

"(29) Manistee, Michigan: The entire river from its source to Manistee Lake, including its principal tributaries and excluding Tippy and Hodenpyl Reservoirs.

"(30) Wisconsin, Wisconsin: The segment from Prairie du Sac to its confluence with the Mississippi River at Prairie du Chien.

"(31) West Fork of the Sipsey Fork, Alabama: The segment, including its tributaries, from the impoundment formed by the Lewis M. Smith Dam upstream to its source in the William B. Bankhead National Forest.

"(32) Cahaba, Alabama: The segment from its junction with United States Highway 31 south of Birmingham downstream to its junction with United States Highway 80 west of Selma.

"(33) Kettle, Minnesota: The entire segment within the State of Minnesota.

"(34) Upper Mississippi, Minnesota: The segment from its source at the outlet of Itasca Lake to its junction with the northwestern boundary of the city of Anoka.

"(35) American, California: The North Fork from Mountain Meadow Lake to the Auburn Reservoir and the lower 7.5 miles of the North Fork.

"(36) Tuolumne, California: The main river from its source on Mount Dana and Mount Lyell in Yosemite National Park to Don Pedro Reservoir.

"(37) Illinois, Arkansas and Oklahoma: The entire river from Tenkiller Ferry Reservoir upstream to its source, including the Flint and Barren Fork Creeks and excluding Lake Frances.

"(39) South Fork Owyhee, Oregon: The main stem from the Oregon-Idaho border downstream to the Owyhee Reservoir.

"(40) John Day, Oregon: The main stem from Service Creek Bridge (at river mile 157) downstream one hundred and forty-seven miles to Tumwater Falls (at river mile 10).

"(41) Colorado, Colorado and Utah: The segment from its confluence with the Dolores River, Utah, upstream to a point 19.5 miles from the Utah-Colorado border in Colorado.

"(42) Gunnison, Colorado: The segment from the upstream (southern) boundary of Black Canyon of the Gunnison National Monument to its confluence with the North Fork.

"(43) Los Pinos, Colorado: The segment from its source, including the tributaries and headwaters within the San Juan Primitive Area, to the northern boundary of the Granite Peak Ranch.

"(44) Big Thompson, Colorado: The segment from its source to the boundary of Rocky Mountain National Park.

"(45) Green, Colorado: The entire segment within the State of Colorado.

"(46) Conejos, Colorado: The three forks from their sources to their confluence, thence the Conejos to its first junction with State Highway 17, excluding Platoro Reservoir.

"(47) Elk, Colorado: The segment from its source to Clark.

"(48) Cache la Poudre, Colorado: Both forks from their sources to their confluence, thence to Cache la Poudre to the eastern boundary of Roosevelt National Forest.

"(49) Piedra, Colorado: The Middle Fork and East Fork from their sources to their confluence, thence the Piedra to its junction with Colorado Highway 160, including the tributaries and headwaters on national forest lands.

"(50) Encampment, Colorado: The Main Fork and West Fork to their confluence, thence the Encampment to the Colorado-Wyoming border, including the tributaries and headwaters.

"(51) Yampa, Colorado: The segment within the boundaries of the Dinosaur National Monument.

"(52) Dolores, Colorado: The segment from the west boundary, section 2, township 38, north, range 16 west, NMPM, below the proposed McPhee Dam, downstream to the Colorado-Utah border, excluding the segment from one mile above Highway 90 to the confluence of the San Miguel River; the segment of the main stem from Rico upstream to its source, including its headwaters; and the West Dolores from its source, including its headwaters, downstream to its confluence with the main stem.".

(b) In subsection (a) of section 4—

(1) in the third sentence strike "1978." and insert in lieu thereof "1978; with respect to all rivers named in subparagraphs 5(a)(28) through (51) of this Act no later than October 2, 1979; and with respect to the river named in subparagraph 5(a)(52) of this Act no later than October 2, 1975."; and

(2) in the fourth sentence: (A) between "rivers." and "with" insert "i", and (B) strike "system." and insert in lieu thereof "system, and (ii) which possess the greatest proportion of private land within their areas.".

(c) In clause (i) of subsection (b) of section 7 strike the final comma and the following word "and" and insert in lieu thereof a colon and the following proviso: *"Provided,* That if any Act designating any river or rivers for potential addition to the national wild and scenic rivers system provides a period for the study or studies which exceeds such three complete fiscal year period the period provided for in such Act shall be substituted for the three complete fiscal year period in the provisions of this clause (i); and".

SEC. 2. Subsection (a) of section 6 of the Lower Saint Croix River Act of 1972 (86 Stat. 1174) is amended by deleting "$7,275,000" and inserting in lieu thereof "$19,000,000".

The title was amended so as to read: "A bill to amend the Wild and Scenic Rivers Act (82 Stat. 906), as amended, to designate segments of certain rivers for possible inclusion in the national wild and scenic rivers system; to amend the Lower Saint Croix River Act of 1972 (86 Stat. 1174), and for other purposes."

Mr. HASKELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time consumed in debate on S. 3022 be charged jointly against the time allocated to the two leaders under the standing order.

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Idaho (Mr. MCCLURE) is recognized for not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum. I ask unanimous consent that the time be taken out of the order that was entered in behalf of Mr. MANSFIELD, without prejudice to the first Senator under the list of orders.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRIFFIN. 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. GRIFFIN. Mr. President, I ask unanimous consent that the special order reserving time for the Senator from New Mexico (Mr. DOMENICI) be transferred to the Senator from Oklahoma (Mr. BARTLETT), and that he may proceed at this time without prejudice to the other Senators who have special orders for recognition today.

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

PETROLEUM PRICES AND THE ECONOMY

Mr. BARTLETT. Mr. President, the Senator from Oklahoma has been interested for some time in doing something about the problem of inflation and the other problems of our economy. As the present occupant of the Chair (Mr. HUDDLESTON) knows, I joined with him and others as a cosponsor of Senate Resolution 363, calling for a domestic summit conference on the economy, and I would like to say that I am very gratified with its progress. It certainly has shown, on the one hand, that Congress and the administration are working at the problem of inflation, the problem of a possible recession, and the various aspects of our economy.

First, I would like to emphasize just how drastic inflation can be. A vivid example is that a person making $20,000 at age 30, with an inflation rate of 12.5 percent during his productive years until age 65, would have to make over $1 million per year at retirement to enjoy the same standard of living that he enjoyed when 30. This is intolerable and totally unacceptable.

There are those who contend that inflation can be reduced through price controls or price rollbacks; and there are those currently, today, who are advocating price rollbacks on oil, and presumably would like to see the low controlled price on natural gas remain where it is, rather than be deregulated.

Let us look at just what has happened in the past. Between the years 1951 and 1971, because of Government controls and Government programs, real electricity prices fell 43 percent, refined petroleum prices were down 17 percent, and coal prices dropped 15 percent.

Mr. President, I can recall that the price of crude oil in 1957 was $3.09 per barrel, and then went down and did not return to $3.09 until 1969, at which time Congress saw fit to decrease the depletion allowance from 27.5 percent to 22 percent, which had the effect of reducing the price of crude oil 17 cents a barrel.

Now, as a result of these lower energy prices during the 20-year period ending in 1971, domestic demand soared, and the domestic supplies of energy did not keep pace.

Foreign oil, at first cheap, as people were saying, "Let us import more cheap foreign oil," but their foreign oil later became very expensive, as it is today, set by a cartel of a number of exporting countries called OPEC, and have a very high price which is bankrupting the nations of the world.

This foreign oil has replaced much of the American oil and gas that was being produced then. The increased domestic demand and the decreased domestic supply of oil and gas resulting from Government programs and Government controls brought about greater shortages of domestic energy of oil and gas, and brought about greater imports of the very high-priced crude oil and other products, causing inflation.

I am not saying this has caused all the inflation, by any means; it certainly has not. But it caused inflation because it is a classical example of too many dollars chasing too few goods, of having the supply-demand equation out of balance.

So, yes, these controlled prices during this period did cause inflation. It decreased the supply and it increased the demand. So this is what would happen today if the prices were rolled back, and is what is happening today because of the controlled prices of natural gas and the controlled prices of crude oil.

All right. What is inflation also doing to the supply side of the coin so far as increased energy is concerned so that we will be less reliant on imported energy—oil and gas principally?

Mr. John Winger of the Chase Manhattan Bank has been estimating all along, and continues to estimate, that the requirements of capital worldwide for the period 1970 to 1985 amount to $1.2 trillion.

If there is 10 percent inflation, then this figure goes up to $2.1 trillion, and if there is 15 percent inflation, then this becomes $3.1 trillion. So the cost of energy sufficiency because of inflation increases tremendously.

The domestic supply of energy is certainly the lifeblood of our economy. Energy is the great multiplier of our gross national product of manufactured and agricultural products. Over a period of years, the increase in energy has been about 3.1 percent per year. The increase in gross national product has been about 3.1 percent per year. There has been a close relationship.

There is also a close relationship between gross national product and employment, and there are those who are saying, "Let us just have a flat energy supply."

Well, first I want to say that is a misleading statement because our supplies of energy continue to decline even though the drilling activity for oil and gas has increased rather sharply, although far behind what it used to be during the sixties.

So, first, we need to do more drilling, we need to bring on more coal, we need to have more research and more effort for alternate fuels in order to just stay where we are so that we do not decrease our supplies of domestic energy. It takes a lot of running to stand still as far as energy supplies are concerned because it is a finite commodity, and each producing oil well and gas well declines continually through its life.

Second, what will happen if we maintain just a flat supply of energy, not increasing it? Our employment would stay flat. But what would happen to the unemployment side? The figures show that by 1985 the unemployment would be 20 percent, a staggering figure and, again, totally unacceptable.

This would rise because of the rising labor force that we would have at that time in 1985.

The worst thing that could happen to us, I believe, from an energy point of view would be if the Arab countries decided at some point in the future to lower their price, undercutting our price, and undercutting a free market price if we had one at that time. There would be a hue and cry in this body, and from others, wanting to meet that lower price which, of course, would decrease supplies.

But just to give an idea of what their cost picture is in some of the Arab countries, and in one in particular, Saudi Arabia, compared to ours, I will give just a few figures, Mr. President, that I think show the point very clearly.

Naturally, our pay scale is much higher than that of Saudi Arabia. But besides that there are other very obvious differences in our ability to produce oil and gas at the same price.

The average size well of Aramco in Saudi Arabia—which, incidentally, produces about 9 million barrels a day, about the output of the United States—is 11,000, over 11,000, barrels per day. The average well in the United States is 18.3 barrels per day. So it is very obvious that a rollback in prices or an undercutting of our price structure subsidizes the high prices of imported oil. It undermines the domestic efforts for self-sufficiency. It guarantees a dependency upon the Arab nations, and other nations of the world, that are exporting oil to us, and it jeopardizes our future, it jeopardizes our foreign policy and our national security. So I say the first order of business for us in our economy is to know that we are going to have in the future a reliable supply of domestic energy. We must, in Congress, develop a full commitment behind a free market price to maximize our efforts for energy sufficiency, to know that the price is going to be fair; that with a given supply-demand situation a price will exist that will do several things: that will increase the supplies of oil, gas, and coal, as our known sources of energy, and bring on, very importantly, the alternate sources of energy that are in the development stage, gasification of coal, liquefaction of coal, oil from shale, and so on.

So, Mr. President, I think that our first order of business in addressing the problems of the economy is to know that we have the energy to keep the wheels of industry going, to keep the source of jobs going and expanding, and to know that we are going to have a rising GNP—gross national product—and a rising employment available.

Mr. President, in order to strengthen our economy it is absolutely necessary that we have a free market for oil, natural gas, and all sources of energy.

Mr. President, I yield the floor.

Mr. McCLURE. Mr. President, will the Senator from Oklahoma yield?

Mr. BARTLETT. I yield to the distinguished Senator from Idaho.

Mr. McCLURE. Mr. President, I commend the Senator from Oklahoma for the statement he has made about the necessity of economic health in this country.

I had a conversation just the other day with someone who was asking how in this period of inflation can we justify a deregulation of natural gas, and I think the answer is very simple: If consumers of this Nation are going to have enough natural gas in the pipeline to heat their homes, that there is going to have to be an increased supply, and in order to get that increased supply into the consumers' homes of the Northeast, in particular, there have to be some changes in the pricing structure.

The only alternative for them is an increased supply at much higher cost, is that not correct?

Mr. BARTLETT. Yes, that is certainly correct, and I would say to the distinguished Senator that he raises a very timely point that some of the sources that increase prices are unreliable. I know the Senator is aware that Algeria was wanting to sell liquefied gas that would be liquefied and shipped to the east coast, but now their interests are not in selling it to the United States but in selling it to Europe.

Also, they advised this Senator and two other Senators who were visiting Algeria——

The ACTING PRESIDENT pro tempore. The time of the Senator from Oklahoma has expired. Under the previous order, the Senator from Idaho is recognized.

Mr. McCLURE. Mr. President, I yield to the Senator from Oklahoma.

Mr. BARTLETT. The three Senators were advised at that time that the Algerians would not ship gas for liquefaction, liquefied natural gas, to this country if there was an embargo.

The price from Canada has recently been raised.

The only readily available, least expensive but most reliable, source of gas is domestic natural gas and it also, of course, does not provide any problem with balance of payments.

But there is one other point that the distinguished Senator raised and I would like to comment on it very briefly. That is, there is a possible coal strike scheduled for November 12; there is a possible series of wildcat refinery strikes to take

place in January; there is an assurance from the FPC that the interruptions of natural gas deliveries will be 81 percent more than last year this winter.

Also, I understand the weatherman is saying that we may have a very cold winter.

So I think that for many people—in their homes, hospitals, schools, and away from their jobs that they are not attending because of the interruption of gas—it is going to be a cold winter.

Certainly, the time is ripe right now to deregulate natural gas and move forward a free market price on natural gas.

Mr. McCLURE. I know statistics get very boring and sometimes we use too many figures in discussions, but I think it is useful to make some comparison here so people understand what they are confronted with, what kinds of choices they have to make.

The average price of natural gas in the interstate pipelines has been quite low and it has been regulated since 1954. Their price has been in the range of what figure, if the Senator from Oklahoma can tell us?

Mr. BARTLETT. Well, the price in Oklahoma, the average price until very recently, was about 23 cents, but just a couple of years ago it was around 15 cents.

Mr. McCLURE. But even today, the average interstate gas pipeline that supplies the great majority of the consumers of natural gas, the home heating and water heating that is done in the average residence, supplies through natural gas pipelines under regulated rates around 26 cents per thousand cubic feet.

Mr. BARTLETT. Yes.

Mr. McCLURE. And the result has been, as we had the environmental controls placed upon the use of alternative fuels, that a great many industries that could get natural gas in their areas without going through an interstate pipeline bought it in intra-State sales that are not regulated by the Federal Power Commission and those places have over the last couple or 3 years moved up to average better than double that which is in the interstate pipeline, is that not correct?

Mr. BARTLETT. The Senator is correct.

Mr. McCLURE. So if we see a deregulation of natural gas in the interstate pipelines, we will see perhaps a doubling of those pipeline prices and that has a very serious effect on the consumers of this Nation.

But the alternative will be something that is far worse, either they will not have supplies or they will begin to depend more and more upon the liquefied natural gas that comes in from Algeria or other places, and the average prices, compared to 26 cents now, will be $1.30 to $1.60 per thousand cubic feet of gas in the pipeline.

Another alternative that has been held out is producing synthetic gas from liquefaction of coal. The latest estimates, assuming we could get any very great quantity of that, will range now as high as $4 per thousand cubic feet.

So the range we might expect to increase to the average consumer of natural gas will not run from 26 cents to 40 cents, but the increase will run 26 cents up to as high as $4.

So I think we have to look at the alternatives and not necessarily just the desirable options that we would like to have. I think we have to look back to the fact that for all the periods since 1954 this has been building, just as other inflationary pressures in our society have been building, as a result of actions or inactions taken by the Federal Government. It is time for us to recognize that.

Mr. WILLIAM L. SCOTT. Will the Senator yield?

Mr. McCLURE. I yield to the Senator from Virginia.

Mr. WILLIAM L. SCOTT. Mr. President, I commend the Senator from Idaho for taking this time to talk about the economic problems confronting the country, to talk about our energy sources and the adequacy of our supply of energy.

We are privileged to serve together on the Committee on Public Works and last week the committee had hearings with regard to the problems of the business community, including the housing industry, and we had the national president of a contractors' organization testify. He was asked what the primary basis was for the crisis confronting the business community, the primary causes of the problems confronting the contractors nationwide.

He emphasized the actions of Congress in connection with the environment, the Environmental Protection Agency, its regulations, the law as made by Congress permitting upon the Environmental Protection Agency to issue regulations, and that actually the Government was harassing business. He talked about occupational safety, the Health and Safety Act, OSHA, he also talked about fair employment policies.

Now I believe the gentleman intended to speak favorably of a clean environment and he was in favor of health and safety, he was in favor of fair employment, but he seemed to think that the laws we had enacted pretty much put business in a straitjacket and they could not operate in a businesslike and profitable manner, they could not expand to do things they wanted to because of the severity of some of these actions.

In my opinion, this is something that we ought to think about and we ought to review some of these laws that Congress passed that are handicapping the free enterprise system that we all believe in so much.

I thank the Senator for yielding.

Mr. McCLURE. I thank the Senator from Virginia for his contribution because I think he has touched on some points that have to be kept in mind as we look at the question of inflation and how we deal with it.

Let us not forget to look at the action or inaction of Congress because Congress, in my judgment, bears a major part of the responsibility for the economic chaos with which we are confronted today.

The examples the Senator from Virginia recites are only several of the very many that can be pointed to.

Yesterday, at some length, I pointed out the attempt by some in our country to find some scapegoat somewhere rather than confess that we bear some of the responsibility here. The Senator from Oklahoma made some reference to the need for secure energy supplies. Yesterday I pointed out that some people were now saying that somebody else is responsible for our inflation. It must be the Arabs, it must be the OPEC nations, or it must be someone else's increased energy supplies which has created the inflation.

Mr. WILLIAM L. SCOTT. On that point, if the Senator will yield, we have talked about this foreign aid bill. I know that Senators are split all kinds of ways with regard to foreign aid, but I do not see how we can avoid inflation when we have our budget out of balance and when we give away more than $200 billion to the nations all around the world, as we have done since World War II.

I am very much impressed with the terminology that was used by H. R. GROSS over in the other body, the foreign giveaway program.

I spoke briefly yesterday and suggested somewhat in jest—but it would not be entirely unfair—that we have cast our bread upon the waters. We have tried to help other nations. Maybe we ought to have some aid in reverse now. The other nations see our economic conditions. With some of them being in a better condition than we are, if they are not going to return the aid we have provided for a generation they can refrain from asking us to assist them further. It seems to me that we have to learn to say no to broad-brush giveaway programs and to vote against a lot of these big spending programs that come before Congress.

When I was in the House I took polls of constituents, and they are wholeheartedly opposed to a continuation of aid to almost all of the nations of the world. If some country has a severe drought, if somehow they have a special hunger problem, it is a humanitarian act for us to try to help them. But if we spread the assets that we have all over the world, I do not see how we can keep from bankrupting the Nation. I believe it is time to call a halt to this sort of thing.

Mr. McCLURE. I thank the Senator from Virginia.

I would point out that there are some of our friends overseas who, over the past several years, have been pointing to the mismanagement of our economy as one of the major reasons for inflation.

I recall, I think it was about 7 years ago, that the Minister of Finance of France was very bitterly opposed to what was happening in the buildup of Eurodollars in Europe as a result of the chronic imbalance of payments in the United States, largely linked with foreign policy, in which they had built up a tremendous dollar overhang in the European market.

Their comment at that time was, in effect, what we were doing was exporting the inflation that we had created at home, and that the European nations were being forced to accept an inflation which we created simply because we sent those excess dollars overseas where they

build up in their markets instead of our own. We avoided the consequences of our self-created inflation by exporting it to them along with our dollars. They bitterly resented that.

I think it is no wonder, really, as you look at today's world situation, that you find a worldwide inflation about 15 percent a year. The United States suffers but does not suffer as much. Because we are such a dominant factor in the world's economy, we have been able to impose our policies upon them in a variety of manners. In foreign aid we have taken the excess dollars created in our own economy, put them into theirs, and then created the inflation which we then criticize them for having created. They justifiably resent it.

Today, we are trying to say that it is not our fault that we have inflation; it is somebody else's. It must be the oil prices.

I pointed out yesterday that even in Japan where they depended so heavily upon imported energy, the inflation rate that they suffer, in excess of our own, is only 4 percent caused by the increase in energy costs. In our own economy it is less than 1 percent of the inflation that is the result of the increased energy costs.

We are constantly trying to find someone else to blame for the ills which we have created in our own economy.

Someone suggested recently, as my good friend in the other body, Mr. UDALL, used to say, some very witty and wise man suggested, perhaps the real reason the world is in the problem it is in is because we have been sending our experts all over the world to tell them how to run their economy and they have been running it like we have been running our own. No wonder they are in trouble, because we are in trouble. We are in trouble because we have adopted bad monetary policies here.

We have suggested to our friends around the world that they adopt bad monetary policies, and they have taken our advice. Now the result is worldwide inflation that threatens to engulf us.

Instead of trying to find the basic causes and correcting the basic causes, we seek to find someone else to blame so we do not have to shoulder the blame or correct the abuses which we have inflicted upon our economy.

Mr. President, I say it is high time that the people of the United States speak, as I think they are speaking, loudly and clearly to those of us who have been given the responsibility for making national policy.

They have the opportunity to speak on November 5 by their votes. They better vote for people who have an understanding of economic and fiscal responsibility, domestically and internationally. I have the confidence that they will.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.) Under the previous order, the Senator from Virginia is recognized for not to exceed 15 minutes.

NOMINATION OF NELSON ROCKEFELLER TO BE VICE PRESIDENT

Mr. WILLIAM L. SCOTT. Mr. President, I take this time to discuss the nomination of Nelson Rockefeller to be Vice President. I understand from the report of the chairman of the Committee on Rules and Administration (Mr. CANNON), that we will be voting on this sometime after recess, probably in November.

Mr. President, immediately after the President stated his intention to nominate former Governor Rockefeller for the office of Vice President, constituents started calling our office indicating their disapproval.

Within a few days, we were receiving mail almost wholly in opposition. It occurred to me that this initial response by telephone and letter might be generated; that it might represent the thinking of only a small portion of the people of Virginia.

To resolve this question, I solicited the views of constituents in a newsletter mailed about 10 days ago. It seemed the best way to obtain a fair sampling of the thinking of Virginia citizens.

There is no doubt that this nomination is different from a person nominated to serve in the President's Cabinet, or even the more studied nominations to fill vacancies in other executive or judicial posts. Under the 25th amendment, in this instance we act for the people of the country in electing a Vice President.

Our newsletter, of course, goes to all parts of Virginia.

I asked that responses be furnished as soon as possible to assist in deciding how to vote on this important nomination.

Of the responses we have received to date from all sections of Virginia, 85 percent of those responding oppose Mr. Rockefeller's confirmation as Vice President.

Mr. President, let me share with you some of the representative letters from around our State indicating the reasons for this opposition. This is just a fraction of those received in my office.

A resident of Alexandria let me know how she felt in this manner:

> This letter is to register my vote against confirmation of Mr. Nelson Rockefeller as Vice President. I shall watch closely how well you represent me when Congress completes its investigation of Mr. Rockefeller. It has been said Mr. Rockefeller cannot be "bought," but how he can "buy" in many subtle ways. We need no more of that in high office.

Another lady from Clifton Forge had different reasons:

> Rockefeller's appointment to the vice presidency has concerned me deeply. I do not believe that a man with the awesome financial power that he has held will be good for the country.
>
> Neither do I believe that his personal life has entitled him to the position. His divorce and subsequent remarriage to a woman who lost custody of her children is a poor example for Americans, especially the youth, and I can see little chance of our nation getting back to a path under God (as President Ford said he desires) with a man such as Rockefeller in the second highest post.
>
> I also object to his fiscal irresponsibility in New York as well as his support of liberal abortion in that state.
>
> I find the man totally unacceptable and I urge you to vote against his confirmation.

One from Barboursville enumerated her reasoning as follows:

> It is my earnest hope that you will vote against the confirmation of Nelson Rockefeller for the vice presidency, for the following reasons:
>
> 1. His vast inherited wealth has involved him in special interests *outside* of the United States.
>
> 2. He has always belonged to the far-out, liberal wing of the Republican party—even refusing to support Barry Goldwater, the party's nominee in 1964.
>
> 3. His private life—deserting his wife of over thirty years—is hardly conduct Americans can admire.
>
> 4. His brother David's connections in financial circles—national and international—might have undue weight with him in making decisions.
>
> 5. Lastly, I am a fourth generation New Yorker, and have seen the Rockefeller family "in action" for many years and believe they have wielded more influence and power than is good for a healthy, democratic government.

A constituent from Portsmouth indicated he expected me to represent him by my vote:

> I am writing this letter to you to let you know my feelings concerning the nomination of Mr. Rockefeller for vice president. I voted for you in the last election in hopes that you would vote the way I thought. I do not think Mr. Rockefeller has mine and your best interest at heart. I hope you will vote against his appointment.

A president of a taxpayers organization from Covington had this to say:

> We of the Virginia Taxpayers Liberty Association, ostensibly oppose affirmation of Nelson A. Rockefeller as Vice President of the United States. We know what Rockefeller stands for and his past activities. We have had too much Socialism already!
>
> We beseech you for the good of America to vote against the affirmation of Rockefeller as Vice President of the United States!
>
> Enclosed is just a portion of what Rockefeller stands for and his acts in New York as Governor.

A couple from Leesburg were concerned about abortion:

> We firmly oppose the confirmation of Rockefeller as Vice President. He is well known for his anti-life stand. His advocating of abortion sends chills down our spines.

A Richmond physician expressed concern regarding taxes and spending.

> Without question, Nelson Rockefeller has had vast experience in controlling New York State. However, I do not believe we need a man with his socialistic philosophy of administration. Look at his 15 years record as Governor of New York State:
>
> The budget was quadrupled from $1.9 billion to $9 billion. Individual state income taxes were increased from seven percent to fifteen percent.
>
> State gasoline tax was raised from four to eight cents per gallon.
>
> A four percent sales tax was put into effect.
>
> New taxes were imposed and old taxes increased in eight of the fifteen years.
>
> The total state tax burden on the citizens of New York had quintupled during his 15 years as Governor.
>
> This man's philosophy is higher taxes and more government spending. Do we need such a man as this to be our Vice President, only a heart beat away from being President?
>
> Inflation is ruining our country and for the people trying to live on Social Security or the small pensions they receive, it is an impossible situation.
>
> Please, therefore, vote against this man for Vice President.

From Waynesboro discussing Rockefeller's past history:

Just a line in regard to Nelson Rockefeller.

Hope you will see your way clear to vote against him when he comes up for election.

I don't think he is the man for the job. Because of his past history as governor of New York, and because of his close ties with the leftists including Alger Hiss and many other reasons.

A Lynchburg lady opposed Rockefeller's philosophy:

Please vote against the confirmation of Gov. Rockefeller.

I am sure you know his past record on Taxes in New York State; his Liberalism; and all the other facts about him. We need men like you and Senator Byrd to oppose him.

A Chatham lawyer indicated no one in his area approved of the nomination:

I am unfavorably impressed with the record of former Governor Nelson Rockefeller in public life. I have talked with a number of people about the confirmation of him for Vice President. I have not found a single person who has voluntarily approved of the confirmation. However, I have found a number of people who have been neutral on the question.

Therefore, I hope that you may disapprove of the confirmation since there is always a remote possibility of a Vice President becoming President.

A lady from The Plains indicated that since the citizens did not have a right to choose they would depend on their elected representatives:

Since the American people have not had a chance to elect the Vice President they choose, then writing to our Congressmen is the only voice we have at this time. Certainly Mr. Rockefeller is not the choice when it should be remembered that his party never wanted him in previous years. Why should he be railroaded down our throats now? There are too many wealthy leaders in this country today who know nothing about poverty and surely Mr. Rockefeller would only have the interests of the rich in any decision he would make. It is time to have leaders who think of the low, and middle-income taxpayers who are truly concerned about this country.

A Vienna lady spoke of moral pollution:

I do not approve of Mr. Rockefeller becoming Vice-President. I do not think the majority of American people can take divorce and the abortion issue so casually—this leads others to follow in his footsteps, then what do we have as a nation?

The moral pollution is a pathetic enough situation with leaders who will do nothing about it. Now we are to condone leaders who act immorally?

A pharmacist wrote his views on a prescription pad:

I am opposed to the confirmation of Nelson Rockefeller as Vice-President of the United States.

A veterinarian from Staunton was concise with his views:

I am not in favor of the confirmation of Mr. Rockefeller for the Vice-Presidency.

A Richmond lawyer felt that Mr. Rockefeller had not been sufficiently concerned about the taxpayers' money while he was Governor of New York.

Thank you for your September-October, 1974, report. I would like to express to you that I do not feel Nelson Rockefeller should be approved for the Vice Presidency of the United States. His record while he was Governor of New York would lead one to believe that he is more concerned with social problems than with sound financial policy, and I feel that since he would be only a heartbeat away from the Presidency of the United States, we should have someone in that office who is more practical and whose views concerning the business and welfare of the country are more in line with the views of the citizens of the United States.

A Falls Church lawyer indicated Rockefeller was too far to the left.

I certainly would be disappointed to know that Nelson A. Rockefeller, who has courted every leftist anti-American with whom this Country has had to contend and at the same time became even more wealthy furnishing both raw and refined materials to our enemies which were used to kill American servicemen in two major wars, would be confirmed by a Senator from Virginia, as Vice President of the United States.

A Portsmouth lady states he is unprincipled:

I urge you to vote against the confirmation of Nelson Rockefeller for Vice President, as he is definitely not the man we need in so vital a position. He is unprincipled—didn't support the Republican candidate for President in 1964—in fact, did everything he could to hinder the election of Goldwater. Does he think the people have forgotten? I also am aware of his having attended Bilderberger meetings, and is also a member of the CFR (Council on Foreign Relations) which is supporting and working for a one-world government. How can someone belonging to organizations with this goal, swear to uphold our constitution, that is, with a clear conscience? I feel that Rockefeller is a very dangerous man, and hope and pray that you will vote NO on his confirmation.

A husband and wife from Farmville had a number of reasons for opposing the nomination:

We have nothing personal against Nelson Rockefeller; however, to have him as Vice President of our United States might well result in a virtual disaster to the U.S. This could conceivably result in his becoming President in case of the death of President Ford as a result of illness, accident, or assassination.

Nelson Rockefeller, a notorious spendthrift, master-minded the most lavish state government in the history of this Country.

During the 15 years as Governor, New York's taxes quintupled from $94 per capita to $460. New York's debt catapulted from $1 billion to nearly $10 billion. New York's taxes are 12% higher than the next top state and 50% above the U.S. average.

He failed to carry N.Y. State for Mr. Nixon in 1960. He refused to support Barry Goldwater in 1964. He didn't support Mr. Nixon in 1968. He is loyal to only one person, namely, Nelson Rockefeller.

Rockefeller's main support is derived from the Eastern Liberal Republican Establishment and the Ripon Society, but very little from the National Republican electorate.

Do we want such a man to be put in a position where he could, by the accident of death, become President of the U.S.? We say No. A thousand times NO!!

Now Mr. President, I do not say that all of these letters are accurate, but right or wrong, they represent the feeling of the people of Virginia and I feel that they may be useful to other Members of the Senate as representing the grass roots thinking of our citizens. Let me share the thinking of a lady from Norfolk:

My husband just received your September–October 1974 "Bill Scott Reports" and I felt that I should let you know what we thought and how we feel on the nomination of Nelson Rockefeller for the office of Vice President of the United States.

We are both against Nelson Rockefeller ever being our Vice President, and hope you do what is in your power to prevent this from taking place.

I believe President Ford has already done enough things that will hurt our Country, without this taking place, and I am sure that there are better men from this great nation, that will do a much better job than Rockefeller will do as being the Vice President of the United States.

If President Ford, is not stopped in this act, by the Senate and Congress, then there is no telling what road they will lead this nation down, that will lead to the downfall of this great nation.

An Arlington couple refers to him as a "dangerous man":

I am asking you to please commit yourself now to oppose Mr. Rockefeller as Vice President. His background is such that we feel he is, and would be, a most undesirable man for such a high office.

He tried twice to be elected as President—and was turned down by a wide margin, and his ambition to head this nation as President makes him a dangerous man to be so close to the Presidency—anything could happen. There are other men more needed, qualified, than this liberal, dangerous person. The nation can well do without him!

We have had enough scandal and the Republican Party needs a man we can depend on for leadership and strength.

Please, for the good of the country Say No!

A Newport News lady indicates that my vote will influence her when it is time to determine whether or not I should be returned to the Senate:

I am writing to you in regards to the upcoming confirmation of Nelson Rockefeller as Vice President of the United States. Due to his vetoeing of New York's 1972 Abortion Repeal Law, he has allowed millions of unborn to be condemned to death.

I am asking you to vote "nay" on his confirmation as my representative in Congress. Your actions in this matter will definitely influence me when it is time for you to return to Congress. Thank you very much.

An Alexandria engineer refers to Rockefeller's performance as Governor of New York:

I hope you will vote against Nelson Rockefeller for Vice President for the following two reasons:

1. We cannot afford him based on his performance in New York State.

1. There is a basic Conflict of Interest. His fifteen family controlled tax-free foundations and twenty-one corporations plus many interlocking directorates cannot be expunged from his influence. He and most of his foundations appear to favor Internationalist/Socialist projects not in the interests of the people of the United States.

Based on his performance alone he is not potential presidential material.

P.S. I voted for him when I lived in New York State to my regret.

A Galax couple is concerned about his internationalism and trade with the communists:

The contemptable and ironic nomination of Nelson Rockefeller for Vice President, by President Ford, has brought to my attention the morbid facts that Mr. Rockefeller's dealings with the Communists may well bring our nation to its knees under Communist rule.

I urge you to take a strong stand in opposing Mr. Rockefeller's confirmation for the Vice-Presidency. Our political representatives connot ignore the facts which prove Nelson Rockefeller incompetent for this po-

sition—a "heartbeat away" from the Presidency.

Nelson Rockefeller is of the super-rich clique and an internationalist. In 1967, Cyrus S. Eaton, Sr. and Mr. Rockefeller joined forces to promote trade with the Communist world. Combining the power of politics and the control of money forbodes a calamity far worse than Watergate. We frankly don't trust him to uphold the Constitution of the United States and the well-being of its citizens were he to become President.

I believe many Americans sense the dire consequences awaiting us because of past political experiences. Therefore, we urge you again to use your influence against confirmation of Mr. Rockefeller.

Quite a few of these letters appear to be from women, with a Colonial Heights lady indicating that the rank and file within the Republican Party do not support him:

When the time comes to vote for or against the confirmation of Nelson Rockefeller as the vice-president of this great nation, please take this into consideration:

This nation needs leaders that are supported by the people. Nelson Rockefeller has been defeated by the rank and file members of his party in his bid for the office of President. This should be sufficient in your determination on his acceptability as presidential material.

After he was rejected by the delegates at the convention he did not support the party's nominee Barry Goldwater. I supported Mr. Goldwater.

I wish more people had paid less attention to the press. This country needed a man like Goldwater rather than a Johnson or a Rockefeller.

This country needs a man that has fiscal responsibility. Nelson Rockefeller's record in New York shows the one thing he ain't is a conservative or even a moderate.

This country doesn't need Nelson Rockefeller as vice-president. The people have said no on several occasions. Cast a nay vote for us, please.

The chairman of the Lynchburg Chapter of the Society for Human Life is disappointed with his stand on abortion:

The nomination of Nelson Rockefeller for the Vice Presidency was a sad disappointment. Mr. Rockefeller is perhaps the single most influential abortion advocate in public life. Prior to the Supreme Court abortion decision of January 22, 1973 New York State had a State law which permitted abortion on demand. This law had been passed by one vote in 1970. Two years later, in 1972, a new State legislature repealed the permissive law, again greatly restricting the practice of abortion. Governor Nelson Rockefeller vetoed this law, thereby returning the State back to the practice of abortion on demand.

The Lynchburg Chapter of Virginia Society for Human Life opposes the Rockefeller nomination and asks that you do the same. The best interests of this country would be better served by someone more supportive of the right to life—the most basic of all rights.

An Arlington lady does not feel he should be forced upon the American people:

I want to let you know that I am opposed to the confirmation of Rockefeller as Vice President. The American people do not want him, and I do not think that Congress should force him on the American people. He is not going to help the American people, and he certainly is not going to stop inflation. We need a conservative as Vice President to offset those liberals that Ford is appointing to office.

I hope and pray that you will act wisely and vote no for his confirmation. You know that he is lying about his finances.

A Harrisonburg doctor considers him "unfit":

I have reviewed the record of Nelson Rockefeller in New York State and consider him unfit to become Vice President of the U.S. I hope you will vote against his confirmation.

A Lincoln couple speaks of his help to Communists:

Mrs. Vermilye and I feel very strongly about the nomination of Nelson Rockefeller for Vice President of the United States. We are against it.

Nelson Rockefeller is for international trade whether it is in the interests of the United States or not. His International Basic Economy Corp. with its affiliated Tower Corp of Cyrus Eaton are very actively promoting the exporting of our technological know-how to the Soviet Union under the guise of detente. This is a one-way exchange of ideas. Who will benefit from this exchange? The Rockefellers and the Eatons financially. The Soviets will use this information and highly sophisticated "tools" to "bury us" economically.

Will we ever learn? I have lived a lot longer than you, Senator and have seen it happen.

Please in the interest of long range planning, do not vote for this man.

A lady from Great Falls says the good of the country would be served by his rejection:

I urge you to vote against the confirmation of Nelson Rockefeller as Vice-President of the United States. In times such as these the good of our country should be considered before party politics.

An Alexandria lady indicates she cannot vote for anyone who votes for Rockefeller:

This is to express my deep opposition to the confirmation of Nelson Rockefeller for vice-president.

My feeling is based on two points: He controls too much money to be placed in a position of such potential power; According to newspaper reports he divorced his wife of many years to marry a younger woman. If he will treat his wife so selfishly what will he do to us taxpayers? I do not feel he has set an appropriate example for the rest of the country; as a leader this counts.

I have always voted for you but in the future I do not feel I could vote for anyone who votes for Rockefeller.

An Amherst gentleman indicates his past record is not good:

I received your news-letter a few days ago and thank you for sending it. In regard to the Rockefeller nomination, I am against his being confirmed as Vice President. His past record is not good and I don't think that he will do the country any good as Vice President. I am surprised that he accepted second place.

A couple from McLean objects to his connection with the oil monopoly:

As registered Virginia voters, we urge you to vote against confirmation of Nelson A. Rockefeller as vice-president of the United States.

In our opinion, much of the blame for the present troubled state of the economy and the country must be assumed by those who have allowed big business to control our political system. We heartily oppose awarding the vice presidency to a man whose very name is synonymous with big business.

We particularly object to Mr. Rockefeller's connections with the oil monopoly—and industry that has held the White House and much of Congress in the palm of its hand for the past six years. We think it is time that they relinquish the excessive power they have to control our lives, political and otherwise, and that we citizens take it back. This can't happen if one of their very own is second in command of the country.

In another light, we abhorred Mr. Rockefeller's handling of the now almost forgotten Attica Riots. His inept, tragic fumbling caused unnecessary bloodshed and heartache to many and demonstrated his inability to deal with social problems as well as pointing out the extent to which he is out of touch with real people.

As you make your decision on confirmation of Mr. Rockefeller, we urge you to take these and other opposing viewpoints into serious account. Big business has had your ear for a long time—its *our* turn!

A Portsmouth constituent is just against him:

Being a qualified voter in the state of Virginia, I feel I must inform you of my disapproval of Nelson Rockefeller as the Vice-President of the United States. Please vote against his appointment.

A history professor feels that he represents the leftist element:

Please allow me, as one of your most energetic supporters on this University's faculty, to urge that you cast your vote against confirmation of Nelson A. Rockefeller as Vice-President, when the Senate turns to consideration of Mr. Ford's nomination of the former New York governor.

Mr. Rockefeller represents a leftish element in the Republican Party seldom accepted (nationwide) by the public, and in Mr. Rockefeller's case always repudiated by the national party at large during the ex-Governor's bids for the Presidency.

I sincerely consider President Ford's nomination of Mr. Rockefeller to be a step toward national disaster and earnestly hope that you and Senator Byrd will refuse to vote to confirm this wretched and shocking White House choice.

A Norfolk gentleman refers to the moral issue:

Irresponsible or negligent rationalization, especially on moral issues, is one of the most destructive of the sacredness of the values inherent in our constitution, and thus of our Nation.

Nelson Rockefeller, in 1972 as Governor of New York, blatantly demonstrated this irresponsibility by his veto of that State's Abortion Repeal Law. I am unalterably opposed to his confirmation as vice president!

An Alexandria constituent states that his long range views are not in the best interests of the Nation:

I have just read your Bill Scott Reports, and my views are very strong AGAINST the nomination of Mr. Rockefeller as Vice President. This man's actions through his political career and private life have shown me that his true long-range desires ARE NOT in the best interests for this REPUBLIC!

And a Hot Springs couple indicates Rockefeller has hurt the economy and taxpayers in New York State:

As a taxpayer of Virginia I would like to request that you vote against the confirmation of Rockefeller as Vice President. It is no secret how Rockefeller has hurt the economy and the taxpayers of New York State. Do you want to see his policies to further boost the inflation that is destroying us today?

How long will it take the Senate to confirm

him if they investigate the 300 corporations that he owns?

Also—the fact that he paid only $600.00 income tax in 1972. Less than a man making $6,000.00 a year.

So you can see what a man like that would do to our National economy.

Please, for the sake of all the people in these United States—"Look Before You VOTE".

Mr. President, I took this time and read samples of some of the mail we are receiving to let the Senate know the thinking of the people of Virginia regarding the Rockefeller nomination. I am sure most Senators have received mail for and against confirmation. The reason for reading such a large sampling of my mail is because of the overwhelming nature of it—85 percent against confirmation. This may well indicate how my vote will be cast.

ORDER OF BUSINESS

The PRESIDING OFFICER (Mr. McINTYRE). Who yields time?

Mr. GRIFFIN. Mr. President, as I understand it, we are under special orders.

The PRESIDING OFFICER. Under a previous special order, the Senator from Montana is recognized for 9 more minutes.

Mr. GRIFFIN. Mr. President, on behalf of the Senator from Montana, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

PRIVILEGE OF THE FLOOR

Mr. PERCY. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. GRIFFIN. Yes, I shall, but I have been asked first by the Senator from Nebraska (Mr. HRUSKA) to yield to him.

Mr. HRUSKA. Mr. President, I ask unanimous consent that Douglas Marvin, a member of the staff of the Committee on the Judiciary, be permitted to be on the floor during debate and vote on the pending measure.

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

Mr. GRIFFIN. With the permission of the distinguished majority leader, who has this time, I yield to the Senator from Illinois.

Mr. PERCY. Mr. President, I ask unanimous consent that William Lytton and Brian Conboy of the staff of the Committee on Government Operations be allowed the privilege of the floor during all debate on Senate Resolution 399, Senate Joint Resolution 240, and S. 4016, including votes thereon.

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

ORDER OF BUSINESS

Mr. GRIFFIN. Mr. President, with the permission of the distinguished majority leader, I yield 4 minutes to the Senator from Virginia.

HOLD THAT LINE! HIT 'EM AGAIN! GET THOSE GRANTS! GET THOSE GRANTS?

Mr. HARRY F. BYRD, JR. Mr. President, on Tuesday and Wednesday I reported to the Senate on a number of examples of wasteful spending by the Federal Government. I shall continue to speak on this subject each day until the scheduled adjournment on October 11.

I think it is important that we focus on the inappropriate use of tax funds in this period of devastating inflation.

In my earlier speeches I outlined a number of projects that seemed to me to be inappropriate or mismanaged. They ranged from a $44 million outlay for Navy torpedo targets that cannot be used at sea to a $1,000 grant to a musician "to travel and study the Southern Plains style of American Indian flute playing with Doc Tate Nevaquaya, a Comanche flutist."

I have pointed out that with regard to many of the programs I have described, particularly the studies in the arts and the humanities, I make no judgment as to whether or not they are worthwhile.

My contention is that all too frequently, they do not represent a legitimate use of tax funds.

Today I want to look at another aspect of the funds paid out for studies: Who gets the money?

Analysis of grants for the current year by the National Science Foundation is most interesting. Leafing through the pages of this agency's list of grants for research in the social sciences, one is struck by the frequency with which one encounters awards to Harvard University and Yale University.

It turns out that the total of awards in the social sciences, which is only one of many grant programs, to these two institutions is $1,572,050.

Yale did a little better than Harvard: $834,750 to $737,300.

Now I have nothing against Harvard and Yale. They are noble and venerable institutions, and among their alumni are a number of my distinguished colleagues in the Congress.

But I fail to see how such huge sums can be justified for social science research at two schools.

Here are some of the subjects which will be explored at the taxpayer's expense at Yale and Harvard this year:

Early Phases of Hominid and Pongid Evolution. Yale, $55,500.

The Prehistory of Taiwan. Yale, $65,200.

Prehistoric Urban-Rural Relationships. Harvard, $28,600.

Organizations, Decisions and Welfare. Harvard, $32,700.

A Calculus of Social Networks. Harvard, $105,000.

Investigations of Ancient Mathematical Astronomy. Yale, $36,300.

Early History of the Measurement of Motion. Harvard, $14,700.

Influence of Dyadic Relationships on Adherence to Stressful Decisions. Yale, $46,600.

Unintentional Influence in Dyadic Interaction. Harvard, $50,300.

The PRESIDING OFFICER. The Senator's 4 minutes have expired.

Mr. MANSFIELD. Mr. President, how much more time would the Senator like?

Mr. HARRY F. BYRD, JR. Three minutes, Mr. President.

Mr. MANSFIELD. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. MANSFIELD. I yield 5 minutes to the distinguished Senator from Virginia.

Mr. HARRY F. BYRD, JR. I thank the majority leader.

As I said earlier, I am not passing judgment on the value of these studies. I am sure that many will make a contribution to the body of human knowledge.

But is it appropriate for the Federal Government, at a time when every taxpayer is feeling the cruel pinch of inflation, to spend more than a million and a half dollars for such projects at only two universities?

I think not.

As to Yale and Harvard, they are certainly to be saluted for their enterprise in obtaining federal funds.

All of us know that the annual football game between these two great universities is a highlight of the year in New England. At this year's game, perhaps the cheerleaders might abandon the traditional rah-rahs in favor of a more realistic bit of rooting, something like this:

> Pull up your socks!
> Hitch up your pants!
> Get in there and fight for
> Your Federal grants!

Mr. President, I thank the Senator from Montana and yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Montana has 2 minutes remaining.

Mr. MANSFIELD. On that encouraging note, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ROUTINE MORNING BUSINESS

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore (Mr. HUDDLESTON) laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

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

MESSAGES FROM THE HOUSE

At 11:03 a.m., a message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House has passed the bill (H.R. 16900) making supplemental appropriations for the fiscal year ending June 30, 1975, and for other purposes, in which it requests the concurrence of the Senate.

ENROLLED BILL SIGNED

The message also announced that the Speaker has affixed his signature to the following enrolled bill:

S. 2382. An act for the relief of Caridad R. Balonan.

The enrolled bill was subsequently signed by the Acting President pro tempore (Mr. HUDDLESTON).

At 1:30 p.m., a message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the Speaker has affixed his signature to the following enrolled bills:

H.R. 4861. An act to amend the Act of October 4, 1961, providing for the preservation and protection of certain lands known as Piscataway Park in Prince Georges and Charles Counties, Md., and for other purposes;

H.R. 10088. An act to establish the Big Cypress National Preserve in the State of Florida, and for other purposes; and

H.R. 11546. An act to authorize the establishment of the Big Thicket National Preserve in the State of Texas, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore.

HOUSE BILL REFERRED

The bill (H.R. 16900) making supplemental appropriations for the fiscal year ending June 30, 1975, and for other purposes, was read twice by its title and referred to the Committee on Appropriations.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, October 3, 1974, he presented to the President of the United States the enrolled bill (S. 2382) for the relief of Caridad R. Balonan.

REPORTS OF COMMITTEES

The following reports of commitees were submitted:

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

S. 4081. A bill to redesignate November 11 of each year as Veterans Day and to make such day a legal public holiday (Rept. No. 93-1218).

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

S. Res. 90. A resolution to refer the bill (S. 1453) entitled "A bill for the relief of Thomas Raymond Pomaski" to the Chief Commissioner of the United States Court of Claims for a report thereon (Rept. No. 93-1219).

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

H.R. 5641. An act to authorize the conveyance of certain land to the New Mexico State University, Las Cruces, New Mexico (Rept. No. 93-1220).

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

H.R. 11013. An act to designate certain lands in the Farallon National Wildlife Refuge, Calif., as wilderness, to add certain lands to the Point Reyes National Seashore; and for other purposes (Rept. No. 93-1221).

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

S. Res. 344. A resolution to refer S. 3666 to the Court of Claims. (Rept. No. 93-1222).

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

S. 3979. A bill to increase the availability of reasonably priced mortgage credit for home purchases (Rept. No. 93-1223).

By Mr. ALLEN, from the Committee on Agriculture and Forestry, without amendment:

H.R. 7954. An act to direct the Secretary of Agriculture to release on behalf of the United States conditions in a deed conveying certain lands to the State of New York and to provide for the conveyance of certain interests in such lands so as to permit such States, subject to certain conditions, to sell such land (Rept. No. 93-1224); and

H.R. 9054. An act to amend the Act entitled "An Act to authorize the Secretary of Agriculture to execute a subordination agreement with respect to certain lands in Lee County, South Carolina" (Rept. No. 93-1225).

By Mr. HARTKE, from the Committee on Veterans Affairs, with amendments:

S. 4040. A bill to amend title 38 of the United States Code to liberalize the provisions relating to payment of disability and death pension, and dependency and indemnity compensation, to increase income limitations, and for other purposes (Rept. No. 93-1226).

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following executive reports of committees were submitted:

By Mr. EASTLAND from the Committee on the Judiciary:

John A. Birknes, Jr., of Massachusetts, to be U.S. Marshall for the District of Massachusetts.

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

By Mr. STENNIS, from the Committee on Armed Services:

Gen. Frederick Carlton Weyand, for appointment as Chief of Staff, U.S. Army;

Will Hill Tankersley, of Alabama, to be Deputy Assistant Secretary of Defense for Reserve Affairs;

Harold L. Brownman, of Maryland, to be an Assistant Secretary of the Army;

H. Tyler March, of Massachusetts, to be an Assistant Secretary of the Navy; and

Gary Dean Penisten, of Connecticut, to be an Assistant Secretary of the Navy.

Mr. STENNIS. Mr. President, as in executive session, from the Committee on Armed Services, I report favorably the nomination of Major General Wilson, U.S.A., to be lieutenant general; in the Air Force, Major General Tighe, Jr., to be lieutenant general and Major General Fish to be lieutenant general and in the Air Force Reserve Major General Pesch to be permanent major general and Brigadier General Guice to the grade of permanent brigadier general; in the Marine Corps there are six for the permanent appointment of major general and eight permanent appointments to brigadier general. I ask that these names be placed on the Executive Calendar.

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

Mr. STENNIS. Mr. President, in addition, there are 1,169 for the Army in the grade of colonel and below—most of which are Reserve officers—in the Navy and Naval Reserve there are 4,729 in the grade of captain and below; in the Marine Corps there are 4 appointments in the grade of lieutenant colonel and below; and, in the Air Force and Reserve of the Air Force there are 1,260 for promotion to the grade of colonel and below. Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing them on the Executive Calendar, I ask unanimous consent that they lie on the Secretary's desk for the information of Senators.

(The nominations ordered to lie on the Secretary's desk were printed at the end of the Senate proceedings in the RECORDS of August 23, August 29, September 12, September 16, and September 23, 1974.)

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. HRUSKA (for himself, Mr. ALLEN, Mr. CURTIS, Mr. DOLE, Mr. MONTOYA, Mr. WILLIAM L. SCOTT, and Mr. THURMOND):

S. 4081. A bill to redesignate November 11 of each year as Veterans Day and to make such day a legal public holiday. Referred to the Committee on the Judiciary.

By Mr. MONDALE (for himself, Mr. PACKWOOD, Mr. BENTSEN, and Mr. JAVITS):

S. 4082. A bill to amend the Social Security Act to establish a consolidated program of Federal financial assistance to encourage

provision of services by the States. Referred to the Committee on Finance.

By Mr. FONG:

S. 4083. A bill to amend title XI of the Federal Aviation Act of 1958 (49 U.S.C. 1501–1513) in order to promote the use of U.S.-flag carriers by Government-financed passengers and property. Referred to the Committee on Government Operations.

S. 4084. A bill to amend the Federal Aviation Act of 1958 to deal with discriminatory and unfair competitive practices in international air transportation, and for other purposes; and

S. 4085. A bill to amend the International Aviation Facilities Act (49 U.S.C. 1151–1160). Referred to the Committee on Commerce.

S. 4086. A bill to amend the Export-Import Bank Act of 1945 to authorize assistance to certain United States air carriers. Referred to the Committee on Banking, Housing and Urban Affairs.

S. 4087. A bill to amend subsection (h) of section 406 of the Federal Aviation Act of 1958 (49 U.S.C. 1376). Referred to the Committee on Post Office and Civil Service.

By Mr. STAFFORD:

S. 4088. A bill to amend title II of the Social Security Act to permit certain full-time students who have not completed their education to continue to receive child's insurance benefits after attaining age 22. Referred to the Committee on Finance.

By Mr. TALMADGE:

S. 4089. A bill for the relief of Toizia Lepofsky. Referred to the Committee on the Judiciary.

S. 4090. A bill to provide for a balanced Federal Farm Credit Board. Referred to the Committee on Agriculture and Forestry.

By Mr. YOUNG:

S. 4091. A bill to provide indemnity payments to farmers whose crops are destroyed in whole or in part by certain wildlife. Referred to the Committee on Agriculture and Forestry.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MONDALE (for himself, Mr. PACKWOOD, Mr. BENTSEN, and Mr. JAVITS):

S. 4082. A bill to amend the Social Security Act to establish a consolidated program of Federal financial assistance to encourage provision of services by the States. Referred to the Committee on Finance.

SOCIAL SERVICES AMENDMENTS OF 1974

Mr. MONDALE. Mr. President, I am pleased to introduce on behalf of myself and Senators PACKWOOD, BENTSEN, and JAVITS, legislation designed to end the long and bitter struggle over the future of the social services program, which began with the announcement of proposed new HEW regulations over 1½ years ago.

By sharply restricting eligibility, by excluding many services, by excluding use of privately contributed funds, these proposed new regulations threatened to fundamentally change the nature of the services program. In the past months, Congress has twice acted to suspend implementation of these regulations or modifications of them.

Yet, today, I am happy to be able to praise the constructive and cooperative spirit shown by the Department of Health, Education, and Welfare in working with my office and a broad range of interested groups and private agencies over a period of almost 6 months. Together, I believe we have produced a fundamentally sound bill, which would preserve State flexibility which has always characterized social services programs—and which at the same time maintains the Federal accountability which is the hallmark of a successful Federal-State partnership.

Under our bill the goals of the program are established as:

First, achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

Second, achieving or maintaining self-sufficiency, including reduction or prevention of dependency;

Third, preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families;

Fourth, preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; or

Fifth, securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

This legislation is based on the old-fashioned notion that dignified work is better than welfare, that independence and self-sufficiency are better than life in a State-supported home.

By providing child care to children of working parents, the program can reduce the welfare rolls. By providing hot meals and home visits, the program can help the elderly to live normal lives in their own homes, and to avoid institutions which cost the taxpayer far more than these modest services. By providing treatment to alcoholics and drug addicts and special help to the handicapped, the retarded and emotionally disturbed, the program can help thousands each year gain more productive, financially independent and useful lives.

Mr. President, this is important legislation. It will govern our largest single domestic social program. I hope very much that those who have worked so hard to develop and improve this bill—and others interested and committed in the area of human services—will suggest improvements where they are needed in this legislation, and help us to achieve enactment of this bill in the present session of Congress.

Mr. President, I ask unanimous consent that the text of this legislation, a brief summary of the bill, and press release issued today by HEW Secretary Caspar Weinberger may appear in the RECORD at the conclusion of my remarks.

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

S. 4082

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Social Services Amendments of 1974".

SEC. 2. The Social Security Act is amended by inserting at the end thereof the following new title:

"TITLE XX—GRANTS TO STATES FOR SERVICES

"APPROPRIATION AUTHORIZED

"SEC. 2001. For the purpose of encouraging each State, as far as practicable under the conditions in that State, to furnish services directed at the goal of—

"(1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency,

"(2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency,

"(3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families,

"(4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care, or

"(5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions,

there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States under section 2002.

"PAYMENTS TO STATES

"SEC. 2002. (a)(1) From the sums appropriated therefor, the Secretary shall, subject to the provisions of this section and section 2003, pay to each State, for each quarter, an amount equal to 90 percent of the total expenditures during that quarter for the provision of family planning services and 75 percent of the total expenditures during that quarter for the provision of other services directed at the goal of—

"(A) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency,

"(B) achieving or maintaining self-sufficiency, including reduction or prevention of dependency,

"(C) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families,

"(D) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care, or

"(E) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions,

including expenditures for administration (including planning and evaluation) and personnel training and retraining directly related to the provision of those services. Services that are directed at these goals include, but are not limited to, child care services, protective services for children and adults, services for children and adults in foster care, services related to the management and maintenance of the home, day care services for adults, transportation services, training and related services, employment services, information, referral, and counseling services, the preparation and delivery of meals, health support services, appropriate combinations of services designed to meet the special needs of children, the aged, the mentally retarded, the blind, the emotionally disturbed, the physically handicapped, and alcoholics and drug addicts.

"(2) No payment with respect to any expenditures other than expenditures for personnel training or retraining directly related to the provision of services may be made under this section to any State for any fiscal year in excess of an amount which bears the same ratio to $2,500,000,000 as the population of that State bears to the population of the fifty States and the District of Columbia. The Secretary shall promulgate the limitation applicable to each State for each fiscal year under this paragraph prior to September 1 of the preceding fiscal year, as determined on the basis of the most recent satis-

factory data available from the Department of Commerce.

"(3) No payment may be made under this section to any State with respect to any expenditure for the provision of any service to any individual unless—

"(A) the State's services program planning meets the requirements of section 2004, and

"(B) the final comprehensive annual services plan in effect when the service is provided to the individual includes the provision of that service to a category of individuals which includes that individual in the descriptions required by section 2004(2)(B) and (C) of the services to be provided under the plan and the categories of individuals to whom the services are to be provided.

The Secretary may not deny payment under this section to any State with respect to any expenditure on the ground that it is not an expenditure for the provision of a service or is not an expenditure for the provision of a service directed at a goal described in paragraph (1) of this subsection.

"(4) So much of the aggregate expenditures with respect to which payment is made under this section to any State for any fiscal year as equals 50 percent of the payment made under this section to the State for that fiscal year must be expended for the provision of services to individuals—

"(A) who are receiving aid under the plan of the State approved under part A of title IV or who are eligible to receive such aid, or

"(B) whose needs are taken into account in determining the needs of an individual who is receiving aid under the plan of the State approved under part A of title IV, or who are eligible to have their needs taken into account in determining the needs of an individual who is receiving or is eligible to receive such aid, or

"(C) with respect to whom supplemental security income benefits under title XVI or State supplementary payments, as defined in section 2007(1), are being paid, or who are eligible to have such benefits or payments paid with respect to them, or

"(D) whose income and resources are taken into account in determining the amount of supplemental security income benefits or State supplementary payments, as defined in section 2007(1), being paid with respect to an individual, or whose income and resources would be taken into account in determining the amount of such benefits or payments to be paid with respect to an individual who is eligible to have such benefits or payments paid with respect to him, or

"(E) are eligible for medical assistance under the plan of the State approved under title XIX.

"(5) No payment may be made under this section to any State with respect to any expenditure for the provision of any service to any individual who is receiving, or whose needs are taken into account in determining the needs of an individual who is receiving, aid under the plan of the State approved under part A of title IV, or with respect to whom supplemental security income benefits under title XVI or State supplementary payments, as defined in section 2007(1), are being paid, if any fee or other charge (other than a voluntary contribution) is imposed on the individual for the provision of that service.

"(6) No payment may be made under this section to any State with respect to any expenditure for the provision of any service, other than an information or referral service or a service directed at the goal of preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, to any individual who is not an individual described in paragraph (5), and who is a member of a family the monthly gross income of which exceeds—

"(A) if a fee or other charge reasonably related to income is imposed on the individual for the provision of the service, 115 percent of the median income of a family of four in the State, adjusted, in accordance with regulations prescribed by the Secretary, to take into account the size of the family, or

"(B) in any other case, the lower of—

"(i) 80 percent of the median income of a family of four in the State, or

"(ii) the median income of a family of four in the fifty States and the District of Columbia,

adjusted, in accordance with regulations prescribed by the Secretary, to take into account the size of the family.

The Secretary shall promulgate the median income of a family of four in each State and the fifty States and the District of Columbia applicable to payments with respect to expenditures in each fiscal year prior to September 1 of the preceding fiscal year.

"(7) No payment may be made under this section to any State with respect to any expenditure—

"(A) for the provision of medical or any other remedial care, other than family planning services, unless it is an integral but subordinate part of a service described in paragraph (1) of this subsection and Federal financial participation with respect to the expenditure is not available under the plan of the State approved under title XIX; or

"(B) for the purchase, construction, or major modification of any land, building or other facility, or fixed equipment; or

"(C) which is in the form of goods or services provided in kind by a private entity; or

"(D) which is made from donated private funds, unless such funds—

"(i) are transferred to the State and are under its administrative control, and

"(ii) are donated to the State without restrictions as to use, other than restrictions as to the services with respect to which the funds are to be used imposed by a donor who is not a sponsor or operator of a program to provide those services, and/or the geographic area in which the services with respect to which the contribution is used are to be provided, and

"(iii) do not revert to the donor's facility or use if the donor is other than a nonprofit organization; or

"(E) for the provision of room or board (except as provided by paragraph (11)(B)) other than room or board provided for a period of not more than six consecutive months as an integral but subordinate part of a service described in paragraph (1) of this subsection.

"(8) No payment may be made under this section with respect to any expenditure if payment is made with respect to that expenditure under section 403 or 422 of this Act.

"(9)(A) No payment may be made under this section with respect to any expenditure in connection with the provision of any child day care service, unless—

"(i) in the case of care provided in the child's home, the care meets standards established by the State which are reasonably in accord with recommended standards of national standard-setting organizations concerned with the home care of children, such as the Child Welfare League of America and the National Council of Homemaker-Home Health Aid Services; or

"(ii) in the case of care provided outside the child's home, the care meets the Federal interagency day care requirements as approved by the Department of Health, Education, and Welfare and the Office of Economic Opportunity on September 23, 1968, and in the case of care provided to a child under the age of three, there is at least one caregiver for every two children under the age of three who is responsible for the care of only those children, except as provided in subparagraph (B).

"(B) The Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives, after December 31, 1976, and prior to July 1, 1977, an evaluation of the appropriateness of the requirements imposed by subparagraph (A) together with any recommendations he may have for modification of those requirements. No earlier than ninety days after the submission of that report, the Secretary may, by regulation, make such modifications in the requirements imposed by subparagraph (A) as he determines are appropriate.

"(C) The requirements imposed by this paragraph are in lieu of any requirements that would otherwise be applicable under section 522(d) of the Economic Opportunity Act of 1964 to child day care services with respect to which payment is made under this section.

"(10) No payment may be made under this section with respect to any expenditure for the provisions of any educational service which the State makes generally available to its residents without cost and without regard to their income.

"(11) No payment may be made under this section with respect to any expenditure for the provision of any service to any individual living in any hospital, skilled nursing facility, or intermediate care facility (including any such hospital or facility for mental disease or for the mentally retarded), any prison, or any foster family home except—

"(A) any expenditure for the provision of a service that (i) is provided by other than the hospital, facility, prison, or foster family home in which the individual is living, and (ii) is provided, under the State's program for the provision of the services described in paragraph (1), to individuals who are not living in a hospital, skilled nursing facility, intermediate care facility, prison, or foster family home,

"(B) any expenditure which is for the cost, in addition to the cost of basic foster care, of the provision, by a foster family home, to an individual living in that home, of a service which meets a special need of that individual, as determined under regulations prescribed by the Secretary, and

"(C) any expenditure for the provision of emergency shelter provided to a child, for not in excess of 30 days, as a protective service.

"(12) No payment may be made under this section with respect to any expenditure for the provision of cash payments as a service.

"(13) No payment may be made under this section with respect to any expenditure for the provision of any service to any individual to the extent that the provider of the service or the individual receiving the service is eligible to receive payment under title XVIII with respect to the provision of the service.

"(b)(1) Prior to the beginning of each quarter the Secretary shall estimate the amount to which a State will be entitled under this section for that quarter on the basis of a report filed by the State containing its estimate of the amount to be expended during that quarter with respect to which payment must be made under this section, together with an explanation of the bases for that estimate.

"(2) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to the State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

"(3) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

"PROGRAM REPORTING, EVALUATION, AND ADMINISTRATION REQUIREMENTS

"SEC. 2003. (a) Each State which participates in the program established by this title shall provide for the publication by the chief executive officer of the State or such other official as the laws of the State provide, within ninety days, or such longer period as the Secretary may authorize, after the end of each services program year (as established under the requirements of section 2002(a)(3)), of services program report prepared by the individual or agency designated pursuant to the requirements of section 2003(g)(1)(C) and, unless the laws of the State provide otherwise, approved by the chief executive officer which describes the extent to which the services program of the State was carried out during that year in accordance with the annual services program plan for that year and the extent to which the goals and objectives of the plan were achieved.

"(b) Each State which participates in the program established by this title shall have a program for evaluation of the State's program for the provision of the services described in section 2002(a)(1) which conforms to the description of the evaluation activities to be carried out by the State contained in its current final comprehensive annual services program plan.

"(c) Each State which participates in the program established by this title shall submit to the Secretary, and make available to the public, information concerning the services described in section 2002(a)(1) provided in the State, the categories of individuals to whom those services are provided, and such other related information as the Secretary may by regulation provide, at such times and in such form as he may by regulation provide. In establishing requirements under this subsection, the Secretary shall take into account other reporting requirements imposed under this title and other titles of this Act.

"(d) Each State which participates in the program established by this title shall make available to the public, within one hundred and eighty days, or such longer period as the Secretary may authorize, after the end of each services program year (as established under the requirements of section 2002(a)(3)), the report of an audit performed by—

"(1) a private certified public accountant or auditing firm utilizing certified public accountants, the services of which have been secured in accordance with procurement standards prescribed by the Secretary,

"(2) a publicly elected auditor utilizing certified public accountants, or

"(3) an office representing the legislature of the State utilizing certified public accountants,

of the expenditures for the provision of the services described in section 2002(a)(1) during that year which sets forth the extent to which those expenditures were in accordance with the State's final comprehensive annual services program plan (as developed under the requirements of section 2002(a)(3)), including any amendments thereto, and the extent to which the State is entitled to payment with respect to those expenditures under section 2002. So much of the report as relates to the extent to which the State is entitled to payment with respect to those expenditures under section 2002 shall be submitted to the Secretary.

"(e) Each State which participates in the program established by this title shall assure that the non-federal share of the aggregate expenditures for the provision of services during each services program year (as established under the requirements of section 2002(a)(3)) with respect to which payment is made under section 2002 is not less than the non-federal share of the aggregate expenditures for the provision of those services during the fiscal year ending June 30, 1973, or the fiscal year ending June 30, 1974, with respect to which payment was made under the plan of the State approved under title I, VI, X, XIV, or XVI, or part A of title IV, whichever is less, except that the requirements of this subsection shall not apply to any State for any services program year if the payment to the State under section 2002, for each fiscal year any part of which is included in that services program year, with respect to expenditures other than expenditures for personnel training or retraining directly related to the provision of services, equals the allotment of the State for that fiscal year under section 2002(a)(2).

"(f)(1) If the Secretary, after reasonable notice and an opportunity for a hearing to the State, finds that there is a substantial failure to comply with any of the requirements imposed by subsections (a) through (e) of this section, he shall, except as provided in paragraph (2), notify the State that further payments will not be made to the State under section 2002 until he is satisfied that there will no longer be any such failure to comply, and until he is so satisfied he shall make no further payments to the State.

"(2) The Secretary may suspend implementation of any termination of payments under paragraph (1) for such period as he determines appropriate and instead reduce the amount otherwise payable to the State under section 2002 for expenditures during that period by three percent for each of subsections (a) through (e) of this section with respect to which there was a finding of substantial noncompliance and with respect to which he is not yet satisfied that there will no longer be any such failure to comply.

"(g)(1) Each State which participates in the program established by this title shall have a plan applicable to its program for the provision of the services described in section 2002(a)(1) which—

"(A) provides that an opportunity for a fair hearing before the appropriate State agency will be granted to any individual whose claim for any service described in section 2002(a)(1) is denied or is not acted upon with reasonable promptness;

"(B) provides that the use or disclosure of information obtained in connection with administration of the State's program for the provision of the services described in section 2002(a)(1) concerning applicants for and recipients of those services will be restricted to purposes directly connected with the administration of that program, the plan of the State approved under part A of title IV, the plan of the State developed under part B of that title, the supplemental security income program established by title XVI, or the plan of the State approved under title XIX;

"(C) provides for the designation, by the chief executive officer of the State or as otherwise provided by the laws of the State, of an appropriate agency which will administer or supervise the administration of the State's program for the provision of the services described in section 2002(a)(1), including planning and evaluation;

"(D) provides that the State will, in the administration of its program for the provision of the services described in section 2002(a)(1), use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the program, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

"(E) provides that no durational residency or citizenship requirement will be imposed as a condition to participation in the program of the State for the provision of the services described in section 2002(a)(1);

"(F) provides, if the State program for the provision of the services described in section 2002(a)(1) includes services to individuals living in institutions or foster homes, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions or homes which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admissions policies, safety, sanitation, and protection of civil rights;

"(G) provides, if the State program for the provision of the services described in section 2002(a)(1) includes child day care services, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such services which are reasonably in accord with recommended standards of national organizations concerned with standards for such services, including standards related to admissions policies for facilities providing such services, safety, sanitation, and protection of civil rights;

"(H) provides that the State's program for the provision of the services described in section 2002(a)(1) will be in effect in all political subdivisions of the State;

"(I) provides for financial participation by the State in the provision of the services described in section 2002(a)(1).

"(2) The Secretary shall approve any plan which complies with the provisions of paragraph (1).

"(h)(1) No payment may be made under section 2002 to any State which does not have a plan approved under subsection (g).

"(2) In the case of any State plan which has been approved by the Secretary under subsection (g), if the Secretary, after reasonable notice and an opportunity for a hearing to the State, finds—

"(A) that the plan no longer complies with the provisions of subsection (g)(1), or

"(B) that in the administration of the plan there is a substantial failure to comply with any such provision,

the Secretary shall, except as provided in paragraph (3), notify the State that further payments will not be made to the State under section 2002 until he is satisfied that there will no longer be any such failure to comply, and until he is so satisfied he shall make no further payments to the State.

"(3) The Secretary may suspend implementation of any termination of payments under paragraph (2) for such period as he determines appropriate and instead reduce the amount otherwise payable to the State under section 2002 for expenditures during that period by three percent for each clause of subsection (g)(1) with respect to which there is a finding of noncompliance and with respect to which he is not yet satisfied that there will no longer be any such failure to comply.

"SERVICES PROGRAM PLANNING

"SEC. 2004. A State's services program planning meets the requirements of this section if, for the purpose of assuring public participation in the development of the program for the provision of the services described in section 2002(a)(1) within the State—

"(1) the beginning of the fiscal year of either the Federal Government or the State government is established as the beginning of the State's services program year; and

"(2) at least ninety days prior to the beginning of the State's services program year, the chief executive officer of the State, or such other official as the laws of the State

provide, publishes and makes generally available (as defined in regulations prescribed by the Secretary after consideration of State laws governing notice of actions by public officials) to the public a proposed comprehensive annual services program plan prepared by the individual or agency designated pursuant to the requirements of section 2003(g)(1)(C) and, unless the laws of the State provide otherwise, approved by the chief executive officer, which sets forth the State's plan for the provision of the services described in section 2002(a)(1) during that year, including—

"(A) the objectives to be achieved under the program,

"(B) the services to be provided under the program, including at least one service directed at at least one of the goals in each of the five categories of goals set forth in section 2002(a)(1) (as determined by the State), together with a definition of those services and a description of their relationship to the objectives to be achieved under the program and the goals described in section 2002(a)(1).

"(C) the categories of individuals to whom those services are to be provided, including any categories based on the income of individuals or their families,

"(D) the geographic areas in which those services are to be provided, and the nature and amounts of the services to be provided in each area,

"(E) a description of the planning, evaluation, and reporting activities to be carried out under the program,

"(F) the sources of the resources to be used to carry out the program,

"(G) a description of the organizational structure through which the program will be administered, including the extent to which public and private agencies and volunteers will be utilized in the provision of services,

"(H) a description of how the provision of services under the program will be coordinated with the plan of the State approved under part A of title IV, the plan of the State developed under part B of that title, the supplemental security income program established by title XVI, the plan of the State approved under title XIX, and other programs for the provision of related human services within the State, including the steps taken to assure maximum feasible utilization of services under these programs to meet the needs of the low income population,

"(I) the estimated expenditures under the program, including estimated expenditures with respect to each of the services to be provided, each of the categories of individuals to whom those services are to be provided, and each of the geographic areas in which those services are to be provided, and a comparison between estimated non-Federal expenditures under the program and non-Federal expenditures for the provision of the services described in section 2002(a)(1) in the State during the preceding services program year, and

"(J) a description of the steps taken, or to be taken, to assure that the needs of all residents of, and all geographic areas in, the State were taken into account in the development of the plan; and

"(3) public comment on the proposed plan is accepted for a period of at least forty-five days; and

"(4) at least forty-five days after publication of the proposed plan and prior to the beginning of the State's services program year, the chief executive officer of the State, or such other official as the laws of the State provide, publishes a final comprehensive annual services program plan prepared by the individual or agency designated pursuant to the requirements of section 2003(g)(1)(C) and, unless the laws of the State provide otherwise, approved by the chief executive officer, which sets forth the same information required to be included in the proposed plan, together with an explanation of the differences between the proposed and final plan and the reasons therefor; and

"(5) any amendment to a final comprehensive services program plan is prepared by the individual or agency designated pursuant to section 2003(g)(1)(C), approved by the chief executive officer of the State unless the laws of the State provide otherwise, and published by the chief executive officer of the State, or such other official as the laws of the State provide, as a proposed amendment on which public comment is accepted for a period of at least thirty days, and then prepared by the individual or agency designated pursuant to section 2003(g)(1)(C), approved by the chief executive officer of the State unless the laws of the State provide otherwise, and published by the chief executive officer of the State, or such other official as the laws of the State provide, as a final amendment, together with an explanation of the differences between the proposed and final amendment and the reasons therefor.

"EFFECTIVE DATE OF REGULATIONS PUBLISHED BY THE SECRETARY

"SEC. 2005. No final regulation published by the Secretary under this title shall be effective with respect to payments under section 2002 for expenditures during any quarter commencing before the beginning of the first services program year established by the State under the requirements of section 2002(a)(3) which begins at least sixty days after the publication of the final regulation.

"EVALUATION; PROGRAM ASSISTANCE

"SEC. 2006. (a) The Secretary shall provide for the continuing evaluation of State programs for the provision of the services described in section 2002(a)(1).

"(b) The Secretary shall make available to the States assistance with respect to the content of their services program, and their services program planning, reporting, administration, and evaluation.

"(c) Within six months after the close of each fiscal year, the Secretary shall submit to the Congress a report on the operation of the program established by this title during that year, including—

"(1) the evaluations carried out under subsection (a) and the results obtained therefrom, and

"(2) the assistance provided under subsection (b), during that year.

"DEFINITIONS

"SEC. 2007. For purposes of this title—

"(1) the term 'State supplementary payment' means any cash payment made by a State on a regular basis to an individual who is receiving supplemental security income benefits under title XVI or who would but for his income be eligible to receive such benefits, as assistance based on need in supplementation of such benefits, as determined by the Secretary, and

"(2) the term 'State' means the fifty States and the District of Columbia."

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 3. (a)(1) Section 402(a)(5) of the Social Security Act is amended by striking out "(A)" and striking out everything after "proper and efficient operation of the plan" and inserting "; and" in lieu thereof.

(2) Section 402(a) of that Act is further amended by striking out paragraphs (13) through (15).

(3) Section 403(a)(3) of that Act is amended to read as follows:

"(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

"(A) 75 percent of so much of such expenditures as are for the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision, and

"(B) one-half of the remainder of such expenditures,

except that no payment shall be made with respect to amounts expended in connection with the provision of any service described in section 2002(a)(1) of this Act other than services the provision of which is required by section 402(a)(19) to be included in the plan of the State; and"

(4) Section 403 of that Act is further amended by striking out subsections (e) and (f).

(5) Section 406 of that Act is amended by striking out subsection (d).

(6) Section 422(a)(1)(A)(i) of that Act is amended by striking out "the State agency designated pursuant to section 402(a)(3) to administer or supervise the administration of the plan of the State approved under part A of this title" and inserting "the agency designated pursuant to section 2003(g)(1)(C) to supervise and coordinate the administration of the State's services program" in lieu thereof.

(7) Section 422(a)(1)(A)(ii) of that Act is amended by striking out "the organizational unit in such State or local agency established pursuant to section 402(a)(15))" and inserting "a single organizational unit in such State or local agency, as the case may be," in lieu thereof.

(b) Title VI of the Social Security Act is repealed.

(c) Section 1115 of the Social Security Act is amended by—

(1) striking out "or XIX" and inserting "XIX, or XX" in lieu thereof,

(2) striking out "or 1902" in clause (a) and inserting "1902, 2002, 2003, or 2004" in lieu thereof,

(3) striking out "or 1903" in clause (b) and inserting "1903, or 2002" in lieu thereof, and

(4) inserting "or expenditures with respect to which payment shall be made under section 2002," immediately after "administration of such State plan or plans," in clause (b).

(d) Section 1116 of the Social Security Act is amended by—

(1) striking out "or XIX" in subsections (a)(1) and (b) and inserting "XIX or XX" in lieu thereof,

(2) striking out "or 1904" and inserting "1904, or 2003" in lieu thereof in subsection (a)(3), and

(3) inserting "XX," immediately after "XIX," in subsection (d).

(e) Section 1130 of the Social Security Act is repealed.

(f) Any child day care service provided under any plan of a State approved under part A, or developed under part B, of title IV of the Social Security Act must meet the requirements applicable, under subsection (a)(9) of section 2002 of the Social Security Act, as amended by this Act, to child day care services with respect to which payment is made under that section. The requirements imposed by this subsection are in lieu of any requirements that would otherwise be applicable under section 522(d) of the Economic Opportunity Act of 1964 to child day care services provided under any plan of a State approved under part A, or developed under part B, of title IV of the Social Security Act.

(g) Section 12(a) of Public Law 93-233 is amended by striking out "January 1, 1975" and inserting "July 1, 1975" in lieu thereof. Notwithstanding the provisions of section 12(a) of Public Law 93-233, the Secretary may make any modification in any regulation described in that section if the modification is necessary to implement the provisions of this Act.

REPORT BY THE SECRETARY

SEC. 4. Prior to July 1, 1977, the Secretary shall submit to the Congress a report on the effectiveness of the program established by

title XX of the Social Security Act, as amended by this Act, during calendar years 1975 and 1976, together with recommendations, if any, for improvements in that program.

DEFINITION OF SECRETARY

SEC. 5. As used in this Act and the amendments made by this Act, the term "Secretary" means, unless the context otherwise requires, the Secretary of Health, Education, and Welfare.

EFFECTIVE DATES

SEC. 6. (a)(1) The amendments made by section 2 of this Act shall be effective with respect to payments under section 2002 of the Social Security Act, as amended by this Act, for quarters commencing after June 30, 1975.

(2) Notwithstanding the provisions of section 2004 of the Social Security Act, as amended by this Act, the first services program year of each State shall begin on July 1, 1975, and end with the close of, at the option of the State—

(A) the day in the twelve month period beginning July 1, 1975, or

(B) the day in the twelve month period beginning July 1, 1976,

which is the last day of the twelve month period established by the State as its services program year under that section. Notwithstanding the provisions of subsection (h) of section 2003 of the Social Security Act, as amended by this Act, the aggregate expenditures required by that subsection with respect to the first services program year of each State shall be the amount which bears the same ratio to the amount that would otherwise be required under that subsection as the number of months in the State's first services program year bears to twelve.

(b) The amendments made by section 3 of this Act shall be effective with respect to payments under sections 403 and 603 of the Social Security Act for quarters commencing after June 30, 1975, except that the amendments made by section 3(a) shall not be effective with respect to the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.

SUMMARY OF SOCIAL SERVICES ACT

I. ELIGIBILITY AND PRIORITY FOR FEDERALLY REIMBURSEABLE SOCIAL SERVICES

The bill provides special priority for recipients of AFDC and SSI and Medicaid by requiring that 50 percent of the federal social services funds used in a State be for services to such individuals and families.

The bill proposes that federal limitations on States in establishing those in a State eligible for federally assisted social services relate to the income of the individual or family, and would remove the requirement that recipients be classified as "former or potential welfare recipients." Federal matching for free services is available for people with incomes up to 80% of the median family income in a State (or the full national median, now $12,041 if less) adjusted for family size, and services at some fee up to 115% of the median income of a State. The $2.5 billion limit on federal payments will continue to apply.

II. DEFINING SOCIAL SERVICES

The goals of the program are established as:

"(1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency,

"(2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency,

"(3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families,

"(4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care, or

"(5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

Social services would be defined by the State, required to be directed at the social services goals with parameters for such definitions established by: prohibition against funding certain activities; prohibitions against reimbursing certain medical institutions for social services provided to those living in them (but other entities could provide social services to such individuals in such facilities); and prohibitions against funding child day care not meetng standards. The draft bill also specifically names certain services as examples of social services but it is not intended to be an all inclusive list.

III. SOCIAL SERVICES PROGRAM PLANNING, REPORTING, EVALUATION, AND AUDITING

Establishes new requirements for a State to conduct a program planning process to determine the services to be provided and who is to receive such services with primary emphasis on involvement by the citizens of a State. The Governor or such other official as the laws of the State provide is responsible for publishing the services plan for comment and approving the final services plan for the program year. The State is also required to conduct evaluations and provide required reports to HEW and the public.

Ninety days after the end of the services program year an "annual social services program report" is approved by the Governor or other official designated under State law describing the services provided during the past year.

IV. "STATE PLAN" SUBJECT TO PRIOR APPROVAL BY HEW

The State would submit to HEW approval prior to the beginning of the services program year a document which is still called a "State Plan". It would deal with State assurances regarding: fair hearings, confidentiality of information; designation of a single agency other than the Governor to supervise the administration of the State's social services program; no durational residency or citizenship requirement; and designation of state authorities for establishing and maintaining standards.

V. MAINTENANCE OF EFFORT AND MATCHING PROVISIONS

The bill establishes a maintenance of effort requirement for States which requires that the non-federal share of its aggregate expenditures for the provisions of services during each services program year are not less than the aggregate expenditures for the provisions of those services during fiscal year 1973 or 1974 (whichever is less) with respect to which payment was made under the Social Security Act. The Governor is also to provide to the citizens of the State comparison of non-federal expenditures between services program years.

Percentage of matching is not changed from present law, i.e.: 75% for all services except 90% for family planning services; 75% for training and retraining.

State matching may be in cash or in-kind by the State including provisions to the State by its political subdivisions. Private funds donated to the State are allowed to be utilized for non-federal match but with certain restrictions.

VI. FEDERAL EVALUATION, RESEARCH AND DEMONSTRATIONS, PROGRAM ASSISTANCE AND HEW REPORTS TO CONGRESS

HEW is authorized to grant waivers under the proposed new title XX for Social Services to any State now under the various titles of the Social Security Act and provide reports to Congress on the results of such research and demonstration programs.

He is also to provide to Congress prior to July 1, 1977 a report on the effectiveness of the social services program along with recommendations for improvements.

VII. EFFECTIVE DATE OF REGULATIONS PUBLISHED BY THE SECRETARY OF HEW

No final federal regulations for the program would be effective in a services program year for a State if the regulations are published within 60 days of the beginning of the States services program year.

VIII. CONTINUATION OF MORATORIUM ON NEW REGULATIONS UNTIL PROPOSED EFFECTIVE NEW LEGISLATIONS

Currently the law prohibits HEW from changing social services regulations until after December 31, 1974. The draft bill would have an effective date as to the payments of social services of July 1, 1975. The bill would also continue the moratorium on HEW implementing new regulations until July 1, 1975.

HEW NEWS

HEW Secretary Caspar W. Weinberger announced his full support for the social services bill introduced today by Senator Walter F. Mondale (Minn.), together with Senators Bob Packwood (Ore.), Lloyd H. Bentsen (Tex.), and Jacob K. Javits (N.Y.). The bill was developed jointly by the Congress and HEW and has the support of numerous interested groups including the National Governors' Conference.

"We wholeheartedly endorse this bill," the Secretary said. "It is the result of six months of cooperative effort and consideration on the part of the Congress, the Department, the National Governors' Conference, and many others, as well as key organizations concerned with services for children, families, the aged, and the disabled.

"All who have worked on the amendments believe their enactment would make possible a positive new Federal-State relationship within which States could more effectively target their social services resources to meet the needs of their own people.

"The proposed amendments make the State social services program answerable primarily to the State's citizens, within broad Federal guidelines. I am convinced that this new approach can free us all to concentrate on getting services to people.

"At present a Congressional moratorium on implementation of 1973 regulations is due to expire on January 1, 1975. The amendments would extend this moratorium until July 1, the effective date of the proposed changes. This is important so that States can plan their programs effectively, and is one reason we hope for speedy enactment."

Major changes affect State program eligibility, services planning, and accountability, but not Federal funding.

Federal funding would remain unchanged, with a total of $2.5 billion authorized for allocation among the States on the basis of their population. The Federal share of a State's social services expenditures would continue to be 75 percent, except for family planning services for which the Federal share would continue to be 90 percent.

Eligibility for services would be based on income rather than on welfare-relatedness (qualifying as a "former" or "potential" recipient), but approximately 50 percent of Federal funds must be spent for people eligible for AFDC (Aid to Families with Dependent Children), SSI (Supplemental Security Income), and/or Medicaid.

Social services goals are specified in the amendments; self-support; self-sufficiency; protection for children and for adults unable to protect themselves; de-institutionalization when appropriate; and institutional placement and services within some institutions when necessary.

An Annual Comprehensive Services Plan specifying one or more services to be offered to meet each of the established goals and specifying who is to be eligible to receive services would be developed in each State by means of an open planning process with emphasis on citizen involvement. The State planning process must meet HEW requirements, but prior HEW approval is not required for the program priorities and resource allocations expressed in the comprehensive services plan.

Prior HEW approval would be required for State plans in regard to: fair hearings; Statewide applicability; merit system; confidentiality; designation of a single individual or agency to supervise program administration; designation of State standard setting and enforcement authorities for facilities offering day or residential care; and absence of any eligibility requirement based on duration of State or local residency or of U.S. citizenship.

Public Accountability to citizens of the State is insured by means of the federally required open planning process; regular reporting; independent audits; and evaluation.

1968 Federal Interagency Day Care Requirements would remain in effect (at least until 1977) with one addition: for children under three there must be one adult for every two children.

Federal evaluation and program assistance to States would be mandated, as would a July 1977 report to Congress on program effectiveness.

Other major changes include (but are not limited to):

Prohibition of Federal matching under the program for certain clearly specified expenditures, such as facilities construction and services that fall under other Federal programs;

State-option income-related fees for services furnished to persons not eligible for cash assistance;

Fiscal sanctions for noncompliance with certain Federal requirements;

A delayed effective date for any Federal regulation promulgated less than 60 days before the beginning of a State's program year;

And maintenance of State fiscal effort in regard to social services.

Mr. BENTSEN. Mr. President, it gives me particular pleasure to join with my colleagues in introducing the Social Services Amendments of 1974. Senators MONDALE, JAVITS, PACKWOOD, and I are the Senators who introduced similar legislation last year.

This bill will, I believe, terminate a long period of uncertainty about the social services program, which is so vital to the States. In February 1973, HEW proposed a series of regulations so harsh and restrictive as to deny many recipients of social services the kind of support they needed to stay off the welfare roles and maintain productive lives. The original HEW regulations would have denied the use of private funds as State matching funds, limited services to families and individuals to very low-income levels, and denied Federal support for subsistence and other maintenance items.

These regulations were followed in May by revised regulations, which represented some improvement, but which were still overly restrictive.

Later in the year, I joined with the cosponsors of the present bill to introduce a new social services measure which would have eliminated many of the deficiencies in the HEW regulations. That measure, in large part, was incorporated into H.R. 3153, which, unfortunately remains unresolved in conference.

In the meantime, the social services program has been operating on temporary extensions, with no real certainty about the future uses of funds. Now, with this bill, which has been worked out in meetings with HEW and the States, I believe we have the basic concepts necessary to approve a measure which will be acceptable and which will meet the goals of a humane and realistic social services program.

Particularly important is the provision defining eligible recipients. In the original HEW regulations, social services would have been only available to "former or potential welfare recipients" and would have been limited to families and individuals having incomes not exceeding 133 percent of the State's payment level. The present bill eliminates the requirements that recipients be judged according to their present or potential welfare status and uses instead Federal matching for free services for people with up to 80 percent of the median family income in a State or the full national median, whichever is less. In addition, services for some fee are allowed for recipients having up to 115 percent of the median income of the State.

Mr. President, the purpose of the social service program is to reduce welfare dependency by providing Federal assistance to a wide range of services intended to move recipients into self-sufficiency. The old limitations in the HEW regulations were unduly restrictive, and would have eliminated hundreds of thousands of needy persons from receiving services.

There are a wide range of services allowed in the bill, from family planning to aid to the retarded to services for drug addicts and alcoholics. The bill leaves to the States the major responsibility of naming services, but sets certain parameters and makes suggestions as to what those services can include. In that sense, it is more flexible than the previous bill we introduced, which listed specifically the range of services that would be allowed.

The social services program has for too long been plagued by uncertainty and mismanagement. This bill attempts to direct the aid where it is really needed, without being completely rigid about services the States choose to include in their State plans.

The programs that will be served are of vital importance in determining whether disadvantaged and handicapped citizens in the various States are to be given the opportunity to attain dignity and self-respect. I am hopeful that this measure will pass the Congress before adjournment this year, and I intend to work with my colleagues on the Finance Committee and in the Senate to write these concepts into law.

Mr. JAVITS. Mr. President, I am pleased to join with Senators MONDALE, PACKWOOD, and BENTSEN, in introducing the "Social Services Act of 1974," a bill to amend the Social Security Act to establish a consolidated program of Federal financial assistance to encourage provision of services by the States.

This bill embodies an agreement reached between us and Secretary Weinberger of the Department of Health, Education, and Welfare, on the future of our vital social services programs.

It marks the end of a 20-month dispute over new rules to govern the program, during which the Congress—as a result of our efforts and those of others—twice acted to bar implementation of proposed HEW regulations which we considered to be undesirable; under the Renegotiation Act Amendments of 1973, which became law on July 10, 1973, HEW is barred from issuing any regulations through this calendar year 1974.

Mr. President, this agreement could not come at a more appropriate and important time since, as the President as well as others have noted, the poor and the near poor are being hit doubly by inflation and unemployment, and nothing is more key to their survival—next to a substantial public service employment and continuation of the antipoverty programs, as I and others have proposed—than social services.

It is very reassuring that the confrontations that have characterized the past in this vital area of social services have given way to this "rapproachment" between the executive branch and those of us who have been the chief opponents of the previous HEW position.

Mr. President, I now wish to note elements of the bill which I consider to be particularly meritorious, both in terms of the national interest, and particularly the interest of children and families in New York State.

First, States would receive 7-percent Federal matching for child care and other family services at considerably higher eligibility and payment standard levels than under existing law and practice.

Under the bill, States are authorized to offer free services to persons with incomes up to 80 percent of the State median income, adjusted for family size—or up to the full national median, if lower, and services based on a fee schedule to persons with incomes up to 115 percent of the State median.

This means that States could establish eligibility standards considerably above those now applicable in New York City and New York State.

Mr. President, these provisions are particularly important at this time in that New York City and New York State are still embroiled in a dispute over just these questions in respect to child care service in the city and this bill would make possible a remedy.

The State has sought to enforce its eligibility standards, which prescribe free services up to the $6,000 gross income level and eligibility for partial reimbursement up to $11,050.

The city has been insisting on free services up to at least $9,100 for a family of four and eligibility for partial subsidies up to at least $13,000 for such a family.

If the State standards are imposed, some 5,000 children now in child care programs in the city would be ineligible for services and will have to leave the program unless of course the city and State use their general funds to continue coverage, which the State, at least does not now seem disposed to do.

At this point the matter is in the courts and the southern district of the U.S. District Court has recently restrained the State temporarily from imposing the regulations—a hearing is schedule for next week.

Were the bill we introduce today in effect, the State could receive Federal matching funds for most, if not all, of the 5,000 children currently in programs, as well as others who are now precluded from enrollment.

Mr. President, these eligibility requirements and standards would replace the current law which applies the test of whether a participant may be considered a "former" or "potential" welfare recipient and related restrictions.

I believe that the eligibility standards proposed in our bill provide a much sounder and more realistic basis upon which to determine participation and although they do not relate specifically to the question of relationship to welfare, they will in fact, be very conducive to getting people to work and off the welfare rolls in New York State and New York City where the cost of living is so high.

Second, the bill would give the States further flexibility to provide a comprehensive range of services, under a State plan to be developed through a system of public hearings, directed at the following goals: self support; self sufficiency; protective services for children and adults and services to preserve or help reunite families; preventing or reducing inappropriate institutional care by providing community and home-based care; securing referral or admission for institutional care—and providing services in institutions—where appropriate.

This will permit new efforts in innovative programs to deal with the rehabilitation of alcoholics and drug addicts and other areas of great concern.

The Secretary's principal role would be to review the State's compliance with fair hearing and other due process aspects, in arriving at funding decisions, but unlike the present situation, the Secretary would not be required to sign off on the suitability of each and every one of the particular services provided.

This seems to me to be a sound division of Federal and State responsibility similar to that set forth in the Comprehensive Employment and Training Act of 1973.

Third, under the bill, the Federal Intergency Day Care Requirements of 1968 would continue to be applicable to insure quality child care programs. The Department of Health, Education, and Welfare's previous regulations had eliminated these requirements, with a great risk that programs could become purely "custodial," that is, lacking in educational, nutritional, and other components that are so key to human development. Indeed, nothing could have been more counterproductive in terms of the purposes of the Social Security Act since programs without these essential elements can only act to perpetuate the cycle of poverty for a new generation.

Mr. President, regrettably, we were not able to obtain agreement with the Department in respect to the $2.5 billion ceiling on Federal spending on social services which was imposed as a part of the State and Local Assistance Act of 1972.

This ceiling and the allocation formula contained in the legislation has acted to prejudice greatly industrial States, like New York—indeed the very States that bear so heavily the cost of welfare and have shown the greatest interest and competency in providing social services.

For this fiscal year, New York State plans to spend all of the $220 million allocated to it under the ceiling, compared with needs in the area of an aggregate of $800 million.

Most ironic, if not tragic, is the fact that while States like New York are straitjacketed in meeting their needs other States are not even using the funds available to them under the $2.5 billion ceiling.

In that connection, the Library of Congress advises that only $1,607,445,000 of the $2.5 billion was paid to the States by the Federal Government in fiscal year 1973, with the result that States failed to use $892,555,000 of funds available under the $2.5 billion ceiling. Final data are unavailable for fiscal year 1974, but HEW budget officers say that preliminary indications are that approximately $900 million again was unused.

Mr. President, this is ridiculous in itself, but particularly outrageous as a matter of public policy at a time when the poor, hit by inflation, are in greater numbers being forced onto welfare and at the same time, again because of inflation even the $1.6 billion spent will buy considerably less in services than when the ceiling was imposed.

Mr. President, I intend to introduce next week legislation to remedy this situation, both by raising the ceiling and by providing for adequate redistribution of funds not being used by the States.

Mr. President, in closing, notwithstanding that very important item of remaining business, I believe that this bill represents a great step forward and I shall work closely with Senators MONDALE, PACKWOOD, and BENTSEN, who are members of the Senate Finance Committee which will consider this legislation, to insure that it becomes law at the very earliest moment, so that the machinery is in place to meet the very real crisis which the poor will continue to face in these difficult and threatening economic times.

Mr. President, I ask unanimous consent that a summary of the act, together with a chart for each State showing new eligibility and free payment standards, be printed at this point in the RECORD.

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

SUMMARY OF SOCIAL SERVICES ACT

I. ELIGIBILITY AND PRIORITY FOR FEDERALLY REIMBURSABLE SOCIAL SERVICES

The bill provides special priority for recipients of AFDC and SSI and Medicaid by requiring that 50 percent of the federal social services funds used in a State be for services to such individuals and families.

The bill proposes that federal limitations on States in establishing those in a State eligible for federally assisted social services relate to the income of the individual or family, and would remove the requirement that recipients be classified as "former or potential welfare recipients." Federal matching for free services is available for people with incomes up to 80% of the median family income in a State (or the full national median, now $12,041 if less) adjusted for family size, and services at some fee up to 115% of the median income of a State. The $2.5 billion limit on federal payments will continue to apply.

II. DEFINING SOCIAL SERVICES

The goals of the program are established as:

"(1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency,

"(2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency,

"(3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families,

"(4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care, or

"(5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

Social services would be defined by the State, required to be directed at the social services goals with parameters for such definitions established by: prohibition against funding certain activities; prohibitions against reimbursing certain medical institutions for social services provided to those living in them (but other entities could provide social services to such individuals in such facilities) and; prohibitions against funding child day care not meeting standards. The draft bill also specifically names certain services as examples of social services but it is not intended to be an all inclusive list.

II. SOCAL SERVCES PROGRAM, PLANNNG, REPORTING, EVALUATION, AND AUDITING

Establishes new requirements for a State to conduct a program planning process to determine the services to be provided and who is to receive such services with primary emphasis on involvement by the citizens of a State. The Governor or such other officials as the laws of the State provide is responsible for publishing the services plan for comment and approving the final services plan for the program year. The State is also required reconduct evaluations and provide required reports to HEW and the public.

Ninety days after the end of the services program year an "annual social services program report", is approved by the Governor or other official designated under State law describing the services provided during the past year.

IV. "STATE PLAN" SUBJECT TO PRIOR APPROVAL BY HEW

The State would submit to HEW approval prior to the beginning of the services program year a document which is still called a "State Plan". It would deal with State assurances regarding: fair hearings; confidentiality of information; designation of a single individual or agency other than the Governor to supervise the administration of the States social services program; no durational residency or citizenship requirement; and designation of state authorities for establishing and maintaining standards.

V. MAINTENANCE OF EFFORT AND MATCHING PROVISIONS

The bill establishes a maintenance of effort requirement for States which requires that the non-federal share of its aggregate expenditures for the provisions of services during each services program year are not less than the aggregate expenditures for the provisions of those services during fiscal year 1973 or 1974 (whichever is less) with respect

to which payment was made under the Social Security Act. The Governor is also to provide to the citizens of the State comparison of non-federal expenditures between services program years.

Percentage of matching is not changed from present law, i.e.: 75% for all services except 90% for family planning services; 75% for training and retraining.

State matching may be in cash or in-kind by the State including provisions to the State by its political subdivisions. Private funds donated to the State are allowed to be utilized for non-federal match but with certain restrictions.

VI. FEDERAL EVALUATION, RESEARCH AND DEMONSTRATIONS, PROGRAM ASSISTANCE, AND HEW REPORTS TO CONGRESS

HEW is authorized to grant waivers under the proposed new title XX for Social Services to any State now under the various titles of the Social Security Act and provide reports to Congress on the results of such research and demonstration programs.

He is also to provide to Congress prior to July 1, 1977 a report on the effectiveness of the social services program along with recommendations for improvements.

VII. EFFECTIVE DATE OF REGULATIONS PUBLISHED BY THE SECRETARY OF HEW

No final federal regulations for the program would be effective in a services program year for a State if the regulations are published within 60 days of the beginning of the States services program year.

VIII. CONTINUATION OF MORATORIUM ON NEW REGULATIONS UNTIL PROPOSED EFFECTIVE NEW LEGISLATIONS

Currently the law prohibits HEW from changing social services regulations until after December 31, 1974. The draft bill would have an effective date as to the payments of social services of July 1, 1975. The bill would also continue the moratorium on HEW implementing new regulations until July 1, 1975.

State (family of 4)	80 percent of adjusted median income [1]	115 percent of adjusted median income
Alabama	$8,629	$12,404
Alaska	12,758	18,334
Arizona	10,309	14,818
Arkansas	7,774	11,175
California	10,676	15,345
Colorado	10,376	14,915
Connecticut	12,387	17,805
Delaware	10,918	15,694
District of Columbia	10,078	14,479
Florida	9,768	14,041
Georgia	9,463	13,563
Hawaii	12,135	17,444
Idaho	9,116	13,103
Illinois	11,648	16,742
Indiana	10,698	15,378
Iowa	9,947	14,298
Kansas	9,720	13,972
Kentucky	8,519	12,245
Louisiana	8,677	12,472
Maine	8,765	12,599
Maryland	11,702	16,821
Massachusetts	11,424	16,420
Michigan	11,690	16,803
Minnesota	10,784	15,501
Mississippi	7,651	10,998
Missouri	10,049	14,444
Montana	9,130	13,123
Nebraska	9,437	13,564
Nevada	11,308	16,255
New Hampshire	10,411	14,964
New Jersey	12,179	17,507
New Mexico	9,736	12,557
New York	12,767	18,352
North Carolina	8,902	12,796
North Dakota	8,542	12,273
Ohio	10,037	15,721
Oklahoma	9,014	12,057
Oregon	10,402	14,952
Pennsylvania	10,281	14,777
Rhode Island	10,483	15,066
South Carolina	8,741	12,564
South Dakota	8,391	12,062
Tennessee	8,586	12,342
Texas	9,776	14,052
Utah	9,680	13,929
Vermont	9,535	13,658
Virginia	10,028	14,441
Washington	11,133	16,011
West Virginia	$8,325	$11,966
Wisconsin	10,780	15,496
Wyoming	9,745	14,007

[1] This figure may not exceed the full national median, currently $12,041.

By Mr. FONG:

S. 4083. A bill to amend title XI of the Federal Aviation Act of 1958 (49 U.S.C. 1501–1513) in order to promote the use of U.S.-flag carriers by Government-financed passengers and property. Referred to the Committee on Government Operations.

S. 4084. A bill to amend the Federal Aviation Act of 1958 to deal with discriminatory and unfair competitive practices in international air transportation, and for other purposes; and

S. 4085. A bill to amend the International Aviation Facilities Act (49 U.S.C. 1151–1160). Referred to the Committee on Commerce.

S. 4086. A bill to amend the Export-Import Bank Act of 1945 to authorize assistance to certain U.S. air carriers. Referred to the Committee on Banking, Housing and Urban Affairs.

S. 4087. A bill to amend subsection (h) of section 406 of the Federal Aviation Act of 1958 (49 U.S.C. 1376). Referred to the Committee on Post Office and Civil Service.

HELP FOR INTERNATIONAL AIR CARRIERS

Mr. FONG. Mr. President, today I am introducing five bills to assist major U.S.-flag carriers operating in the international air transport system, which are in deep economic trouble because they have been subjected over the years to needlessly discriminatory and unfair practices in their competition with foreign air carriers.

As a result of the President's recent decision—recommended by the CAB—denying Pan American's request for interim subsidy and dismissing Trans World Airlines' application in its entirety, we have all been made aware of the great inequities against which Pan Am, TWA, Northwest, and Braniff must compete in the international air transport business.

For those who are not familiar with some of the gross inequities that our airlines must face abroad in competing with the foreign air carriers, allow me to cite a few examples.

Pan American and all the other international airlines must pay the Australian Government $4,200 to land a Boeing 747 at Sydney Airport. On the other hand, Australia's Qantas Airways and the other international air carriers pay only $271 to land a 747 at the San Francisco Airport. Through the excessively high fees charged by the Australian Government, the air carriers are paying not only for facilities and services they receive at Sydney, but for maintaining airports they do not use in places like Perth and Brisbane.

At New York's JFK International Airport, British Airways pays a total of $391 in landing fees for each 747 landed. On the other hand, at Heathrow International Airport in London, Pan Am and TWA pay a total of $1,675 in landing fees. This startling disparity in landing fees is the result of the British Government's policy of charging landing fees not only for the use of London's Heathrow Airport but to subsidize four other airports and to provide a 14 percent return on investment for the British Airport Authority.

In Rome, U.S. airlines spent about $2 million for landing fees in 1973. On the other hand, Alitalia, the Italian national air carrier, paid nothing.

If an Italian businessman must come to the United States, his government requires—I repeat—requires him to fly on Alitalia. On the other hand, when an American businessman goes to Italy, the U.S. Government places no such restrictions or restraints on his air travel.

Because most foreign airlines are owned by their respective governments and because these government-controlled enterprises frequently control both domestic and international services, they are able to deny connecting domestic space to passengers who do not enter their countries via the respective national airlines of those foreign lands.

Discriminatory taxes and fees against U.S.-flag carriers are very common. For example, a country may tax the gross sales of a U.S. carrier but collect taxes only on the net income of its own national airline. Or it may exempt its own carrier from customs charges, while charging duty on support equipment imported by U.S. carriers.

Many countries, contrary to the practice that prevails in the United States, allow their airlines to own or control such travel subsidiaries as travel agencies, tour operators, and freight forwarders. This control of the retail marketing system in a foreign country by the national carrier severely curtails the marketing opportunities of U.S. carriers.

Mr. President, the above practices indulged in by other countries against U.S.-flag carriers have been characterized by the CAB as "questionable or unethical" at best and "obviously discriminatory" at worst. There is no question in my mind that prompt action is needed to counteract and correct the above abuses and unfair practices. I firmly believe that we must take all necessary steps short of Government subsidy to provide our U.S.-flag carriers with the equality of opportunity they need in order to compete with foreign air carriers on an equal basis.

INEQUITABLE TREATMENT OF U.S. INTERNATIONAL AIR CARRIERS

Mr. President, although many of the problems experienced by our airlines operating in the international air system are the result of actions taken by foreign governments, many others, unfortunately, stem from practices of our own Government. Let me cite a few examples.

Foreign airlines spend less for the airplanes they fly than do American carriers because foreign buyers are able to finance the purchase of American-built aircraft through loans from the Export-

Import Bank at interest levels far below the commercial prime rate, while those lower interest rate loans are not available to our carriers since they are not classified as foreign buyers. While in the past, U.S. international carriers have been able to obtain an effective interest rate more in line with Eximbank rates, in today's growing interest rate market, U.S. carriers are at a distinct disadvantage.

The U.S. Postal Service pays much higher rates to foreign carriers than to U.S. airlines for the transportation of international air mail. The United States, as a member of the Universal Postal Union, pays as much as $1.73 per ton-mile to foreign air carriers to transport U.S. mail, while it currently pays 31 cents per ton-mile to U.S. carriers. While I understand foreign airline carriage of mail is used only where no U.S. carrier serves a particular foreign destination, still the wide disparity in rates acts to increase the financial strength of foreign lines vis-a-vis U.S. carriers.

There is no law requiring that U.S.-financed travel be accomplished on U.S.-flag air carriers. On the other hand, most countries require that their national carriers be used not only for official government travel, but for transportation required by businesses and organizations financed in whole or in part by the respective governments.

While foreign governments spend a considerable amount of money to entice Americans to fly on their respective airlines, U.S. airlines do not receive similar promotional assistance from the U.S. Travel Service.

PROPOSED LEGISLATIVE REMEDIES

Mr. President, in an effort to remedy some of the above-mentioned problems, and to give our airlines a "fair shake" in their head-to-head competition with the foreign air carriers, I am introducing five bills which I hope will be given favorable consideration by my colleagues.

I. FLY U.S.-FLAG CARRIER ACT OF 1974

My first bill is designed to promote the use of U.S.-flag air carriers by government-financed passengers and property. It is called the Fly U.S.-Flag Air Carrier Act of 1974.

The primary purpose of this bill is to ensure that any activity financed in whole or part by the U.S. Government that requires air transportation of persons, including foreign nationals, and property fly on U.S.-flag air carriers whenever possible. This means that whenever the American taxpayers' money is used to pay for the transportation of an individual and his personal effects, such expenditures will not be allowed unless they are spent on a U.S.-flag carrier. Only in those instances where an American carrier is not able to provide the services will the use of foreign air carriers be allowed.

II. INVESTIGATION OF UNFAIR COMPETITIVE PRACTICES IN INTERNATIONAL AIR TRANSPORTATION

My second bill is designed to help us formulate a comprehensive policy that will assist in eliminating discriminatory and unfair competitive practices against U.S.-flag air carriers in the international air transportation business. It would require the Department of State, the Department of the Treasury, the Department of Transportation, the Civil Aeronautics Board, and other governmental agencies to keep under review, to the extent of their respective functions, all forms of discrimination or unfair competitive practices to which U.S. air carriers are subject in providing foreign air transportation services. It would also require them to take all appropriate actions within their respective jurisdictions to eliminate such forms of discrimination and unfair competitive practices found to exist.

In addition to correcting any wrongs found to exist against U.S.-flag air carriers the appropriate departments and agencies are asked to request from Congress such additional legislation as may be deemed necessary at any time it is determined there is inadequate legal authority for dealing with any form of discrimination or unfair competitive practices found to exist. This requirement will assure us that no Department or agency will have the excuse that it does not have the legal authority to take actions designed to eliminate discriminatory and unfair practices against our air carriers.

III. CORRECTING INEQUITABLE LANDING FEES AND OTHER USER CHARGES

My third bill proposes to correct the gross inequities that exist in the area or landing fees. The U.S.-flag air carriers have made it clearly known that they are not opposed to being charged a fair price for services they receive in the form of communications and navigation networks, air traffic control, and airports at which to land. However, they are very much against paying for facilities they do not use and against paying excessive charges that are not related to the cost of services received.

In a two-volume study on restrictive practices by foreign governments, published in 1973, the Civil Aeronautics Board stated that:

> The United States basically has no quarrel with levels of landing charges set to recover costs. But it is another question when the rates are designed to subsidize other airports—not used by U.S. carriers—or to meet unrealistic rates of return on assets. It is equally a problem for us when foreign air carriers are exempt . . . from payment of landing fees which U.S. air carriers must pay.

In an attempt to combat the problem of excessive and/or unfairly levied user charges, my bill will give our Government the authority to impose offsetting charges on foreign air carriers. Thus, the amounts collected would "accrue to an account established by the Secretary of the Treasury to make payments from that account to air carriers in such amounts as shall be certified by the Secretary of Transportation in accordance with such regulations as he shall adopt to compensate such air carriers for excessive or discriminatory charges paid by them to the foreign countries involved."

IV. FAIR RATES FOR INTERNATIONAL AIR MAIL

My fourth bill is designed to correct the present practice whereby the U.S. Postal Service pays under the Universal Postal Union Convention much higher rates to foreign carriers than to U.S. airlines for the transportation of international air mail. It would require the payment to U.S. airlines of mail rates no lower than those the Postal Service pays to foreign air carriers for the transportation of the same mail. Although the great bulk of our foreign air mail business is carried by U.S air carriers and although the Postal Service resorts to foreign carriers only in instances where our airlines cannot provide the air mail service because they do not fly to a particular area, I firmly believe that it was an error for our Government to agree to a rate schedule that is much higher for foreign carriers under the Universal Postal Union Convention than the rates the U.S. Postal Service pays our own international air carriers.

V. EXPORT-IMPORT BANK FINANCING FOR U.S. INTERNATIONAL AIRLINES

My fifth bill is designed to give U.S.-flag airlines access to Export-Import Bank financing for the purchase of U.S.-manufactured airplanes used primarily in competition with foreign air carriers which have received the benefit of Eximbank guarantees, insurance, or credit for the purchase of similar aircrafts. This measure would assure our international carriers that they would not be placed at a financial disadvantage in the purchase of airplanes manufactured in the United States and bought by their foreign competitors.

AIRLINES' PROBLEMS DISCUSSED WITH DOT OFFICIAL

Mr. President, yesterday at my request the Honorable Robert H. Binder, Assistant Secretary for Policy, Plans and International Affairs, Department of Transportation, came to my office and discussed the problems being faced by our international air carriers and the actions that are currently being taken by our Government to assist them in improving their financial and economic situation. We had a very candid and informative meeting.

Secretary Binder informed me that after a careful and comprehensive review of the situation facing Pan American, President Ford concluded that it would not be fair to the taxpayers to require them to support our international flag air carriers with direct cash subsidy payments. The issue that prompted this Presidential review and decision was the application of Pan American Airways to the Civil Aeronautics Board for an emergency interim operating subsidy of $10 million a month.

Although the President denied Pan Am's request for a cash subsidy, he recognized the serious financial difficulties facing that airline and the great importance of a healthy international U.S.-flag airline system to our country. Therefore, he directed Secretary of Transportation Claude Brinegar to move immediately to see what could be done to improve the competitive climate in which Pan Am and our other international air carriers operate.

Secretary Brinegar recently created a new aviation economic policy office,

which has the responsibility of coordinating and implementing programs to improve the competitive and financial position of U.S. international airlines.

Secretary Binder assured me that as a result of President Ford's strong instructions, many positive actions are already underway and that others will be started very soon. I was told that not all of the proposed actions can be carried out entirely by the Department of Transportation. Most of them will require cooperative action by others, including the CAB and, in some cases, the carriers themselves.

After my lengthy meeting with Secretary Binder, I was most gratified to learn of the actions that are being considered by the Administration to assist our international air carriers. They include the following:

First. Fares More in Line With Costs. Fare structures that more closely reflect today's rising cost will hopefully soon be approved by the CAB. This will include fares of the scheduled carriers and the charter carriers, including those available to the military.

Although no one wants to see air fares go higher, we must recognize the plain fact that as costs go up—foreign fuel prices have tripled in the past year—the airlines must recover these increasing costs in higher ticket prices.

Second. Excess Capacity. It is a well-documented fact that many airlines, including U.S.-flag carriers that have rights to fly international routes to and from the United States, are flying too many flights in terms of current demands and needs. I was informed that agreements between U.S. carriers and the Italian and the British carriers for reductions in seating capacity during winter months were recently reached and that similar agreements are expected in the near future with the airlines of France and West Germany.

I was also advised that the State Department has an intensive review underway—working in conjunction with the Department of Transportation and the Civil Aeronautics Board—to determine which of the foreign carriers are flying capacity to the United States that exceeds the rights provided by their bilateral agreements. I have been assured that prompt action will be taken to correct any excesses found.

Third. Tariff Integrity. The Department of Transportation, along with the Department of Justice and the CAB, are pushing ahead on a program to eliminate, or at least reduce, "illegal ticket discounting." I was also informed that as part of this program, the Government is also "investigating the roles of the travel agents and tour operators to determine if some form of Federal licensing is needed."

Fourth. Fly U.S. Flag. Statistics show that while Americans constitute over 60 percent of those flying overseas to and from the United States, our flag airlines carry a far smaller share. I am told that an equitable balancing of these ratios would add some $200 million a year in new revenues to U.S.-flag carriers. The Department of Transportation and Department of Commerce, hopefully with the cooperation of our country's travel agents, are planning to push a "Fly U.S. Flag" program to encourage all Americans to increase their use of U.S.-flag airlines when they travel abroad.

Fifth. Mail Rate Increase. The Department of Transportation urged the CAB to act promptly to determine final international mail rates so that U.S.-flag carriers may receive the fair and reasonable rates of compensation for carrying the mail. The present rates for the transportation of international mail have been basically unchanged since 1968, despite substantial increases in airline costs.

Sixth. Overseas Discrimination. Because of repeated complaints that U.S.-flag carriers are being discriminated against overseas in terms of excessive landing and other fees, the Department of Transportation, together with the State Department and the CAB, are in the process of officially documenting the flagrant cases. I was personally assured that our Government "will seek immediate corrective action."

Seventh. Route Restructuring and Service Suspensions on Loss Operations. The Department of Transportation is strongly urging the U.S. international air carriers themselves to consider agreements on overseas route rearrangements and possibly even mergers. It is also recommended that unilateral actions be taken to suspend service to points which have inadequate traffic potential to cover costs. For its part, the administration will do what it can to see that meritorious proposals receive prompt approval.

CONCLUSION

Mr. President, I firmly believe that the bills I am proposing today and the administration's efforts to help our international airlines will go a long way to put our airline carriers in a much stronger position to deal competitively with the foreign carriers. The combined impact of the administration's proposals—many of them long overdue—will, in due course, contribute a great deal to improve the financial health and stability of all our international flag carriers, including Pan American.

Mr. President, I want to take this opportunity to commend President Ford, Secretary Brinegar, and all the other individuals for moving promptly to find ways to assist America's international air carriers. Were there no remedial actions being contemplated by our Government and no relief in sight, the recent rejection of Pan Am's and TWA's applications for a subsidy would have had a serious negative impact on not only the airlines involved, but on their loyal and hard-working employees. I am informed that Pan American and TWA together have over 67,000 employees who would be unemployed should their companies go bankrupt.

In view of the adverse consequences that the failure of our international airlines would have on our economy, I hope and trust the momentum already begun to assist these air carriers and their faithful employees will continue until our international airlines can once again become viable, strong, job-creating, and tax-paying enterprises.

I believe these actions will fulfill the challenge issued by the Air Transport Association when its representatives testified:

> We firmly believe it is time for the American government to be aware of these problems and to understand the necessity for equalizing the competitive balance that for years has rested in favor of the foreign competition. Our international airlines ask no more than an equal opportunity to compete.

Mr. President, the request for only "an equal opportunity to compete" and not for "handouts" was also eloquently made by the dedicated and highly motivated employees of Pan American in Hawaii. In an advertisement that appeared in the September 23 issue of the Honolulu Star-Bulletin and in the September 24 edition of the Honolulu Advertiser, the 1226 Pan Am employees in Hawaii stated:

> These men and women of Pan Am are just not the type who enjoy asking for a handout. The only subsidy that we have ever needed was fair treatment. From our own government.

Mr. President, I sincerely hope and believe that the actions being considered by the administration and the bills which I have introduced today will go a long way toward providing Pan American and our other international air carriers with the opportunity to compete on a more equitable basis with their foreign competitors.

Mr. President, I ask unanimous consent that the bills be printed in the RECORD at this time. I also ask unanimous consent that the Pan American employees' advertisement be printed in the RECORD following the printing of the bills.

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

S. 4083

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

SHORT TITLE

SEC. 1. This Act may be cited as the "Fly United States-Flag Air Carrier Act of 1974."

TRANSPORTATION OF GOVERNMENT-FINANCED PASSENGERS AND PROPERTY

SEC. 2. Title XI of the Federal Aviation Act of 1958 (49 U.S.C. 1501–1513) is amended by the addition of the folowing new section:

"TRANSPORTATION OF GOVERNMENT-FINANCED PASSENGERS AND PROPERTY

"SEC. 1114. Whenever any executive department or other agency or instrumentality of the United States shall procure, contract for, or otherwise obtain for its own account or in furtherance of the purposes or pursuant to the terms of any contract, agreement, or other special arrangement made or entered into under which payment is made from funds appropriated, owned, controlled, granted, or conditionally granted or utilized by or otherwise established for the account of the United States, or shall furnish to or for the account of any foreign nation, or any international agency, or other organization, of whatever nationality, without provisions for reimbursement, any transportation of persons (and their personal effects) or property by air between a place in the United States and a place outside thereof or between two places both of which are outside the United States, the appropriate agency or agencies shall take such steps as may be necessary to assure that such transportation is provided by air carriers holding certificates

under section 401 of this Act to the extent authorized by such certificates or by regulations or exemptions of the Civil Aeronautics Board and to the extent service by such carriers is available. The Comptroller General of the United States shall disallow any expenditure from appropriated funds or payment for such personnel or cargo transportation on an air carrier not holding a certificate under section 401 of this Act in the absence of satisfactory proof of the necessity therefor. Nothing in this section shall prevent the application to such traffic of the anti-discrimination provisions of this Act.".

S. 4084

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 "Investigation of Unfair Competitive Practices in International Air Transportation Act of 1974".

DECLARATION OF POLICY

SEC. 2. (a) United States air carriers operating in foreign air transportation perform services of vital importance to the national security and defense of the United States, to the foreign commerce of the United States including its balance of payments, to the United States Postal Service, and to the prestige of our nation abroad. Such carriers have become subject to a variety of discriminatory and unfair competitive practices in their competition with foreign air carriers.

(b) The failure of any principal American-flag air carrier under current world and domestic conditions would result in a decrease in the security capabilities of the United States, an increase in our balance of payments deficit, a substantial increase in unemployment, and a reduction in federal, state and local tax payments.

ELIMINATION OF DISCRIMINATORY PRACTICES

SEC. 3. (a) The Department of State, the Department of the Treasury, the Department of Transportation, the Civil Aeronautics Board, and the other departments or agencies, therefore, each shall keep under review, to the extent of their respective functions, all forms of discrimination or unfair competitive practices to which United States air carriers are subject in providing foreign air transportation services and each shall take all appropriate actions within its jurisdiction to eliminate such forms of discrimination or unfair competitive practices found to exist.

(b) Each of these departments and agencies of Government shall request from Congress such additional legislation as may be deemed necessary at any time it is determined there is inadequate legal authority for dealing with any form of discrimination or unfair competitive practice found to exist.

ANNUAL REPORT TO CONGRESS

SEC. 4. The Civil Aeronautics Board shall report annually to Congress on the actions that have been taken under subsection (a) and on the continuing program to eliminate discriminations and unfair competitive practices faced by United States carriers in foreign air transportation. The Secretaries of State, Treasury, and Transportation shall furnish to the Civil Aeronautics Board such information as may be necessary to prepare the report required by this subsection.

S. 4085

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

SECTION 1. The International Aviation Facilities Act (49 U.S.C. 1151–1160) is amended by redesignating section 11 as section 12 and by inserting immediately after section 10 the following new section:

"INTERNATIONAL USER CHARGES

"SEC. 11. The Secretary of Transportation shall survey the charges made to air carriers by foreign governments or other foreign entities for the use of airport property or airway property in foreign air transportation. If the Secretary of Transportation determines at any time that such charges unreasonably exceed comparable charges for furnishing similar airport property or airway property in the United States or are otherwise discriminatory, he shall submit a report on such cases promptly to the Secretary of State and the Civil Aeronautics Board, and the Secretary of State, in collaboration with the Civil Aeronautics Board, shall promptly undertake negotiations with the foreign country involved to reduce such charges or eliminate such discriminatory practices. If within a reasonable period such charges are not reduced or such discriminations are not eliminated through negotiations, the Secretary of State shall promptly report such instances to the Secretary of Transportation who shall determine compensating charges equal to such excessive or discriminatory charges. Such compensating charges shall, with the approval of the Secretary of State, be imposed on the foreign air carrier or carriers of the country concerned by the Secretary of the Treasury as a condition to acceptance of the general declaration at the time of landing or takeoff of aircraft of such foreign air carrier or carriers. The amounts so collected shall accrue to an account established by the Secretary of the Treasury to make payments from that account to air carriers in such amounts as shall be certified by the Secretary of Transportation in accordance with such regulations as he shall adopt to compensate such air carriers for excessive or discriminatory charges paid by them to the foreign countries involved.".

S. 4086

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2(b)(1) of the Export-Import Bank Act of 1945 is amended by inserting after the second sentence the following new sentence: "In addition, the Bank may provide guarantees, insurance, and extensions of credit to United States air carriers whose principal competitors are foreign air carriers which have received the benefit of Bank guarantees, insurance, or credit."

S. 4087

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

SECTION 1. Subsection (h) of section 406 of the Federal Aviation Act of 1958 (49 U.S.C. 1376) is amended to read as follows:

"PAYMENTS TO FOREIGN AIR CARRIERS

"(h) In any case where air transportation is performed between the United States and any foreign country, both by aircraft owned or operated by one or more air carriers holding a certificate under this title and by aircraft owned or operated by one or more foreign air carriers, (1) the Postmaster General shall not pay to or for the account of any such foreign air carrier a rate of compensation for transporting mail by aircraft between the United States and such foreign country, which, in his opinion, will result (over such reasonable period as the Postmaster General may determine, taking account of exchange fluctuations and other factors) in such foreign air carrier receiving a higher rate of compensation for transporting such mail than such foreign country pays to air carriers for transporting its mail by aircraft between such foreign country and intermediate country on the route of such air carrier between such foreign country and the United States, and (2) the Board shall not fix and determine for any air carrier a rate of compensation for transporting mail by aircraft between the United States and such foreign country which is lower than the rate of compensation payable by the Postmaster General to or for the account of any such foreign air carrier when such carrier transports such mail between the United States and such foreign country. Nothing in this subsection shall be deemed to authorize the Board to fix and determine for any air carrier a rate of compensation for transporting United States military mail higher than the rates set for such mail without regard to the provisions of this subsection.".

AN OPEN LETTER TO THE PEOPLE OF HAWAII FROM THE EMPLOYEES OF PAN AM

After a decade of dangling in a storm of outrageous discrimination, both at home and abroad, and writhing every time the international oil cartels raised their oil prices, the 32,500 men and women of Pan American World Airways have a few confessions we would like to get off our chests.

We plead guilty, first of all, to having worked our tails off for nearly 50 years carrying the spirit of American private enterprise to the rest of the world. We admit also to pioneering every significant overseas air route.

We plead guilty of actively having prevented the outflow of more than $400 million a year from the American balance of payments and of kicking them directly into the nation's economy.

We plead guilty of having flown two million American servicemen out of Vietnam on five-day combat leaves on a cost-plus-dollar contract. We also admit providing the Defense Department a fleet of perfectly-maintained fully-crewed airplanes that were used extensively in World War II, in Berlin, Korea and Indochina.

We plead guilty of overtly supporting the American aerospace industry. Pan Am was the first to operate the flying boats, the intercontinental 707 and the jumbo 747. We cannot say at this point in time how many billions of dollars have been generated by foreign airlines following our leadership in the purchase of new American-built aircraft.

We plead guilty of having once been an enormously-successful private enterprise. We admit also failing to report a crime as it was taking place. The men and women of Pan Am have watched their great airline being reduced over the last decade from a healthy, contributing national resource to a poor, paralyzed, potential welfare patient.

Finally we've been bled white by this recent oil crisis business. Now we're in trouble and we think that the people of Hawaii can see why merely by asking a few simple questions of our own Federal government.

Ask our own government first of all why the Postal Department pays the foreign airlines as much as six times what it pays Pan Am for hauling the same U.S. Mail. Not receiving the same pay for the same work costs Pan Am $40 million a year.

Ask our own government why nothing is ever done about overseas airports that charge Americans exorbitant landing fees. Every foreign airline pays under $600 to land its jumbo 747's in Hawaii. Pan Am Pays $4200 to land its 747's in Sydney, Australia, for example.

Not paying foreign governments the same user fees that their airlines pay in America costs Pan Am twelve million dollars a year.

Ask our own government why the U.S. Export-Import Bank lends money to airlines of so-called "underdeveloped" nations like France, Japan and Saudi Arabia at six percent interest while Pan Am pays twelve percent. Their low-interest loans are used to buy airplanes which they use to compete against Pan Am.

Not allowing Pan Am access to these same interest rates means that we pay seven million dollars more than the foreign airlines pay for the same jumbo jet.

Ask our own government why it is opposed to letting Pan Am fly passengers within our own country. It just doesn't make sense. The domestic airlines now have rights to the international routes that we pioneered and the foreign airlines now serve more cities in the United States than we do. The right to compete freely at home—the most elemental privilege of a free-enterprise society—has always been denied Pan Am.

You see, when it comes right down to it, Pan Am does a lot more than compete with other airlines. We compete with whole countries—sometimes even our own. The men and women of Pan Am are just not the type who enjoy asking for a handout. The only subsidy that we have ever needed was fair treatment. From our own government.

If Pan Am were allowed to have domestic routes within the United States . . . to borrow from the Export-Import Bank . . . to pay reasonable landing fees overseas . . . and to receive equal postal rates from our own government, we wouldn't need any subsidy at all. In fact, the 1226 Pan Am employees of Hawaii wouldn't need to have taken up a collection to run this ad.

If you agree, you can help.

Write to one of the Congresspeople listed below. (Many of us already have.)

THE EMPLOYEES OF PAN AM.

The Honorable Hiram L. Fong, United States Senate, Washington, D.C. 20510.

The Honorable Daniel K. Inouye, United States Senate, Washington, D.C. 20510.

The Honorable Patsy T. Mink, U.S. House of Representatives, Washington, D.C. 20515.

The Honorable Spark M. Matsunaga, U.S. House of Representatives, Washington, D.C. 20515.

By Mr. STAFFORD:

S. 4088. A bill to amend title II of the Social Security Act to permit certain full-time students who have not completed their education to continue to receive child's insurance benefits after attaining age 22. Referred to the Committee on Finance.

Mr. STAFFORD. Mr. President, at present the social security benefit for dependent children terminates at age 18 unless they go on to full-time higher education, in which case the benefit terminates at the end of the 21st year.

But, there have been developing changing patterns in education. Now, many young people wait for a period of time after high school before going on to college or some other form of higher education. And, more and more students are taking a break from their academic life after they have enrolled in an institution or higher learning. In general, the academic community supports this new life style in learning as being beneficial.

Under current law, however, the student who takes such time off forfeits some benefits if the student reaches the age of 22 before completing the traditional 4 years of higher learning.

The bill I introduce today would revise this social security benefit to make it operate much as the GI bill does.

It would provide an additional 4 years time for a dependent student to complete the normal requirements of an institution of higher learning, but it would not increase the actual benefits the student would receive if he or she finished school in the traditional 4-year period.

In short, the bill would simply provide additional flexibility to achieve the fundamental purposes of the law during a period of changing life styles.

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

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

S. 4088

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 202(d)(7) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(E) A child who—

"(i) has attained age 22 but has not attained age 26,

"(ii) has not completed the requirements for, or received, a degree from a four-year college or university, and

"(iii) has for fewer than 45 months been entitled to child's insurance benefits by reason of his status, for each of such months, as a full-time student,

shall, for purposes of the preceding provisions of this subsection which relate to entitlement to child's insurance benefits of individuals who are full-time students, be deemed not to have attained age 22 until the date on which any one of the following first occurs:

"(iv) such child attains age 26,

"(v) such child completes the requirements for, or receives, a degree from a four-year college or university, or

"(vi) such child has, for 45 months, been entitled to child's insurance benefits by reason of his status, in each of such months, as a full-time student."

(b) The amendment made by subsection (a) shall apply only with respect to monthly benefits under section 202 of the Social Security Act for months after December 1974; except that in case of an individual who was not entitled to a monthly benefit under such section 202 for December 1974 such amendment shall apply only on the basis of an application filed after the date of enactment of this Act.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 3514

At the request of Mr. CHILES, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of the bill (S. 3514) to distinguish Federal grants and cooperative agreement relationships from Federal procurement relationships and for other purposes.

S. 3701

At the request of Mr. MATHIAS, the Senator from New York (Mr. BUCKLEY), the Senator from California (Mr. CRANSTON), and the Senator from Michigan (Mr. HART) were added as cosponsors of the bill (S. 3701) to provide that income from entertainment activities held in conjunction with a public fair conducted by an organization described in section 501(c) (3) and (5) shall not be unrelated trade or business income and shall not affect the tax exemption of the organization.

S. 3982

At the request of Mr. WEICKER, the Senator from Nevada (Mr. CANNON), the Senator from Michigan (Mr. HART), the Senator from Maryland (Mr. MATHIAS), the Senator from Montana (Mr. METCALF), the Senator from New Mexico (Mr. MONTOYA), the Senator from Indiana (Mr. HARTKE), and the Senator from Tennessee (Mr. BAKER) were added as cosponsors of the bill (S. 3982) to restrict the authority for inspection of tax returns and the disclosure of information contained therein, and for other purposes.

S. 4019

At the request of Mr. WEICKER, the Senator from New Hampshire (Mr. MCINTYRE) was added as a cosponsor to the bill (S. 4019) to establish a Joint Committee on Intelligence Oversight.

S. 4031

At the request of Mr. MCCLURE, the Senator from Idaho (Mr. CHURCH) was added as a cosponsor of the bill (S. 4031) to authorize the Secretary of the Army to delegate to the States certain functions with respect to the location and plans for structures, excavations, or fills in or on certain navigable waters.

S. 4040

At the request of Mr. HARTKE, the Senator from Indiana (Mr. BAYH), the Senator from Maryland (Mr. MATHIAS), the Senator from Wyoming (Mr. MCGEE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Rhode Island (Mr. PASTORE), the Senator from California (Mr. TUNNEY), and the Senator from Connecticut (Mr. RIBICOFF) were added as cosponsors of the bill (S. 4040) to amend title 38 of the United States Code to liberalize the provisions relating to payment of disability and death pension, and dependency and indemnity compensation, to increase income limitations, and for other purposes.

SENATE CONCURRENT RESOLUTION 116—AUTHORIZING THE PRINTING OF ADDITIONAL COPIES OF SENATE HEARINGS ON THE MARIHUANA-HASHISH EPIDEMIC AND ITS IMPACT ON U.S. SECURITY

Mr. EASTLAND. Mr. President, this morning the Senate Subcommittee on Internal Security released to the press the printed record of the hearings held last May and June on "The Marihuana-Hashish Epidemic and Its Impact on U.S. Security."

In my introduction to the printed record, I stated that I consider these hearings to be among the most significant ever held by the subcommittee or, for that matter, by any committee of Congress. I said that the information contained in the hearings and the interest generated by them might help to reverse a trend toward national disaster.

There can be no question but that the use of marihuana and hashish in the United States has now reached epidemic proportions. More than 30 million people of all ages are reported to have used marihuana, in one degree or another, while some millions of Americans must be classified as regular, or chronic, users.

The scale of the epidemic may be gaged from the statistics on marihuana and hashish seizures presented at the hearings by the Drug Enforcement Administration. According to their records, Federal seizures of marihuana in 1973

had increased 10-fold over a 5-year period, to a total of 780,000 pounds. During the same period, hashish seizures had increased 25-fold for a total of 54,000 pounds in 1973.

There are no figures available, unfortunately, for seizures by State and local authorities. But making a very conservative allowance for such seizures, and assuming that roughly 10 times as much got in as was seized—this, too, is a conservative estimate—we come up with the finding that more than 10 million pounds of marihuana and more than 600,000 pounds of hashish were consumed by Americans last year.

This is an absolutely staggering figure when you consider that an ounce of marihuana is good for from 12 to 20 intoxications, and an ounce of hashish for more than 100.

Part of the testimony presented at the hearings dealt with the origins of our current cannabis epidemic. The testimony and documentation presented to the subcommittee, in my opinion, establishes beyond any challenge that the epidemic was encouraged and facilitated by a widespread propaganda in favor of marihuana. It was recommended in glowing terms to the young people of our country, not only by the entire underground press and by certain New Left organizations, but also by a number of prominent academicians, headed by the infamous Dr. Timothy Leary.

The epidemic spread of marihuana was also encouraged by the widespread belief that it was a harmless as well as pleasant drug. The myth of harmlessness was based on no scientific evidence; actually, hard scientific evidence on the effects of chronic cannabis use has become available only in the last few years. But, with the assistance of a few best selling books, the myth of harmlessness over a period of years came to enjoy almost universal acceptance.

In order to make an intelligent assessment of the impact of cannabis use on U.S. security, it was obvious that the first thing we had to do was to try to find out just how it affects the human body and mind. To this end, the subcommittee arranged for the testimony of more than 20 top-ranking scientists, most of them medical researchers, some of them psychiatrists. The quality of these scientists is apparent from the fact that 14 of our witnesses were quoted in two recent articles on marihuana which appeared in Science magazine, the organ of the National Association for the Advancement of Science. It is further confirmed by the letter I received from Dr. Robert L. DuPont, director of the President's Special Action Office for Drug Abuse Prevention, congratulating the subcommittee for its "public service in bringing the scientific evidence of the health hazards of marihuana to public attention."

The collective testimony of the eminent scientists who appeared before the subcommittee points to massive damage or potential damage to the entire cellular process, to the reproductive system, and to the respiratory system. The evidence also pointed to the serious possibility of irreversible brain damage and genetic damage.

Some of the scientific evidence presented to the subcommittee must, admittedly, be subject to further confirmation before it can be accepted as definitely established: This was a point made by the scientists themselves. But there can be absolutely no question at this point on certain central findings. Among these are: First, the fact that THC tends to accumulate in the fatty tissues, including the brain and the gonads, in the manner of DDT; second, that chronic smoking of marihuana and hashish damages the lungs and respiratory system much faster—almost 10 times as fast—than cigarette smoking; and third, that it severely damages the body cells, including their ability to synthesize DNA and to reproduce new cells.

On the latter point, I note that when Prof. Gabriel Nahas of Columbia University reported on his finding that marihuana, at the three-times-per-week level, seriously reduces DNA synthesis and, in consequence of this, reduces the generation of immune cells—the T-lymphocytes—by a factor of 41 percent, this finding was assailed by the hard-line defenders of marihuana. A letter to the dean of the College of Physicians and Surgeons spoke of Dr. Nahas' so-called findings and scolded Columbia University for having sponsored the press conference at which the findings were announced. It quoted critiques of Nahas by certain promarihuana professors, which described his writings as "meretricious trash," and as "psychopharmacological McCarthyism." This kind of abuse, I might say, was characteristic of the treatment of those scientists who had the courage to swim against the tide of recent years.

Open-minded scientists on the other hand, took the stand that Dr. Nahas' research deserved serious attention, but that it would have to be replicated by others before it could be accepted as fact. Since our hearings took place, Dr. Nahas' findings have been essentially confirmed by four other scientists, working independently. At this point, the validity of these findings and their critical importance to any assessment of marihuana, would not be challenged by any reputable scientist.

The psychological impact of marihuana is just as frightening as its effects on the body.

Two Philadelphia psychiatrists, Drs. Kolansky and Moore, told the subcommittee that—

> Marihuana and hashish . . . produce a brain syndrome marked by distortions of perception and reality. This leads to an early impairment of judgment.

Dr. Harvey Powelson, chief campus psychiatrist at Berkeley from 1964 to 1972, told the subcommittee that—

> After one to three years of continuous use, the ability to think has become so impaired that pathological forms of thinking begin to take over the entire thought process.

Dr. Phillip Zeidenberg, a Columbia University psychiatrist, said:

> There is no doubt that a single dose of THC can cause an acute psychotic reaction in mentally healthy individuals.

Several of the scientists who testified said that, on the basis of the information now available, they consider it the most dangerous drug with which we must contend today.

It stands to reason that any person in Government employment or in the Armed Forces who is affected in this manner by cannabis use automatically becomes a security risk. Dr. Forest Tennant, who was in charge of the U.S. Army drug program in Europe in 1970 and 1971, told the subcommittee that at that time some 16 percent of the U.S. Army in Germany were using hashish in excess of three times a week. He said that it had become a matter of policy in the U.S. Army to deny secret or top secret or nuclear clearance to anyone who was known to be a cannabis user. He also stated that cannabis use had been responsible for many accidents and much damage to expensive military equipment. He recalled that there had been a number of instances where security clearances previously granted had to be revoked when it was discovered that the subject was on cannabis.

Spokesmen for the armed services made it abundantly clear in their testimony that they understand the danger of cannabis from a security standpoint. Unfortunately, it has come to the knowledge of the subcommittee that there are other Government agencies, at least one of them dealing in highly sensitive information, where security officers still operate with outdated manuals, according to which marihuana is not a seriously harmful drug. The failure to understand the medical and psychological dangers of marihuana in itself poses a risk to our national security. I have therefore asked the staff of the Senate Subcommittee on Internal Security to prepare a master memorandum bringing together the evidence that has a direct bearing on the question of security. When this memorandum is completed, I propose to send copies of it to all executive agencies for the information of their security officers.

The tremendous interest generated by these hearings is attested to by the fact that, in advance of publication, the subcommittee has already received going on 1,700 requests for copies of the testimony. The requests came from Government offices, law enforcement officers at every level, drug educators and counselors, churches and service organizations, medical doctors and concerned parents. Based on the interest already displayed by the media and the public, I truly believe that our hearings may succeed in turning the entire situation around. I feel that the evidence is so hard and so dramatic that even the skeptical will have to open their minds. After all, no young person wants to run the risk of irreversible brain damage, or of severe reductions in male hormone level and sperm count, or of genetic damage to his offspring.

Mr. President, in view of the great interest in this publication, I sent to the desk, for reference to committee, a resolution asking for the printing of 10,000 additional copies of the hearings for the use of the Subcommittee on Internal Security.

The concurrent resolution (S. Con. Res. 116) submitted by Mr. EASTLAND, which was referred to the Committee

on Rules and Administration, reads as follows:

S. CON. RES. 116

Resolved by the Senate (the House of Representatives concurring), That there be printed for the use of the Senate Committee on the Judiciary ten thousand additional copies of the hearings before its Subcommittee on Internal Security during the present session entitled "The Marihuana-Hashish Epidemic and Its Impact on United States Security".

Mr. EASTLAND. Mr. President, I ask unanimous consent to insert in the RECORD the text of my introduction to the published record of the subcommittee's hearings on "The Marihuana-Hashish Epidemic and Its Impact on U.S. Security."

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

INTRODUCTION

(By Senator JAMES O. EASTLAND)

Chairman, Senate Subcommittee on Internal Security

I consider the hearings which are the subject of this record to be among the most significant ever held by the Senate Internal Security Subcommittee, or, for that matter, by any committee of Congress. The widespread interest already generated by the hearings suggest that they may play a role in reversing a trend towards national disaster.

Without public awareness, our country has become caught up in a marihuana-hashish [1] epidemic that probably eclipses, in gravity, the national epidemics that have had so debilitating an effect on the population of a number of Middle Eastern countries. Speaking about this matter, Mr. Andrew C. Tartaglino, Deputy Administrator of the DEA, made this statement at the opening hearing on May 9, over which I presided:

"The traffic in, and abuse of, marihuana products has taken a more serious turn in the last two or three years than either the courts, the news media, or the public is aware. The shift is clearly toward the abuse of stronger, more dangerous forms of the drug which renders much of what has been said in the 1960's about the harmlessness of its use obsolete."

The epidemic began at Berkeley University at the time of the famous 1965 "Berkeley Uprising." Not only was pot-smoking embraced as a symbolic rejection of the establishment, but, together with the "dirty speech movement," the right to pot became an integral part of the catalogue of demands of the uprising. From Berkeley, the marihuana epidemic spread rapidly throughout the American campus community. Then it spread down into the high schools and junior high schools—and within the last year or two it has begun to invade the grade schools. It has also spread into the ranks of professional society and of the bluecollar workers, so that all sectors of our society are today affected by the epidemic. Today it is estimated that there are some millions of regular marihuana users in the country, and the evidence indicates that they are graduating rapidly to the stronger hemp drugs, hashish and liquid hashish.

The spread of the epidemic has been facilitated by the fact that most of our media and most of the academicians who have been articulate on the subject have been disposed to look upon marihuana as a relatively innocuous drug. (How the myth of harmlessness came to be so widely accepted is also part of the subject of this testimony.) There were some who even held that marihuana was a good thing, while most held that there really wasn't too much to worry about.

Footnotes at end of article.

Taking advantage of the confusion and widespread ignorance, a variety of movements seeking the legalization of marihuana came into existence. They gathered strength rapidly. In fact, by early this year concerned scientists and government officials were almost ready to throw in the sponge because the battle looked so hopeless.

This situation, by itself was reason enough for concern. The Internal Security Subcommittee decided to look into it because of internal security considerations affecting the armed forces of the United States, and because of the evidence that clearly subversive groups played a significant role in the spread of the epidemic—both as propagandists and as traffikers. It was established, for example, in previous hearings of the subcommittee, that Timothy Leary's Brotherhood of Eternal Love had for a number of years been the largest producers of LSD and the largest organized smugglers of hashish in the country.

The hearings focused heavily on scientific evidence of physical or psychological harmfulness, because this was basic to any assessment of the impact of cannabis on security.

Important new scientific evidence had emerged within the last few years. But this evidence remained fragmented, sometimes inconclusive, and almost invariably completely unknown to the public. The situation was further confused by contradictory evidence and by the emergence of several bestselling books suggesting a more tolerent approach to marihuana.

One of the principal reasons why hard scientific evidence has been so slow in emerging is that it is only within recent years—in fact, since 1970—that accepted procedures for the quantitive analysis of marihuana have been established and that carefully standardized strains of marihuana have become available for research purposes. In the absence of standardized research materials and standardized analytical procedures, research scientists in the past, working with the utmost conscientiousness, often came up with sharply conflicting findings. Within the last few years, thanks to a remarkable program that has been developed at the University of Mississippi,[2] marihuana research is today moving forward without these handicaps—and, as this volume of testimony dramatically demonstrates, this research is producing some very significant results.

In the recent hearings, it was obvious that one of the first things that had to be done was to bring together the bits and pieces of recent research in an organized manner, because only in this way would the total significance of these findings become comprehensible. The subcommittee, therefore, issued invitations to some 20 prominent medical researchers and psychiatrists. Most of them were American, but six other countries were also represented in the panel of scientists. The pro-marihuana cabal could assail a single scientist whose research persuaded him that marihuana was a very dangerous drug: this they could get away with. But abuse and character assassination would no longer be persuasive at the point where it was demonstrated that a large number of top-ranking scientists who had done research on cannabis were convinced that it is a drug with deadly consequences.

With the assistance of several scientists who are internationally known for their research on cannabis and other drugs, the subcommittee staff put together a master list of scientific witnesses who, between them, could cover the newly available scientific evidence in a broad spectrum manner.

Among the eminent scientists who appeared before the Subcommittee were:

Dr. HARVEY POWELSON. Research Psychiatrist, Berkeley University; Chief of the Psychiatric Division of the Student Health Service at Berkeley from 1964 to 1972.

Dr. HENRY BRILL. Regional Director of the New York State Department of Mental Hygiene; member and/or chairman of drug dependence committees of American Medical Association, National Research Council, the World Health Organization, and the FDA; senior psychiatric member of the Shafer Commission.

Dr. DONALD LOURIA. Chairman, Department of Preventive Medicine and Community Health, New Jersey Medical School; Chairman and President, New York State Council of Drug Addiction, 1965 to 1972.

Professor W. D. M. PATON. Head of the department of pharmacology at Oxford University; Chairman of committee overseeing the British Government's drug research program; author of a standard textbook of pharmacology and widely recognized as one of world's leading pharmacologists.

Professor MORTON STENCHEVER. Chairman of the Department of Obstetrics and Gynecology at the University of Utah Medical School.

Dr. GABRIEL NAHAS. Research Professor at the Columbia University College of Physicians and Surgeons; simultaneously Visiting Professor at the University of Paris.

Dr. AKIRA MORISHIMA. Research geneticist; Associate Professor, Department of Pediatrics, Columbia University College of Physicians and Surgeons; Chief of the Division of pediatric endocrine service at Babies Hospital, New York.

Dr. CECILE LEUCHTENBERGER of Switzerland. Head of the Department of Cell Chemistry at the Institute for Experimental Cancer Research in Lausanne; founder and first Director of Cell Chemistry Department at Western Reserve University.

Dr. JOHN A. S. HALL. Senior Physician and Chairman, Department of Medicine, Kingston Hospital, Jamaica, since 1965: Associate Lecturer in Medicine, University of West Indies and visiting Assistant Professor of Neurology at Columbia University.

Dr. ROBERT KOLODNY. Director of the endocrine research section at the Reproductive Biology Research Foundation in St. Louis.

Professor M. I. SOUEIF. Chairman of the Department of Psychology and Philosophy at Cairo University; member of World Health Organization Panel on Drug Dependence; author of classic study on consequences of hashish addiction in Egypt.

Professor NILS BEJEROT. Karolinska Institute, Sweden; author of "Addiction and Society" and several other standard texts on the epidemiology of drug abuse. Widely recognized as one of the foremost international experts in this field.

Dr. ANDREW MALCOLM. Toronto psychiatrist; member, Drug Advisory Committee, Ontario College of Pharmacy; formerly Senior Psychiatrist, Rockland State Hospital, New York (1955–1958).

Dr. HAROLD KOLANSKY. Currently Associate Professor of Psychiatry at the University of Pennsylvania School of Medicine; twice President of the Regional Council (Pennsylvania, New Jersey, Delaware) of Child Psychiatry; Director of Child Psychiatry, Albert Einstein Medical Center, Philadelphia, 1955–1969; Chairman, Department of Psychiatry, Albert Einstein Medical Center, 1968–1969.

Dr. WILLIAM T. MOORE. Currently Associate Professor in Clinical Psychiatry, University of Pennsylvania School of Medicine; Associate Professor of Child Psychiatry at Hahnemann Medical College for 13 years up until 1972; for the past five years Director of Training, Division of Child Analysis, Institute of Philadelphia Association for Psychoanalysis.

Professor ROBERT HEATH. Chairman of the Department of Psychiatry and Neurology at Tulane University Medical School.

Dr. PHILLIP ZEIDENBERG. Professor of Psychiatry at Columbia University; Chairman of the Drug Dependence Committee of the New York State Psychiatric Institute.

Dr. JULIUS AXELROD. Nobel Prize winning research scientist at the National Institute of Mental Health.

Professor HARDIN B. JONES. Professor of Physiology and Professor of Medical Physics at the University of California, Berkeley; Assistant Director of the Donner Laboratory of Medical Physics at Berkeley.

Dr. CONRAD SCHWARZ. Associate Professor, Department of Psychiatry, University of British Columbia and Consultant Psychiatrist to the Student Health Service; Chairman of the Drug Habituation Committee of the British Columbia Medical Association.

Dr. FOREST S. TENNANT, JR. Medical Director for several drug abuse programs in the Los Angeles area; officer in charge of the drug abuse program of the U.S. Army Europe, 1971–1972.

THE SCIENTIFIC FINDINGS

That our hearings succeeded in achieving their objective has been demonstrated by the dramatic increase of interest, on the part of the scientific community as well as the press, in the new scientific evidence on marihuana. For example, a recent issue of *Science* magazine (August 23, 1974) points out "the notion that marihuana is harmless has enjoyed a high degree of acceptability with only a minimum of scientific support. . . . Since 1969, when the federal government began making marihuana of controlled quality available to research scientists, evidence suggesting potential hazards has accumulated at a rapid pace. Those five years of research have provided strong evidence that, if corroborated, would suggest that marihuana in its various forms may be far more hazardous than was originally suspected." I think it worthy of note that ten of the scientists whose findings were quoted by the article in *Science* were among the witnesses who testified in the subcommittee's recent hearings.

The collective testimony of the eminent scientists who came to Washington to testify may be summarized as follows:

(1) *THC, the principal psycho-active factor in cannabis, tends to accumulate in the brain and gonads and other fatty tissues in the manner of DDT.* This was established beyond challenge by the research of NIMH Nobel Laureate, Dr. Julius Axelrod, and his associates. As a corollary of this, they found that THC persists in the body long after the act of ingestion. In some parts of the body, residual amounts could be found as much as a week after ingestion.

(2) *Marihuana, even when used in moderate amounts, causes massive damage to the entire cellular process:*

(a) It reduces DNA and RAN synthesis within the cell, which in turn sharply reduces the mitotic index, or the rate at which the cells give birth to new cells. (Nahas, Morishima, Zimmerman, Leuchtenberger, Paton).

(b) In the case of the T-lympocytes (the cells involved in the immune process), marihuana use at the three-times-a-week level results in a 41 percent reduction in cell birth. (Nahas and associates)

(c) It results in far more cells with defective chromosome complements—from 38 to 8 chromosomes instead of the normal complement of 46. (Morishima)

The findings of five of the scientists who testified converged on the central theme of cellular damage. Other research that had been done in this field was also referred to. Professor W. D. M. Paton of Oxford University, one of the world's leading pharmacologists, summarized this recent research in these terms:

"Numerous such effects have now been described, including actions on microsomes, on mitochondria, on neurones, fibroblasts, white blood cells, and on dividing cells, affecting metabolism, energy utilization, synthesis of cellular constituents, and immunological responses."

On the specific question of cellular damage, additional evidence is becoming available almost by the week. Since Dr. Nahas testified, for example, his findings on damage to the immune cells have been confirmed by two nationally prominent medical scientists, Dr. Louis Harris and Dr. Louis Lemberger. Other aspects of cellular damage will be covered in several research papers, prepared under official auspices, which are shortly to be published.

Needless to say, the confirmation that marihuana does such serious damage to the entire cellular process opens up an entire spectrum of frightening possibilities.

(3) *Tied in with its tendency to accumulate in the brain and its capacity for cellular damage, there is growing body of evidence that marihuana inflicts irreversible damage on the brain, including actual brain atrophy, when used in a chronic manner for several years.* Psychiatrists who testified said that they knew of many cases of brilliant young people who went on prolonged cannabis binges, and then tried to go straight—only to discover that they could no longer perform at the level of which they had been capable (Heath, Powelson, Kolansky and Moore, Paton) Professor Paton referred to animal experiments which demonstrated that rats exposed to marihuana had smaller brains than rats which were not exposed, and to research by Dr. Campbell and associates in England which found brain atrophy in a group of young cannabis smokers comparable to the atrophy that is normally found in people aged 70 to 90. Professor Heath reported that, in experiments with rhesus monkeys exposed to marihuana, highly abnormal brain wave patterns persisted after the marihuana was withdrawn, suggesting long-term or permanent damage to the brain.

(4) *There is also a growing body of evidence that marihuana adversely affects the reproductive process in a number of ways, and that it poses a serious danger of genetic damage and even of genetic mutation.* Scientific testimony presented pointed to the following conclusions:

(a) Male hormone (testosterone) level was reduced by 44 percent in young males who had used marihuana at least four days a week for a minimum of six months. (Kolodny)

(b) Sperm count was dramatically reduced in the same group of marihuana smokers, falling almost to zero with heavy smokers, so that they had to be considered sterile. (Kolodny A similar result was found with mice. (Leuchtenberger)

(c) Very heavy smoking in a number of cases resulted in impotence. Potency was recovered in some of these cases when marihuana was given up. (Kolodny, Hall)

(d) In animal experiments, the spermatids (the precursors of the sperm cells) were found to be abnormal in the sense that they carried reduced amounts of DNA. (Leuchtenberger)

(e) Regular marihuana use, even down to the once a week level, results in roughly three times as many broken chromosomes as are found in non-users. While further research is necessary, this suggests the possibility of genetic abnormalities. (Stenchever)

(f) In a number of animal experiments, marihuana was found to cause a very high rate of fetal deaths and fetal abnormalities, including runting and lack of limbs—the thalidomide effect. (Paton)

(5) *Chronic cannabis smoking can produce sinusitis, pharyngitis, bronchitis, emphysema and other respiratory difficulties in a year or less, as opposed to ten to twenty years of cigarette smoking to produce comparable complications.* (Tennant, Paton, Kolansky and Moore) Professor Paton pointed out that emphysema, which is normally a condition of later life, is now cropping up with increasing frequency in young people, opening up the prospect of "a new crop of respiratory cripples" early in life.

(6) *Cannabis smoke, or cannabis smoke mixed with cigarette smoke, is far more damaging to lung tissues than tobacco smoke alone. The damage done was described as "precancerous."* (Tennant, Leuchtenberger) Although further research is indicated, preliminary observations suggest that marihuana may be a far more potent carcinogen than tobacco.

(7) *Chronic cannabis use results in deterioration of mental functioning, pathological forms of thinking resembling paranoia, and "a massive and chronic passivity" and lack of motivation—the so-called "amotivational syndrome."* (Powelson, Bejerot, Zeidenberg, Malcolm, Schwarz, Jones, Kolansky and Moore, Hall, Soneif, Tennant)

Describing the zombie-like appearance of chronic cannabis users, Dr. Tennant said: "Major manifestations were apathy, dullness and lethargy, with mild to severe impairment of judgment, concentration and memory . . . physical appearance was stereotyped in that all patients appeared dull, exhibited poor hygiene, and had slightly slowed speech. . . ."

Several psychiatrists suggested that the total loss of their own will would make a large population of cannabis users a serious political danger because it makes them susceptible to manipulation by extremists. (Powelson, Kolansky and Moore, Malcolm.)

THE SOCIAL CONSEQUENCES OF THE MARIHUANA EPIDEMIC

The scientific evidence presented to the subcommittee points to an array of frightening social consequences, or possible consequences.

(1) If the cannabis epidemic continues to spread at the rate of the post-Berkeley period, we may find ourselves saddled with a large population of semi-zombies—of young people acutely afflicted by the amotivational syndrome. There is evidence that many of our young people, including high school and junior high school students, are already afflicted by the "amotivational syndrome." The general lack of motivation of the current generation of high school students is a common complaint of teachers. Some of them point out that the growth of this phenomenon in recent years has roughly paralleled the spread of the cannabis epidemic.

(2) We may also find ourselves saddled with a partial generation of young people—people in their teens and early twenties—suffering from irreversible brain damage. Their ability to function may improve if they abandon cannabis, but they will remain partial cripples, unable to fully recover the abilities of their pre-cannabis years.

(3) The millions of junior high school and grade school children who are today using marihuana may produce another partial generation of teenagers who have never matured, either intellectually or physically, because of hormonal deficiency and a deficiency in cell-production during the critical period of puberty. This fear was expressed in particularly urgent terms by Dr. Paton and Dr. Kolodny. As Dr. Paton put it, we may witness the phenomenon of a generation of young people who have begun to grow old before they have even matured.

(4) There are other frightening possibilities, too. There is the possibility of which Dr. Paton spoke that we may develop a large population of youthful respiratory cripples. And there is the possibility—which can only be confirmed by epidemiological studies—that marihuana smokers are producing far more than their quota of malformed or genetically damaged children.

(5) There is the growing body of evidence that marihuana use leads to indulgence in other drugs.

(6) If the epidemic is not rolled back, our society may be largely taken over by a

"marihuana culture"—a culture motivated by a desire to escape from reality and by a consuming lust for self-gratification, and lacking any higher moral guidance. Such a society could not long endure.

These are some of the reasons why we cannot legalize marihuana, and why society cannot remain indifferent to the epidemic.

THE EPIDEMIC POTENTIAL OF CANNABIS

What makes the prospect even more terrifying is the extraordinary epidemic potential of cannabis. It is doubtful that any other drug in common use today has a comparable potential.

I do not underestimate the damage done by the abusive use of alcohol. But the nature of alcohol places certain limitations on its epidemic spread. It is impossible, or at least very difficult, to take a quart of whiskey or a six-pack of beer to one's place of work, or, in the case of a teenager or grade schooler, to take it to school. If one did take it to school or to work, it would be difficult to find the time during the workday or during school hours to get oneself really intoxicated on alcohol. And if a worker or a student did manage to get himself stoned on alcohol, he would be given away by his drunken stagger or by the smell of alcohol on his breath.

But with marihuana, there are no such limitations. It is cheap enough so that even a fourth or fifth grader can afford to buy a joint or two with his weekly allowance. It is compact enough so that a few joints can easily be concealed on the body. All it requires is a 10 or 15 minute break to get thoroughly stoned. And, apart from a tired and passive look which may suggest that user is short on sleep, there are no telltale symptoms; the user, though stoned, does not walk with a stagger, nor is there any odor on his breath. A student could sit through an entire day in a cannabis stupor, and learn nothing—and his teacher would be none the wiser.

On top of this, users of marihuana suffer from a much more compelling urge to proselytize and involve others than do users of alcohol. One can attend a cocktail party and drink ginger ale, and not be harassed and pushed by one's cocktail friends to get in on the act and drink. At pot parties, the pressures are infinitely greater.

Another factor contributing to the spread of the cannabis epidemic is the tremendous potency of the material available and the ease with which it can be concealed and transported. A pound of "liquid hashish"—a concentrated distillate derived from either marihuana or hashish—would theoretically be enough to intoxicate a city of 15,000 people.

Still another factor is that, with marihuana and hashish, chronic abuse begins at a use level which would be insignificant with alcohol. A person who took a drink of whiskey once a week or even three times a week, would be considered a light drinker; it has yet to be argued that alcohol consumption at this level can do any damage. But a person who smokes marihuana three times a week or more is generally considered a chronic smoker; and there are some scientists who insist that even once a week smoking constitutes chronic use. In support of this contention, they point to the facts that THC persists in the brain for a week or more after smoking, and that some of the research covered in our recent hearings found dramatic changes even at the once a week level (cf. Stenchever on chromosome damage.).

Finally, there is the almost unbelievable rate at which—if it is readily available—a cannabis user can escalate from occasional social use to chronic and massive abuse. It generally takes years before a chronic drinker escalates to a quart a day. But, according to Dr. Tennant, GI's who arrived in Germany as casual marihuana users, would a month or two later be consuming 50 or 100 grams—and in some cases up to 600 grams—of hashish monthly. Three grams of hashish a day, it should be pointed out, is roughly 12 times the amount required to produce a hashish intoxication.

WHERE THE EPIDEMIC STANDS TODAY

There are conflicting estimates of the number of chronic cannabis users in our country. According to some estimates, there are roughly 20 to 25 million people who have used marihuana in one degree or another, but only one to two million who may be considered regular users. According to the estimate of NORML (National Organization for the Reform of Marihuana Laws), the total number of Americans who have been exposed to marihuana runs close to thirty-five million, while the number of regular users is past the ten million mark.

Figures on seizures of marihuana and hashish submitted to our hearings by the Drug Enforcement Administration strongly suggest the validity of the higher estimate. According to DEA, federal seizures of marihuana over the past five years have increased tenfold, to a total of 780,000 pounds in 1973, while federal seizures of hashish over the same period of time increased twenty-five fold, to a total of almost 54,000 pounds. These figures do not include seizures by state and local law enforcement authorities. Assuming that ten times as much got into the country as was actually seized—a fairly conservative estimate—this would mean that total consumption of marihuana in 1973 was probably close to ten million pounds, while total consumption of hashish probably exceeded 600,000 pounds. (These estimates make some allowance for non-federal seizures—for which no figures are available.)

These are truly staggering quantities when one understands just how potent marihuana and hashish are and how little is required to become intoxicated. No one could possibly get intoxicated on an ounce or two ounces of hard liquor. An ounce of hashish with a 10 percent THC content is sufficient for a hundred intoxications; an ounce of marihuana with a 1.5 percent THC content is enough for roughly twelve intoxications. And when it comes to "marihuana oil," or "liquid hashish," as it is sometimes called, the THC content of which can run as high as 60 to 90 percent, we have a substance with an almost lethal potential for mass intoxication. One drop of liquid hash is enough to send the user into the stratosphere, while a pound of the strongest variety would be enough to intoxicate a population of 15,000.

These figures provide some clue—but only a partial clue—to the damage done by the massive quantities of marihuana and hashish consumed in our country last year.

THE EMERGENCE OF AN ALCOHOL-CANNABIS EPIDEMIC

It must be emphasized that those who are caught up in the cannabis epidemic are not using marihuana or hashish as a substitute for alcohol. With increasing frequency they are being consumed together. The scientists who testified before the subcommittee were agreed that adding marihuana to alcohol, or alcohol to marihuana does not produce an arithmetic effect but a synergistic, or compounding, effect. The combination of the two intoxicants produces a far more potent and dangerous form of intoxication, whose short and long term consequences we still know very little about. While there are reported to be some 10 million problem drinkers in our country, the overwhelming majority of those who use alcohol are what we call social drinkers, who take it occasionally and with moderation. But at the point where a person takes one drink of whiskey with a joint of pot, we are no longer dealing with a social drinker—we are dealing with someone who is suffering from a highly dangerous form of intoxication.

In its own right, the scale of the current cannabis epidemic would give us plenty to worry about, and so would the scale of alcohol abuse. The emergence of an alcohol-cannabis epidemic is even more worrisome.

THE MYTH OF HARMLESSNESS

The spread of the epidemic has been facilitated by the widespread impression that marihuana is a relatively innocuous drug. This impression has been shared by liberals and conservatives, by laymen and judges, and even by people actively involved in the war on drugs. For example, in March of 1973 an advisory committee consisting of some 40 prominent D.C. citizens filed a report urging the complete legalization of marihuana on the ground that:

"No demonstrable medical evidence is available to support the assertion that marihuana use is hazardous or detrimental to the physical or mental health of the user."

The widespread acceptance of the myth of harmlessness has been due to several things. Certainly a role of some importance was played by the militant pro-marihuana propaganda campaign conducted by many New Left organizations, by academicians sympathizing with the New Left, and by the entire underground press, ever since the Berkeley uprising.

Some of this propaganda was positively euphoric on the virtues of marihuana. Dr. Joel Fort of San Francisco, a member of the Sociology Department of the University of California and a former consultant on drug abuse to the World Health Organization, had this to say on the subject: "Cannabis is a valuable pleasure giving drug, probably much safer than alcohol, but condemned by the power structure of our society." An article in "The Sciences" by L. Greenwald in 1968 went even further. "Marihuana," said Greenwald, "restores to the student his ability to feel in an often hostile environment, and the liberating action of that drug is going to allow him to experience more intimate social contact."

But the myth of harmlessness has been stimulated in even greater degree by a number of highly publicized writings and by reports, some official, some unofficial, which have taken a rather benign attitude toward marihuana. A major role was also played by the generous attention which the media bestowed on militant drug enthusiasts like Timothy Leary and Jerry Rubin. The damage was further compounded by the virtual blackout imposed by much of our media—at least until recently—on adverse scientific evidence about the effects of marihuana. The result has been that Congress and the American public have been exposed for years to an appallingly one-sided presentation of the marihuana controversy.

Another factor contributing to the myth of harmlessness was the selective manner in which the Shafer Commission Report was handled by the media. This report, as several witnesses pointed out, contained a number of apparently contradictory passages, which made it possible to write a story suggesting caution, or to write one suggesting that its emphasis was on tolerance. But it did contain quite a number of fairly strong cautionary passages. It was for the purpose of setting the record straight on the Shafer Commission Report that one of the first witnesses heard by the Subcommittee was Dr. Henry Brill, who had served as senior psychiatric member of the Commission. This is what Dr. Brill had to say on the subject:

"I am concerned about the misinterpretations which have developed with respect to the marihuana report of that Commission. These misinterpretations result from reading the reassuring passages in the report and ignoring the final conclusions and recommendations and the passages in the report on which they were based. As a result it has been claimed that the Commission's report was intended to give marihuana a clean bill

of health, and as a covert or direct support for legalization of this drug in the near future, or as a step in that direction. Nothing could be further from the truth.

"From my knowledge of the proceedings of the Commission, I can reaffirm that the report and the subsequent statements by the Commission meant exactly what they said, namely that this drug should not be legalized, that control measures for trafficking in the drug were necessary and should be continued, and that use of this drug should be discouraged because of its potential hazards."

It was because of this pervasive imbalance in dealing with the question of marihuana that so many intelligent people have been under the impression that the scientific community regards marihuana as one of the most innocuous of all drugs. Part of the purpose of our recent hearings was to correct this imbalance—to present the "other side" of the story—to establish the essential fact that a large number of highly reputable scientists today regard marihuana as an exceedingly dangerous drug. We make no apology, therefore, for the one-sided nature of our hearings—they were deliberately planned this way.

MARIHUANA AND THE LAW

In previous statements, I have made it clear that I am opposed to the decriminalization of marihuana use and that I believe some penalties have to be retained. However, a man would have to be devoid of compassion if he did not sympathize with the plight of a youthful offender who was caught smoking marihuana because he succumbed to peer pressures or to the bad advice he received from older students and from a small but vociferous group of academicians. (The academic propagandists for marihuana are protected by the First Amendment, but in my judgment they are far more culpable than the young people who have heeded their advice!) In most cases involving youthful offenders, especially first offenders, the purpose of justice is not served by sentencing them to prison and giving them criminal records. Our federal laws and many of our State laws have in recent years been modified in a manner that reflects a more compassionate approach, and the law is further tempered by the compassionate understanding which the great majority of judges have for the problems of young people.

Although there is still some unevenness in the state laws governing the use of marihuana and although there is always room for review and improvement, in practice very few young people are being sent to prison for simple possession of marihuana, especially when they are first offenders. On this point, there is such broad agreement that I feel it is no longer at issue.

But there is a militant lobby in our country which has been agitating and lobbying for the complete legalization of marihuana. As a stepping stone in that direction, they are working for the complete *decriminalization* of simple possession. This means that personal use of marihuana would no longer be covered by criminal law, that it would not even be considered a misdemeanor under the law. These matters still *are* at issue—and I truthfully believe that they cannot intelligently be decided without an assessment of the known and potential dangers posed by marihuana use.

Not all drugs are equal—no one, for example, has yet proposed that we deal with coffee and heroin, or tobacco and heroin, in exactly the same manner. And the evidence I have presented in the preceding pages should be sufficient to establish that the dangers of cannabis are much closer to the dangers of heroin, in scope and quality, than they are to the admitted but far more limited dangers of coffee or tobacco—or, for that matter, alcohol.

The scientists who testified before the subcommittee were unanimous on the point that it made no sense to send young people to prison for simple possession of a few joints of marihuana. On the other hand, they were strongly opposed to legalization, and not one of them spoke in favor of decriminalization. They expressed the belief that it would seriously undercut any national effort to discourage marihuana use if all penalties were removed for simple possession, as the Shafer Commission had recommended—and which remains the continuing objective of the pro-marihuana lobby. Dr. Brill, who, as a member of the Shafter Commission, had voted in favor of eliminating all penalties, indicated to the subcommittee that he was now rethinking this recommendation.

Commenting on the proposal that the decision on whether or not to use drugs, and especially marihuana, should be left to the individual, Dr. Andrew Malcolm, a distinguished Canadian psychiatrist, called for a combination of education and the law. Said Dr. Malcolm:

"It is necessary to have some external restraint when, indeed, some of the people are incapable of exercising internal restraint. But those people who propose [that the matter be left to] 'wise personal choice' usually are unalterably opposed to any kind of external restraint. It is very foolish, because what we need, in fact, is both of these elements."

Dr. Phillip Zeidenberg, Chairman of the Drug Dependence Committee of the New York State Psychiatric Institute, while he held that the marihuana epidenmic could not be eradicated by legal measures alone, nevertheless strongly opposed legalization and said that there have to be some penalties for use. These were Dr. Zeidenberg's words:

"I believe that legalization will turn on a 'green light' which will enormously increase the number of chronic heavy users, just as it has in every other country where de facto legalization exists. Once this happens, marihuana will become an integral part of our social structure and take on complicated social and symbolic significance, as tobacco and alcohol already have. Once this happens, it will be virtually impossible to remove it.

"Ultrapunitive measures taken against individuals occasionally using the drug can only lead to the backlash of pressure for legalization. Offenders should be given light, but significant sentences, enough to be a sufficient deterrent to repeated use. Chronic heavy users should be offered psychiatric treatment, not jail. . . . The job of the law is to find the appropriate deterrent so that the marihuana problem is kept as a minor drug abuse problem, without crucifying errant adolescents."

Warning about the drive to legalize cannabis in the United States, Professor Nils Bejerot of Sweden said:

"The demand for legalized cannabis has been strongest in those countries which have had the shortest experience and the weakest forms of the drug. Correspondingly, I consider that as a phychiatrist one's attitude to cannabis becomes more negative the more one sees of its effects.

"If cannabis were legalized in the United States, this would probably be an irreversible process not only for this country and this generation, but perhaps for the whole of Western civilization. As far as I can see, another result would be a breakdown of the international control system regarding narcotics and dangerous drugs."

The pro-marihuana lobby brandishes the statistic that there were some 400,000 arrests nationwide for marihuana offenses last year. They do so in a manner which creates the impression that 400,000 young people went to jail because they were caught with a few joints in their possession. The actual situation is quite different.

The number of arrests involving marihuana was very high, among other reasons because virtually every petty criminal arrested for shoplifting or burglary or mugging or other similar offenses had marihuana in his possession at the time of his arrest. But according to many reports, our law enforcement authorities—federal, state, and local—in most cases do not even bother to make arrests when they find young people smoking marihuana or in possession of less than an ounce.

The cases that do come to court for the most part receive suspended sentences or fines, while most states now have a provision in their laws, similar to the provision in the federal law, calling for the expunging of the record for first offenders after one year, if parole is satisfactorily completed.

However, the law is uneven from state to state. Some states, while they have the theoretical power to send first offenders to prison, in practice rarely use this power. But here and there, it must be conceded, simple possession is still punished by prison terms.

I believe it would be helpful in dealing with this situation if the federal law and state laws could be brought into basic harmony on the question of marihuana. I do not suggest that the states slavishly adapt their laws to the current federal model; in many respects, in fact, I think federal law has something to learn from existing state statutes.

There is one state statute that does not recommend itself as a model: that is the marihuana law recently adopted by the State of Oregon. Under this law, simple possession of small quantities of marihuana is not treated as a violation of the criminal law but as a civil violation—something akin to a parking ticket. While the maximum fine provided is one hundred dollars, in practice the fines imposed rarely exceed thirty dollars. And those thus fined, if they can afford it, can go on collecting marihuana violations just as freely as some chronic illegal parkers collect parking tickets.

This approach, I submit, is altogether too permissive and just doesn't take into account the serious social damage done by marihuana or the compelling need to protect society against the spread of the habit. It doesn't take into consideration the basic fact that all drug addiction—including marihuana addiction—is like a contagious disease. Society can't remain indifferent to the spread of this disease.

The law must be framed in a manner that makes it unmistakably clear to young people that smoking marihuana *is* a crime against society. This is something that decriminalization would completely destroy. I believe that the kind of escalated penalties provided by state law in New Mexico, to give one example, make much more sense. Under this law, the possession of one ounce or less for a first offender is punishable by a fine of $50 to $100 and/or 15 days in jail. The jail sentences are rarely imposed, but this much discretion is given to the judge. The penalty for repeat offenders is a fine of $100 to $1,000 and/or one year in jail. Suspended sentences are frequently given and there is provision for expunging the record after one year.

New legislation governing the use of drugs requires the most careful consideration by Congress because—as Dr. Bejerot pointed out—concessions to tolerance, once made, are very difficult, if not impossible, to eradicate. However, as far as marihuana use is concerned. I believe that the philosophy guiding such legislation might well be based on the opinions expressed by Dr. Zeidenberg and the other scientists who testified before the subcommittee. I think there is much merit to Dr. Zeidenberg's proposal, for example, that instead of jail sentences, we might consider sending chronic abusers for a period of time to an institution where they will be given intensive education on drugs and psychiatric treatment if they need it.

When it comes to the pushers and the traffickers, I think our federal and state laws have got to be reinforced, I find it an outrage that, over and over again, criminals caught in the possession of hundreds and even thousands of pounds of marihuana get off with very light sentences or even with six months suspended sentence. For the pushers and traffickers, there have got to be heavy minimum sentences, and they have got to be mandatory.

The suggestion has been made that it might help to break up the traffic in drugs if offenders at every level—users, pushers, and small and intermediate traffickers—could be assured of suspended sentences if they cooperated by identifying the source, or sources, from which they had obtained their drugs. This is a proposal which merits serious consideration.

There are some who argue that tough law enforcement is not the answer to the drug problem, that we won't be able to deal effectively with the drug problem until we eliminate our slums, eliminate poverty, eliminate unemployment, and create a social utopia. I am all in favor of doing everything we reasonably can do to improve the quality of our society. But the fact is that every year the early sixties has witnessed a massive increase in the amount we spend for new social programs—and the same period of time has witnessed a staggering increase in our drug problem.

No drug problem has ever been controlled by determinalization or by social reforms. In every country where the drug problems have been effectively controlled, it has been thanks to strong laws against both the use and sale of the drug. That is how it is controlled in Communist countries; and that is how it has been controlled in some non-Communist countries, both authoritarian and democratic. There is no serious drug problem, for the indigenous population or for the GI's, in either Taiwan or South Korea. Nor is there one in Japan. The contrast between Germany and Italy is most instructive in this connection. In Germany, where drug laws are lax and law enforcement ineffective because it is fragmented among the *Laender*, or states, there has been a runaway epidemic of hashish consumption among the American GI's. (According to Defense Department witnesses, this situation has now improved significantly—although it still remains serious.) In Italy, where the drug laws are much stronger, drug use among GI's has been kept to a minimal level. The GI's in both countries are basically the same. The difference is the law.

THE NEED FOR A NATIONAL EDUCATIONAL PROGRAM

The scale of the marihuana-hashish epidemic makes it essential that we embark—with as little delay as possible—on a national educational program directed in the first place to our young people.

Can the facts that are assembled in this volume be communicated to young people who are disposed to be skeptical about information they receive from "the establishment?" I am convinced that this evidence *can* be communicated to young people and *can* influence them—because it is far more graphic, far more persuasive and far more authoritative than any information that has heretofore been available for marihuana education programs.

Dr. Forrest Tennant, who was in charge of the U.S. Army drug program in Europe from 1970 to 1972, told the subcommittee that at one point he had actually given up on anti-cannabis educational programs because the material at that time was not too persuasive, and while the programs discouraged some GI's, they stimulated the curiosity of others, so that there was no real net progress. He expressed the conviction, however, that armed with the recent evidence that had been presented to the subcommittee by so many eminent scientists, it would be possible to mount an educational program that GI's would find credible. The fact is that no young person wants to run the risk of irreversible brain damage, and no young male wants his male hormone level reduced by more than 40 percent or his sperm count reduced to close to zero. Nor does any young person, boy or girl, want to run the risk of genetically damaged children. These are dangers that young people will respond to.

There is an even larger matter that should be considered by every young person who finds himself yielding to the temptation of drugs or to peer pressures. Whatever each of us does, affects, for better or for worse, all those around us. And the fact is that every young person who takes marihuana or hashish or other drugs, drags down not only himself, but drags down his friends, drags down his family, drags down his community, drags down his nation. I would commend to every young person who is prepared to stop and think the wise words of Dr. Gabriel Nahas, one of the eminent scientists who appeared as a witness before the Subcommittee:

"One may wonder . . . how long a political system can endure when drug taking becomes one of the prerequisites of happiness. If the American dream has lost its attraction, it will not be retrieved through the use of stupefying drugs. Their use only delays the young in their quest to understand the world they now live in and their desire to foster a better world for tomorrow."

A final word of an editorial nature. So many scientific papers and supporting documents were left with the subcommittee by the witnesses that the inclusion of all of them would have made this a document of almost prohibitive length. In the interests of economy, only a portion of these documents have been included in the Appendix. I particularly regret that it was not possible to include a bibliography of some 800 cannabis research papers which Professor W. D. M. Paton of Oxford prepared for the subcommittee, because this volume was already in page proof at the time of its arrival. I ask the indulgence of the scientists who gave supplementary material to the subcommittee which has not been included in the printed Appendix. Hopefully, this material can be included in a followup study or documentation.

On behalf of the subcommittee, I want to thank the many distinguished witnesses who gave so generously of their time to make these landmark hearings possible.

FOOTNOTES

[1] Marihuana and hashish are both derived from the cannabis, or hemp plant. Marihuana consists of the leaves and female flowers; hashish comes from the resin of the plant. Hashish is roughly 8 to 10 times as strong as marihuana.

[2] The program is known as the Marihuana Project of the Research Institute of Pharmaceutical Sciences, which is part of the School of Pharmacy at the University of Mississippi. The program was established in 1968, as part of a national program of research, by Dr. Coy Waller, formerly Vice President in Charge of Research at Meade-Johnson and consultant to the National Institute of Mental Health, who today serves as the Director of the Research Institute. The first Director of the Marihuana Project, from 1968 to 1971, was Dr. Norman Doorenbos. Since 1971, it has been under the direction of Dr. Carlton Turner, who also serves as Associate Director of the Research Institute.

In addition to standardizing the marihuana used for research purposes, Dr. Turner's scientists have developed analytical methods which enable them to give accurate readings on ten different cannabinoids contained in marihuana samples—a few years ago, they were able to analyze for only three cannabinoid components. The marihuana the Institute cultivates is now used routinely for all research projects sponsored through the National Institute of Mental Health, while the United Nations Narcotics Commission has recommended that the analytical procedures developed at the University of Mississippi be used worldwide.

If today we know far more about marihuana than we did two or three years ago, it is thanks in large measure to the pioneering work done at this internationally unique research center.

Mr. EASTLAND. Mr. President, I also ask unanimous consent to insert in the RECORD a letter received from a New Jersey father whose 16-year-old son hanged himself after becoming involved, first with marihuana and then with other drugs. In taking his life, he left a letter to his parents which I also want to insert into the RECORD, because I think it constitutes an eloquent warning to the millions of young people who try pot on an experimental basis.

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

UNION CAMP CORP.,
Wayne, N.J., July 24, 1974.

Hon. JAMES O. EASTLAND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EASTLAND: I was pleased to learn from Mr. David Martin that your Subcommittee on Internal Security is actively studying the marijuana problem. In particular, I was impressed that you have been giving, with the help of qualified professionals and scientists, close scrutiny to the harmful effects marijuana can and does have on many individuals.

Proponents of more lenient use laws, and even legalization, do not seem to recognize or care about the very real dangers involved. The question of eased laws, or ultimate legality, has got to *follow*, not precede, the question of potential harm.

Recently my 16-year-old son, David, took his own life by hanging. He was a beautiful young man in every respect, and his last act was to leave us a letter as a warning to others. I would appreciate it very much if you and other members of your subcommittee would review the enclosed article giving details of his life and death.

Note in particular that David pinpointed the regular smoking of marijuana as his "mistake." Also, he specifically says that marijuana led him to try LSD. Based on David's letter and on subsequent talks I've had with students and police officials, I personally believe that marijuana is the most insidious of all drugs. It's the bait that gets our youth involved at the outset, and leads many on to other drugs. Narcotics officers tell me that most hard drug users started with pot.

We were unaware of David's use of marijuana, and like many parents, were completely ignorant of the symptoms. Since, but too late to help David, we know them well and now they're all too clear—drowsiness, depression, and some apparent psychosomatic symptoms that his doctors felt were imaginary. We also subsequently learned from his friends that David had been working hard to cure himself of his addiction to this drug. Doctors frequently make a distinction between physical and psychological addiction, and say that marijuana can cause the latter. I think there is an implication that psychological addiction is less onerous. My only comment on that is that the final morning in school before taking his life, he told a close buddy that he "couldn't keep off pot" and needed it. All I've learned about David's last few weeks of life convinces me that marijuana, not LSD, precipitated his suicide.

David's case may not be as extreme an example as it appears. I believe that many teenage suicides stem from this cause. I also be-

lieve that marijuana is driving a wedge between parents and children in thousands, probably millions, of homes across the country. You don't hear much about this because families with marijuana problems don't find it a subject they care to discuss, even among their closest friends.

Finally, I believe it is entirely illogical to have criminal penalties for the production and sale of a drug like marijuana, while at the same time ease penalties or possibly legalize possession and use. Moves in this direction will condone use, broaden the market and increase the profits for those engaged in illegal trafficking. Worst of all, we would be increasing the likelihood of irreparable harm to the young people of this country.

Mrs. Beggs and I thank you, Senator Eastland, and your fellow committee members for your diligence on this most serious subject. We also hope that David's warning proves helpful to you and to the young people of this country.

Sincerely yours,

HERBERT S. BEGGS.

LETTER FROM DAVID BEGGS TO HIS PARENTS

DEAR MOM AND DAD: You have probably wondered why I have been acting so strange lately. The reason is simple.

During my freshman year, I tried pot. I liked it. Soon I started smoking it regularly. That was my mistake. This led to the trying of LSD. I tried this drug several times.

I am now at the point where clear thinking is impossible. My friends have noticed it and I think you have too.

You have been great parents to me and please don't blame yourselves for any of this.

Warn Andy and the girls about this.

Love,

DAVID.

Mr. EASTLAND. Mr. President, I further ask unanimous consent to insert in the RECORD the text of the letter to which I have referred from Dr. Robert L. DuPont, Director of the Special Action Office for Drug Abuse Prevention.

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

SEPTEMBER 6, 1974.

Hon. JAMES O. EASTLAND,
U.S Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I have followed with interest the Internal Security Subcommittee hearings on the potential dangers of marihuana use. The Committee—and you as its chairman—have performed a valuable public service in bringing the scientific evidence of the health hazards of marihuana to the public attention:

My congratulations for the excellent job done, and my sincerest thanks as well.

Cordially,

ROBERT L. DUPONT, M.D.,
Director.

Mr. EASTLAND. Finally, Mr. President, I ask unanimous consent to insert in the RECORD the text of a resolution on cannabis and its derivatives adopted this last September 25 by the General Assembly of the International Criminal Police Organization-Interpol, by a vote of 90 for, with none against and no abstentions. This resolution is highly significant because it demonstrates that around the world, those who are charged with the responsibility for law enforcement have absolutely no doubt about the serious dangers of marihuana and the other cannabis derivatives.

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

RESOLUTION ON CANNABIS AND ITS DERIVATIVES

Noting that the ICPO–Interpol General Assembly at its 40th, 41st, and 42nd sessions adopted resolutions recommending the eradication of illicit cannabis cultivation as well as programs warning the public of the direct and indirect dangers of cannabis and its derivatives.

Recognizing that numerous seizures of increasingly large quantities of cannabis indicate growing traffic and abuse.

Particularly concerned at the growing traffic in and abuse of the extremely dangerous extract known as "liquid hashish."

The ICPO–Interpol Genreal Assembly, meeting in Cannes from 19th to 25th September, 1974, at its 43rd session,

Reaffirms the recommendation contained in the above-mentioned resolutions,

Calls the attention of all member countries to the necessity for intensifying the struggle against the traffic in liquid hashish.

Adopted September 26, 1974 by a vote of 90 for, 0 against, 0 abstentions.

ADDITIONAL COSPONSORS OF RESOLUTIONS

SENATE RESOLUTION 352

At the request of Mr. Moss, the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of Senate Resolution 352, a resolution to amend rules XXV and XVI of the Standing Rules of the Senate with respect to jurisdiction over energy research and development matters, and for other purposes.

SENATE RESOLUTION 418

At the request of Mr. AIKEN, the Senator from North Dakota (Mr. BURDICK) was added as a cosponsor of Senate Resolution 418, a resolution relating to the need for an increase in the price support for milk.

AMENDMENTS SUBMITTED FOR PRINTING

DEEPWATER PORT ACT OF 1974—S. 4076

AMENDMENTS NOS. 1953 AND 1954

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

Mr. BUCKLEY submitted two amendments intended to be proposed by him to the bill (S. 4076) to regulate commerce, promote efficiency in transportation, and protect the environment, by establishing procedures for the location, construction, and operation of deepwater ports off the coasts of the United States, and for other purposes.

PRESIDENTIAL RECORDINGS AND MATERIALS PRESERVATION ACT—S. 4016

AMENDMENT NO. 1955

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

Mr. HRUSKA submitted an amendment, in the nature of a substitute, intended to be proposed by him to the bill (S. 4016) to protect and preserve tape recordings of conversations involving former President Richard M. Nixon and made during his tenure as President, and for other purposes.

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 1944

At the request of Mr. SCHWEIKER, the Senator from Utah (Mr. BENNETT) was added as a cosponsor of amendment No. 1944, intended to be proposed to the bill (S. 3265) to amend the Jury Selection and Service Act of 1968.

NOTICE CONCERNING NOMINATIONS BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. ROBERT C. BYRD. Mr. President, the following nominations have been referred to and are now pending before the Committee on the Judiciary:

Edward S. King, of New York, to be U.S. marshal for the western district of New York for the term of 4 years—reappointment.

Marshall F. Rousseau, of Texas, to be U.S. marshal for the southern district New York for the term of 4 years—repointment

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee, in writing, on or before Thursday, October 10, 1974, any representations or objections they may wish to present concerning the above nominations, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

ADDITIONAL STATEMENTS

PRESS ATTACKS ON PRESIDENT FORD

Mr. THURMOND. Mr. President, since President Ford acted to pardon former President Richard Nixon, he has been subjected to criticism of nearly every action he has taken. This effort to weaken confidence in our Nation's new President is taken note of in two articles in the Aiken Standard newspaper published in Aiken, S.C.

The first article appeared on this newspaper's editorial pages under the title "Hatcheting Mr. Ford." The second article, written by Ralph de Toledano, appeared as a column under the title "Making Mincemeat of a New President."

It would seem that the press, recognizing Mr. Ford is the only President we have, would give him some time to adjust to this new and awesome responsibility. I doubt very seriously Mr. Ford will ever suit papers such as the Washington Post and the New York Times, but whatever success he may have in the White House will certainly be diminished if public confidence in his competence is destroyed within a month after his taking office.

Mr. President, I ask unanimous consent that these two editorials be printed in the RECORD at the conclusion of my remarks.

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

[From the Aiken Standard Sept. 23, 1974]

HATCHETING MR. FORD

Speculation on Richard Nixon's health ranges all the way from fear of suicide, heretofore a taboo subject but now openly discussed in the press, to labeling of the former President as a habitual charlatan now making a play for sympathy as a sick man. The picture is further confused by comments from his doctor and younger members of his family.

Having no inside information, we reserve judgment on Mr. Nixon's health. While in the White House he seemed to have a rugged constitution, both physically and mentally, but the strains he has undergone are enough to wreck a person both ways.

Whether President Ford was justified by these considerations in granting a pardon which has shut off prosecution of Mr. Nixon thus becomes a matter of opinion based on incomplete information. Nevertheless, the issue is being used by the enemies of Richard Nixon to punish Gerald Ford.

The hatchetman are out to cut down Mr. Ford with Watergate memories as their ax. They are portraying a humane act as a political blunder, or even a sinister deed, in either event casting doubt on President Ford's capability of reaching momentous decisions. One gathers that these critics welcome an end to a short-lived honeymoon and rejoice in further erosion of public confidence in national leadership.

Perhaps in response to such criticism, President Ford is clearing out the Nixon advisers, notably Gen. Alexander M. Haig Jr. According to some accounts Gen. Haig was virtually acting President during the final months of the Nixon presidency. The critics are blasting his assignment to command NATO on the ground that it is a political reward, lifting him above seniors in the military establishment.

If one listens to the hatchetmen, nothing good can be expected of a Republican, a partisan opinion that the public should recognize and receive with skepticism.

[From the Aiken Standard, Sept. 26, 1974]

MAKING MINCEMEAT OF A NEW PRESIDENT

(By Ralph deToledano)

In my lifetime, I have seen three presidents cut up into small bite sizes by the media and the politicians. The first of these was Herbert Hoover who was blamed (1) for causing the depression of the thirties, and (2) for not trying to do anything about it. History now records that Hoover was a victim of an international financial panic and that his efforts at fighting that depression were blocked by the Democratic Party and by Franklin D. Roosevelt. The second was Lyndon B. Johnson, who never understood what hit him. The third, of course, is Richard Nixon.

Someday, I truly believe, there will be a better understanding of President Johnson—his strengths and his shortcomings—which will demonstrate that he was not the monster that the Kennedy-oriented media depicted.

As for Richard Nixon, too much has been written for any comment at this time. Whatever his crimes, they hardly merit the punishment he has received at the hands of the media.

In the case of Richard Nixon, the media tasted blood. They demonstrated that even a president with an overwhelming electoral mandate could be chewed to pieces—and now the Washington press corps, having proved its kingship, is out to prove its power by doing in President Gerald Ford. During the French Revolution, the press claimed legitimacy as a recognized part of government—the fourth estate—and today it is out to ram home the "validity" of that claim.

Mr. Ford, let's face it, is a tainted man in the eyes of the Washington press corps. He has an unabashed faith in God. He subscribes to all the ridiculous Judeo-Christian beliefs in justice and mercy. And worst of all, he is a Republican.

(At the National Press Club, a Republican may be admitted to the bar, but he always measures the distance to the nearest exit.) It might be observed, parenthetically, that unlike John F. Kennedy, who regarded the media with glorious cynicism, Mr. Ford takes the Washington press corps with disturbing seriousness.

There was much talk of the "honeymoon" for the first weeks of President Ford's tenure. But in the private conversation of Washington correspondents, it never really existed. They were merely biding their time. The moment he pardoned Nixon for the crimes he committed or may have committed in the Watergate affair, Mr. Ford was fair game for the chop-chop, slice-slice technique so dear to some of my colleagues. Dan Rather of CBS set the stage for the attack by stating flatly that the pardon was a "deal."

But what kind of deal? What benefit could accrue to Mr. Ford from the pardon?

What quid pro quo could Richard Nixon, hiding in San Clemente, offer the President of the United States? A child could have predicted that this act of compassion to a man broken in spirit and in bad health would be hurtful to the White House. The accusation that a "deal" had been made, however, was only the first orchestrated note.

Within hours of the pardon, President Ford was being assailed from all sides for not having also pardoned those convicted or facing trial for their complicity in the Watergate affair. There might have been some logic to this if it could have been demonstrated that the John Mitchells, the H. R. Haldemans and the John Ehrlichmans had acted under presidential orders—but there is little evidence to this effect.

President Ford accepted this onslaught in good faith. And in good faith, he let it be known that he would give careful consideration to what was being urged.

Predictably, the unleashed new attacks—and from those who had made the point of a general pardon in the first place. For Mr. Ford, it was: "Tails you win, heads I lose." For when the destruction of a president begins, he can do no right. He is always in the wrong. For the country this can only mean that the tremendous problems of inflation and the federal budget will have to wait while the Washington press corps goes about its business of attempting to make mincemeat of a new President.

DEVELOPMENTAL DISABILITIES—A MAJOR BILL FOR THE HANDICAPPED

Mr. BENTSEN. Mr. President, the passage by the Senate of S. 3378, the Developmentally Disabled Assistance and Bill of Rights Act, represents a significant stride forward for America's millions of handicapped citizens. As a cosponsor of this legislation, I am pleased that it extends for 5 years our programs to combat retardation, epilepsy, cerebral palsy, autism, and a wide range of other disabling diseases.

Not only does the Senate bill extend present programs; it improves them. It requires coordination at the State level to assure that the handicapped are more effectively served. It writes into law the recommendations of the Joint Commission on the Accreditation of Hospitals' standards for residential and community facilities for the mentally retarded and other disabled individuals, beginning the process of improving facilities which have for many years frequently been substandard and degrading. It broadens and clarifies the term "developmental disabilities" to serve a wide range of conditions which have received inadequate attention before.

There are some 46 million handicapped Americans. They seek little more than other Americans—to learn and grow, and, as adults, to have a job, to be secure, to contribute to society and to enjoy the benefits of our land. I believe the passage of S. 3378 is a clear signal to these Americans that the Congress intends to address their needs decisively.

DEVELOPMENTALLY DISABLED ASSISTANCE AND BILL OF RIGHTS ACT

Mr. HOLLINGS. Mr. President, I am pleased the Senate has passed S. 3378, the Developmentally Disabled Assistance and Bill of Rights Act. This legislation is a milestone in providing a framework by which States and local communities can address the problem of the developmentally disabled individual. Up to now, some 3 to 4 million children who are defined as developmentally disabled have been served only through fragmented efforts of States, local communities, and private foundations. Certainly, we can commend these efforts, but I am pleased that Congress is considering a proposal which commits Federal assistance to help these individuals.

I am particularly gratified that this legislation includes autism within its scope by authorizing moneys for research, teacher training, and construction of facilities to treat autistic children. As the Labor and Public Welfare Committee reported, "autism has been the most neglected of childhood disabilities partly because of ignorance and misunderstanding".

The problems of autistic children were brought to my attention several years ago, and I have been actively working to have legislation enacted which would establish a comprehensive plan for the care and treatment of these children. An autistic child is usually described as one having severe behavior and communication disorders. By a conservative count, there are approximately 1.4 million children under age 18 who have severe emotional problems, and the hard core of these children could be described as autistic. The autistic child is helplessly withdrawn from the reality of life around him and requires constant care and attention. It is with difficulty that they are able to communicate with their world at all and without treatment these children are usually placed in a State mental institution where they receive merely custodial care.

However, it has been shown that with treatment programs, these children can become productive members of their

community. Many of them can recover completely, and many can be taught self-help skills to allow them to live and work in half-way houses and workshops. I am very proud of the program that was established recently by the South Carolina Department of Mental Retardation to teach autistic children socially acceptable behavior and basic skills of living. In addition, this program provides parental training in the care of autistic children. However, the States' resources are limited and by itself cannot serve the some 25,000 autistic or emotionally disturbed children within the State.

With the passage of S. 3378, the millions of individuals suffering from a developmental disability will have the opportunity to enjoy life—and receive the care and treatment they deserve. I am pleased these individuals have been so recognized.

HOW U.S. AIRLINES ARE TAKEN

Mr. GOLDWATER. Mr. President, S. 3481 is going to be before us relatively soon for a vote and so that my colleagues might be better informed as to why this is so badly needed, I ask unanimous consent that an article from the Airline Pilot of August, be printed in the RECORD.

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

HOW U.S. AIRLINES ARE TAKEN

(By Danna K. Henderson)

The Australian government charges Pan American World Airways $4,200 to land a Boeing 747 at Sydney Airport. At San Francisco, Australia's Qantas Airways pays $271 for a 747 landing.

In Rome, Trans World Airlines is billed about $600 for each 747 landing (plus a 50 percent surcharge if the landing is at night). The Italian national carrier, Alitalia, pays nothing.

When U.S. airlines want to add airplanes to their fleets, they borrow money from commercial banks at interest rates currently in the 11-12 percent neighborhood. When a foreign airline wants to buy a U.S.-built airplane, it finances the purchase at 7 percent through the Export-Import Bank. As a result, the U.S. airline pays about $7 million more for a wide-body jet than does the foreign airline that competes with it on its routes.

If an Italian industrialist needs to come to the U.S. on business, the Italian government requires him to fly on Alitalia. When an American businessman goes to Italy, the U.S. government places no restraints on his mode of travel. (If his destination is somewhere other than Rome, however, he may find that connecting space on Alitalia is "not available" if he crosses the Atlantic on a U.S. carrier. But the space will magically become available if he changes his transatlantic reservations to Alitalia.)

These startling facts are just a sampling of the discriminations with which U.S. flag airlines must contend as they compete for business in the world transportation marketplace. When the burdens of discrimination are coupled with traditional enormous wage disparities and the recent extraordinary escalation in fuel costs around the world, it is little wonder that the future viability of U.S. flag carriers is currently in serious question.

The gist of the problem facing the U.S. international airlines, says the Air Transport Association, is that they must vie as free enterprises against competitors that are controlled and financed by governments, and must do so in a market in which both prices and the costs of doing business are also a matter of government edict. What's more, foreign airlines have virtually unrestricted access to the U.S. passenger market, while U.S. carriers are hampered at every turn in their efforts to do business abroad.

That this nation's airlines aren't faring very well in the competitive arena is evidenced by the statistics.

In 1973, U.S. airlines exported an estimated $1 billion in air transport services to foreign countries, but the U.S. imported $1.7 billion worth of services from foreign carriers. The U.S. provided 68 percent of the passengers that crossed the North Atlantic, but 58 percent of the total passengers flew on foreign airlines. There are 57 foreign carriers providing service to and from the U.S.; only four U.S. carriers (Pan Am, TWA, Braniff and Northwest) are engaged in scheduled international service in a major way.

LANDING CHARGES [1] AT SELECTED UNITED STATES AND FOREIGN AIRPORTS—BOEING 747B (200 PASSENGERS)

	Landing fee	Per A/C charge	Per pax charge	Total pax charge	Total charges
U.S.:					
New York (J.F.K.)[2]	$291	$48.86	$5.82	$1,164	$1,503.86
Chicago (O'Hare)	328		.40	80	408.00
Miami	118				118.00
Los Angeles	178				178.00
San Francisco	237		.17	34	271.00
Seattle	902				902.00
Honolulu	494				494.00
Foreign:					
Amsterdam	$1,036		$3.27	$654	$1,690.00
Frankfurt [3]	1,395	$177.25	1.96	392	1,964.25
London [4]	840	296.10	1.90	780	1,516.10
Paris [5]	1,180	94.94	3.54	708	1,982.94
Sydney [3]	4,200				4,200.00
Tokyo	1,215				1,215.00

[1] Landing charge defined as any charge related to movement of aircraft, passengers or cargo into or out of an airport paid by an airline.
[2] Charges estimated for processing passengers through the International Arrivals Bldgs.
[3] To be increased.
[4] Plus $150 peak-movement charge.
[5] Night surcharge: $12.50.

It is against this background that the U.S. flag carriers are currently seeking redress in Congress against the unfair and unequal competitive treatment visited upon them from two sources: foreign governments and their own government. "We have now reached the point where America's international airlines can no longer accept such unequal treatment and continue to be viable competitors carrying the United States flag around the world," says ATA.

The discriminations that disturb the carriers the most are those practiced by the U.S. government. For example:

(1) Foreign airlines spend less for the airplanes they fly than do American carriers because they are able to finance the purchase of U.S.-built aircraft through the Export-Import Bank at interest levels far below the U.S. prime rate. Over the past 17 years, Eximbank has loaned $4.2 billion to nearly 100 airlines for the purchase of 1,009 commercial jets, giving these airlines a significant cost advantage over their American competitors.

Congress is now considering legislation that would extend the Eximbank charter for another four years and increase its lending authorization to $30 billion. The U.S. airline industry is seeking to attach to this legislation an amendment that would give U.S. carriers access to Eximbank financing for the purchase of U.S.-manufactured airplanes used primarily in international service. ATA cites as precedent for its request the maritime industry policy of providing a construction cost differential for ships built in the U.S.

"More favorable financing of foreign carrier aircraft purchases has become too much of a burden for the privately owned and financed U.S. carriers to bear," ATA told the Senate Banking Committee. "We believe that this major cost of doing business must be equalized for the U.S. flag airlines operating in competition with foreign carriers."

(2) The U.S. Postal Service pays much higher rates to foreign carriers than to U.S. airlines for the transportation of international air mail. The present rate paid to U.S. carriers is 31 cents per ton-mile, but the U.S. government, as a member of the Universal Postal Union, pays as much as $1.73 per ton-mile to foreign airlines to transport U.S. mail.

In an effort to rectify this and similar inequalities, the airline industry has rallied behind H.R. 14266, a bill "to deal with discriminatory and unfair competitive practices in international air transportation." One section of the bill would require the payment to U.S. airlines of mail rates no lower than those the Postal Service pays to foreign airlines for the transportation of the same mail.

(3) There is no legislative mandate requiring that U.S.-financed travel be accomplished on U.S. flag carriers. Most other nations, by contrast, require that their national carriers be used not only for official government travel, but for transportation required by businesses and organizations financed in whole or in part by the government. In many countries, most corporations have some measure of government control; thus, such policies mean that U.S. airlines are denied access to a large proportion of the world's business travel market.

H.R. 14266, if passed, would help this situation by requiring that U.S. government-financed movements of both people and cargo be accomplished on U.S. airlines wherever possible.

U.S. ROUTE CARRIERS ENGAGED IN FOREIGN OPERATIONS AND FOREIGN POINTS SERVED AS OF JUNE 30, 1973

Area	Countries	Points
Europe	21	39
Africa	14	14
Asia	17	22
Oceania	5	6
Western Hemisphere	32	58
Total	89	136

(4) Foreign governments spend a considerable amount of money to entice U.S. citizens to fly on foreign airlines, but U.S. airlines do not receive equal promotional assistance from the U.S. Travel Service. To remedy this problem, H.R. 14266 would require USTS to "encourage to the maximum extent feas-

ible travel to and from the U.S. on U.S. carriers."

The second source of the discriminations suffered by U.S. flag carriers are the actions through which foreign governments extend preferential treatment to their national airlines.

The problems faced by U.S. carriers in this area are well recognized by the U.S. government. They were documented in country-by-country detail by CAB in a two-volume study published by 1973, and they are currently under study by an inter-agency task force that is engaged in a major effort to improve the financial situation of U.S. international airlines.

As ATA put it in testimony prepared for congressional hearings on H.R. 14266 and its Senate equivalent, S. 3481: "(We) emphasize most strongly the shocking difference between the competitive conditions U.S. airlines find in many foreign countries and the complete freedom and equality of opportunity found by foreign airlines in their operations here in the United States."

CAB was even more blunt: "(Foreign) government aviation policy is designed to protect the government interest and the carrier at all costs, or without regard for cost, as the case may be."

As described by CAB and ATA, here are some of the practices with which U.S. carriers must cope abroad:

(1) Because the government-owned national carrier frequently controls both domestic and international services, it is able to deny connecting domestic space to passengers who do not enter the country via the national airline. On occasion a rebate of the domestic portion of the transportation is also granted in return for booking the international portion on the national carrier.

(2) Discriminatory taxes and fees are often imposed on U.S. airlines. For example, a country may tax the gross sales of a U.S. carrier but collect taxes only on the net income of the national airline. Or it may exempt its own carrier from customs charges. Or it may charge duty on support equipment imported by U.S. carriers but not on equipment brought in by its own airline. In some instances, countries have reduced the duties charged on imported goods if the goods are transported by the national airline.

(3) Contrary to the policy that prevails in the U.S., many countries allow their airlines to own or control such travel subsidiaries as travel agencies, tour operators and freight forwarders. Since more than half of the total business of international airlines is produced by travel agencies and similar organizations, control of the retail marketing system in a foreign country by the national carrier severely curtails the marketing opportunities of U.S. carriers. By contrast, the vast U.S. travel retailing system is available on an equal basis to U.S. and foreign airlines.

(4) Currency restrictions create financial problems for U.S. carriers in many countries. Often a U.S. airline is not allowed to accept local currency in payment for air transportation. Some countries require elaborate authorization procedures of citizens who wish to use local currency to pay U.S. airlines, but impose no such restrictions on payments to the national airline. U.S. airlines experience long bureaucratic delays in seeking to convert and remit funds they hold in the national currency.

(5) The national carrier often is given preference in air traffic control handling, assignment of terminal and gate space, baggage handling, schedule slotting and similar matters. In some countries, the national airline is provided with free services by other elements of the government.

CAB characterizes the practices indulged in by other countries as "questionable or unethical" at best and "obviously discriminatory" at worst. Where the restrictions severely curtail the competitive freedom of U.S. carriers, says CAB, efforts to counteract them should receive "high priority" in bilateral negotiations. The prime objective of the United States, adds CAB, should be "equality of opportunity for U.S. carriers to compete for the national traffic on an equal footing with the national carriers."

Although governmental policies aimed at giving national carriers an edge in the market are looked upon with disfavor by U.S. airlines and the government, they are not nearly as objectionable as are the blatantly discriminatory user charges that are found in many countries.

The airlines emphasize that they are not in any way opposed to paying a fair price for services they receive in the form of communications and navigation networks, air traffic control, and airports at which to land. What they object to is footing the bill for things they don't use, or paying excessive charges that are not related to the cost of the services rendered.

The "for instances" occupy a full volume of the CAB study of restrictive practices.

In some countries, like Italy and Greece, U.S. carriers pay healthy landing fees while the national carriers pay none. For example, U.S. airlines spent some $2 million for landing fees at Rome in 1973; Alitalia spent nothing.

To the argument that the payment of fees by a government-owned airline to a government-owned airport authority amounts merely to a transfer of funds from one pocket to another, the airlines reply that payment of such fees is carried as an expense in an airline's books and thus forms a part of the cost base for ratemaking purposes. Moreover, says ATA, "it must be assumed that the landing fee charged to the U.S. carrier is sufficient to compensate for the exemption to the national carrier." In other words, all of the airport's costs are being paid by outside users.

In other countries, like England and Australia, a different practice prevails. Here the airport authority has two mandates from the government: to operate a network of airports and to return a profit. It fulfills its obligation by establishing for its principal airport a landing fee structure high enough to balance the losses incurred at secondary landing fields.

It is for this reason that U.S. airlines pay $4,200 to land a 747 at Sydney Airport, and $1,965 for a 707 landing. Qantas, the government-owned carrier, pays the same charges to the government airport authority. Through these fees, the carriers are paying not only for the facilities and services they receive at Sydney, but for maintaining airports they do not use in places like Perth and Brisbane.

The situation is similar in Great Britain. There, the fees paid by airlines using London's Heathrow Airport are used not only to subsidize four other airports, but to provide a 14% return on investment for the British Airport Authority. This rate of return, incidentally, is somewhat above the 12% rate established by CAB as desirable for U.S. airlines, and seldom if ever achieved by them.

The startling disparity in landing fees that results from such policies becomes evident in a comparison between Heathrow and New York's JFK International. At JFK, where it has its own terminal, British Airway pays $291 to land a 747, plus about $100 in aircraft-related charges such as ramp fees, for a total of $391. At Heathrow, Pan Am and TWA pay an $840 landing fee for their 747s, plus a $282 terminal air navigation facility charge, $14.10 for the use of loading bridges, and $380 in passenger service charges for 200 passengers—along with an additional $150 surcharge if the airplane arrives during peak hours. The total bill comes to $1,675.

Says CAB: "The United States basically has no quarrel with levels of landing charges set to recover costs. But it is another question when the rates are designed to subsidize other airports—not used by U.S. carriers—or to meet unrealistic rates of return on assets. It is equally a problem to us when foreign air carriers are exempt . . . from the payment of landing fees which U.S. air carriers must pay."

CAB is also alarmed at the sharply rising levels of airways and enroute charges being levied around the world in a growing move to recover the costs of these services from the people who use them. "There is nothing inherently wrong with this objective if the increases are introduced in an orderly manner and the cost recovery objective remains centered," says CAB. "The real crux of the problem is whether the entire cost of recovery can be passed on to the carriers and users without doing harm in a wide economic context."

In an effort to combat the problem of excessive and unfairly levied user charges, the airline-backed unfair competitive practices bill proposes to give the U.S. government the authority to impose offsetting charges on foreign carriers. The amounts collected would accrue into a special account from which payments would be made to U.S. carriers "to compensate (them) for excessive or discriminatory charges paid by them to the foreign countries involved."

The airlines regard the offset charge authority primarily as an "ultimate weapon" to strengthen the U.S. position in bilateral negotiations, rather than as a revenue-producing venture. Pointing out that efforts to moderate excessive fees have not met with notable success to date, ATA contends that the authority to retaliate will give the government the clout it needs to force a more reasonable approach to user charges.

The airlines are hopeful that their efforts to improve their competitive position in the world will bear fruit this year, and that Congress will act on the unfair practices bill before it becomes embroiled in the impeachment proceedings this fall.

ATA summarizes the position of the U.S. flag carriers succinctly:

"We firmly believe it is time for the American government to be aware of these problems and to understand the necessity for equalizing the competitive balance that for years has rested in favor of the foreign competition. Our international airlines ask no more than an opportunity to compete."

Mr. GOLDWATER. Mr. President, I would call my colleagues' attention to the great discrepancy in landing fees that are charged our airlines by foreign countries and what we charge foreign countries' airlines. For example, the landing fee in Sydney, Australia, is $4,200, but an Australian airliner landing in, say, San Francisco pays $237. I think it is high time that we treat other countries as they treat us. In other words, if Sydney is going to charge us $4,200 to land, let us charge them $4,200 to land and, also, let us require them to pay the same price for fuel that our airlines pay overseas.

CAPITAL—AGRICULTURE'S LIFEBLOOD—DRYING UP

Mr. HUMPHREY. Mr. President, we are all aware of the administration's efforts to restrain inflation through the use of high interest rates and a tight money policy. We are also aware that this broad deflationary policy, a principal tenet of the "old time economic religion," is not effectively doing the job of holding down prices.

In fact, Dr. Alan Greenspan, Chairman

of the President's Council of Economic Advisers, admitted last Thursday in testimony before the Joint Economic Committee, that the rate of inflation will accelerate to 12 or 13 percent by Christmas. This is bad news for all of us. But, it is even worse news to our family farmers who are bearing an unfair burden as a result of the administration's anti-inflation efforts.

Tight money has pushed up interest rates; but unlike large corporations, farmers cannot simply pass this higher cost on to consumers. Family farmers must pay these higher production costs out of their own savings. Even more alarming is the flow of loanable bank funds due to high interest rates, through the Federal funds market, to big New York City banks and out of our agriculture areas. Congress has passed legislation guaranteeing livestock loans, for example, but it does no good if the tight money policies of this administration continue to dry up farm loans. By next spring, many family farmers will be driven out of business, after generations on the farm, if the extreme tight money policy is allowed to continue.

Mr. President, I do not understand how ruining the small farmer is going to put a stop to rising food and fuel prices. Maybe the White House economic advisers know something the rest of us do not, but if past performance is any guide, they are way off base.

It is important that the administration understand the dominant role now played by credit, by commercial loans, in agriculture. Without credit, we cannot grow food in large quantities; and without abundant food supplies next year, we will see inflation soaring even faster than at present. Contrary to the administration's views, we need an "easier" money policy to hold down inflation next year.

Yesterday, Mr. E. A. Jaenke, Governor of the Farm Credit Administration, outlined in a clear and comprehensive way to the Joint Economic Committee the role of credit in farming. He makes a very persuasive argument that credit must be available to farmers if our economy is to regain full health. He forcefully states what I know to be a fact, that "credit is the lifeblood of American agriculture." I urge the administration not to prevent the cure and kill the patient by continuing the overly tight money policy which only treats the symptoms while the disease gets worse.

Mr. President, I ask unanimous consent that Mr. Jaenke's remarks before the Joint Economic Committee on October 2, 1974, be printed in the RECORD.

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

STATEMENT OF E. A. JAENKE, GOVERNOR, FARM CREDIT ADMINISTRATION, OCTOBER 2, 1974

Mr. Chairman and Members of the Subcommittee, my name is Ed Jaenke and I am Governor of the Farm Credit Administration. FCA is an independent Federal agency responsible for supervising and regulating in the public interest a nationwide network of farmer-owned credit institutions which are currently lending about $25 billion to agriculture annually. These organizations—the Federal Land Banks, Federal Intermediate Credit Banks, Production Credit Associations and Banks for Cooperatives—are the largest lending group in agriculture, providing nearly 40 percent of the institutional credit extended to farmers.

Mr. Chairman, perhaps nowhere else in the economy have events changed so rapidly in the past 2-3 years as they have in agriculture. No longer can we assume, as most people did in the past, that American agriculture would automatically overproduce the market and that food would be abundant and reasonably-priced.

Today, the situation is entirely different. American people are worried about high prices for food and there is great concern over food scarcities in countries which are unable to produce enough to meet their needs.

Not since World War II has agriculture been in its present position, where farmers are being exhorted to go all-out and produce fence-row-to-fence-row. Now people are reverting to growing "Victory Gardens" and even the crop reports, once of little interest, are major news stories.

As we entered the 1974 crop season, the supply-demand balance was tight. Extra plantings and a bountiful harvest were anticipated. But just when we needed her cooperation, Mother Nature let us down. We had a wet spring, a drought this summer, a hurricane that tore up the sugar cane crop, and just last week an early frost hit several Midwestern States, badly damaging corn, soybean and canning vegetable crops. It has been a bad year for both farmers and consumers.

What this unfortunate set of circumstances means, of course, is a need for greater production next year. Further translated to the agricultural lending community, the message is clear: Farmers, particularly those who suffered losses this year, will need to use more borrowed capital if they are to increase production.

There is another even more compelling reason why farmers will require additional capital in their operations next year. And that reason is simply that in many sectors of the agricultural economy earnings are down and many farmers are sustaining significant losses. Dairymen, beef feeders, cow-calf ranchers and poultry raisers are in an economic bind because of high feed costs and lower prices for their products. Farmers in areas hard-hit by drought or whose crops were wiped out by frost also will need additional borrowed capital to get going again next spring, and need to know now that it will be available.

At the beginning of this year, farm debt totaled $84 billion, an increase of $9 billion from the year before. The Federal Reserve Bank of Chicago recently forecast that this year's increase in farm debt would be about $11 billion. In light of the frost and other recent developments, this prediction may wind up on the conservative side.

Although the aggregate debt numbers are large, it is important to recognize that individual farmers have found credit essential. The average Farm Credit System borrower in 1973—a typical commercial farmer—managed farm assets of $350,000 and debts of $130,000. For these borrowers their debt was 37 percent of their assets and 59 percent of their net worth.

The rapidly escalating use of credit in agriculture is attributable in large part simply to inflation. Farmers' production costs have risen dramatically. Production expenses last year totaled $65 billion and current estimates are that they will climb to $76 billion this year.

Farmers are deeply concerned and apprehensive over the inflated costs of production. Just in the past year, for example, the U.S. Department of Agriculture Prices Paid Index reports the price of fertilizer climbed 60 percent, seed up 50 percent, diesel fuel up 70 percent, farm machinery up 15 percent, and farmland up 25 percent. All Americans are familiar with the higher cost of borrowed money—some farmers, for example, are paying twice as much to borrow money in 1974 as they paid for interest last year.

Other factors in the rising use of credit in agriculture are the increased size of farms, further specialization among farmers and the adoption of new technology. In such a situation, farmers will continue to substitute capital for labor.

The factors of further specialization and use of new technology also have reversed the historic pattern of the type of credit farmers use. Prior to 1972, real estate debt outstanding always exceed non-real estate debt. Now the opposite is true, as farmers increasingly use more short-term credit for operating funds and more intermediate term credit to purchase machinery, equipment, or feeder cattle.

One of the troublesome aspects of the change is now evident in the livestock feeding and poultry industry. High feed prices coupled with lowered live animal prices have reduced farmers' receipts, while at the same time their costs and expenses continue to climb. Many are having difficulty generating enough income to live and meet their obligations.

Feeders who have a solid collateral position in their land can refinance these short-term debts on a long-term basis. For these individuals, the problem is one of loss of equity and not of providing collateral for a loan.

Those whose net worth position isn't as solid are in a much more difficult bind. To illustrate how rapidly livestock producers can experience this equity squeeze, consider a typical cattle feedlot situation.

Earlier this year feeders bought cattle at an average price of about $40 per hundred pounds. To finish the cattle out to proper weight costs about $50 per hundred pounds. Instead of selling at higher prices, cattle sold at prices below both the purchase price and cost of grain. Thus, the more cattle a farmer finished the larger was his loss. Financial leverage was working against him.

What happens to this feeder now in this example is this his current liabilities are exceeding his current assets, thus posing big problems for him and his creditors, who do not want to further erode his savings or foreclose on his operation.

Another way to view the problems in the livestock and poultry industries is to examine the livestock-feed ratios—ratios which measure the price of livestock relative to the price of grains used to feed the animals. In all cases—the Corn-Hog Ratio, Beef Steer-Corn Price Ratio, Milk-Feed Price Ratio, Broiler-Feed Price Ratio and Egg-Feed Price Ratio—the relationships are at or near historic lows. Never before has the price of feed been as high relative to the price of live animals, poultry or milk.

Obviously, something has to give. And what is happening is that livestock production is being cut back. There are fewer placements of cattle in feedlots at this time. This means that within a few months, meats will be in short supply and demand will bid up the price again. There are, of course, historic and regular swings in cattle supplies and prices. But the difference now is the extent of the swings, which are far greater.

One of the more uncertain aspects of farming today is the business of planning. Adverse weather and unfavorable consumer reactions are but two of the factors that have made markets more volatile in recent years and made the job of planning more difficult.

Looking at agriculture from a long-range view, we see from agriculture's balance sheet at the beginning of this year that total assets were $478 billion, with farm real estate accounting for more than two-thirds of the total. The debt to asset ratio of 17.6 percent was 1.8 percentage points below the ratio of a year earlier. This decrease is due to an astounding 25 percent increase in the value

of farm real estate, which gained $65 billion in value in that year.

Agriculture's debt to asset ratio, then, is favorable compared to other industries. When we look at the figures closely, however, there are other conclusions to be drawn. For example, only about one-half of the farmers in the U.S. use credit. Many of these, of course, are not what would be considered by any definition commercial farmers. Thus, they account for only a small portion of the agricultural production.

Additionally, of the approximately million farmers who do use credit, we estimate that their debt to asset ratio averages about 35 percent. This figure has been slowly rising over the years.

Another way to look at the use of credit in agriculture is in terms of capital flow. In 1973, $21.6 billion of capital flow was utilized by these million farmers.

Of this $21.6 billion, 43 percent, or $9.3 billion, was debt financed. It should be noted that annual capital flow to agriculture last year was the largest ever recorded and it came in a year when farm income was the highest ever realized. I would also like to point out that the percent of the capital flow that was debt financed—43 percent—was nearly 4 times the level of debt financing that prevailed in the period 1950–54.

There are 4 primary sources of funds available to farmers: (a) increase in debt, (b) capital consumption allowances, (c) net farm income, and (d) nonfarm income. Until the mid-1960's, net farm income was the primary source of funds for farmers and it was not until the 1970's that the percent of annual capital flow realized through debt exceeded 40 percent.

Looking to the future, we can see no let-up in the proportion of capital flow which will be debt financed and there is a distinct possibility that the percent could go even higher, while the part financed from net income will be less. Even assuming a slower rate of inflation in future years and a less rapid increase in land prices, the annual capital flow projections remain about $20 billion per year.

There appears to be a general agreement that inflation is best halted through increased productivity. If the million farmers who use credit and who produce nearly all of our food are to achieve required additional efficiencies, it is essential, then, that they have access to adequate amounts of credit and at the appropriate time in their production cycle.

Generally speaking, adequate amounts of credit have been available to agriculture in recent years, although there have been adjustments in the percentages of credit supplied by the various credit institutions. In 1973, for example, commercial banks and the institutions of the Farm Credit System—the Federal Land Banks and Production Credit Associations—provided about equal amounts of the annual capital flow for both real estate and non-real estate purposes, 33 per cent for commercial banks and 34 per cent for Farm Credit lenders. Life insurance companies provided about 4 per cent. Individuals and miscellaneous lenders provided 23 per cent of the real estate credit.

The principal changes in the contributions by the groups from 5 years earlier has been increases by commercial banks and Farm Credit Banks and declines by life insurance companies on real estate loans and declines by merchants and dealers in non-real estate credit.

Mr. Chairman, agriculture is recognized among the various industries in the nation as one in which technology, when put into practice, immediately realizes substantial efficiencies. Farm output per hour, for example, has tripled since the 1950–54 period. The number of persons supplied farm products by one farm worker has risen from 25 in 1960 to 52 in 1972.

One of the principal reasons for this gain is directly attributable to the fact that credit has been available to permit farmers to make use of the new advances in technology. In recent years there has been some concern expressed over the fact that the rate of productivity in agriculture, while still advancing, has slowed. And this is true. The curve has flattened out some.

There are a number of reasons for this occurrence. First, we should recognize that some of the easy and fast advances have already taken place. Examples are the exodus of a large labor force, the near total adoption of the use of fertilizer and improved cultural practices.

It appears to me that future gains in productivity in agriculture will be both slower and more difficult to achieve. Reasons include the fact that the best of our tillable land is already in production, the labor force adjustments have been made, new high-yielding varieties of grains are not on the immediate horizon and available plant nutrients are costly and in short supply.

This is not to say that progress won't be made. Of course it will. The American entrepreneurial system of agriculture, backed up by a solid network of government and private research facilities, will continue to make substantial progress. There are still avenues open in which to generate efficiencies.

Mr. Chairman, many think of the United States of America as an industrial nation. And we have a right to be proud of the manufacturing and technological sectors of our economy. But agriculture has been, and continues to be, a vital and influential force in the Nation's economy.

Agriculture, in its truest sense, is a growth industry. Now, as a matter of national policy, American farmers are being called upon to produce even more—to feed this country and other countries of the world.

I am convinced that our agricultural producers are equal to the task. America's agricultural productivity is unparalleled on this earth. But if our farmers are to do the job, they need the tools. They need not only the farm machinery, seed, feed, and fertilizers, but they need the capital. A good deal of that capital, as we have indicated, is in the form of credit.

Capital is the lifeblood of American agriculture. If its flow is cut off or even curtailed, there is no way the economy of the United States can be restored to full health. Adequate credit for agriculture at the lowest possible rates must be given top priority to assure the kind of productivity that will benefit this Nation and its neighbors around the world.

If all lenders do their job in making productive agricultural loans, capital allocation or credit rationing will be unnecessary. So long as the Farm Credit System has competitive access to the Nation's money and capital markets, farmers will have a dependable source of credit at competitive rates. The Farm Credit System cannot and should not be expected to carry the full load of financing agriculture. Other lenders must maintain their commitments to agriculture, for it is only through a united effort that needs can be met.

Mr. Chairman, I appreciate this opportunity to appear before you and express my views on the financing of modern agriculture.

THE PARDON OF FORMER PRESIDENT NIXON

Mr. MONDALE. Mr. President, several days ago, a thoughtful column appeared in the Minneapolis Star. Entitled "Measuring the Limits of a Pardon's Force," this article explores the historical debate over the scope and nature of the pardon power in an evaluation of the recent pardon of former President Nixon. I believe that Austin C. Wehrwein, who authored this column, raised a number of important questions in connection with the pardon power, questions which deserve careful consideration in light of recent events.

Mr. President, I ask unanimous consent that the full text of Mr. Wehrwein's article be printed in the RECORD along with an excerpt from a speech which I delivered at American University that appeared with it in the Star.

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

[From the Minneapolis Star, Sept. 18, 1974]

MEASURING THE LIMITS OF A PARDON'S FORCE

(By Austin C. Wehrwein)

Richard Nixon owes a debt of gratitude to the British kings against whose system the colonists revolted in 1776 that is as heavy as his debt to President Ford.

It was their kingly power to "wash away the legal stain" with a pardon that the Supreme Court in 1867 wrote into our Constitution, which merely says a president "shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment."

The imported doctrine was that he who held a royal pardon was in the eyes of the law as innocent as if he had never committed the offense.

So when the founding fathers were fashioning the Constitution, Alexander Hamilton drew on the royal rule. Speaking specifically of the power to pardon treason, but giving his words that broad application, he said:

"Humanity and good policy conspire to dictate the benign prerogative of pardoning should be as little (as possible fettered or embarrassed." The result is that to change it a constitutional amendment is necessary.

A century later in a case called Ex Parte Garland, Justice Field without attribution cited Hamilton's key words about the chief executive's absolute pardon power, and was off and running.

"A pardon reaches both the punishment prescribed for the offense and the guilt of the offender," Field said in the 6-to-3 opinion.

"And when the pardon is full, it releases the punishment and blots out the existence of the guilt, so that in the eyes of the law the offender is as innocent as if he had never committed the offense."

"If," the justice continued, "granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, it removes the penalties and disabilities, and restores to him all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity."

There is one catch, Field warned: "There is only this limitation. . . . It does not restore offices forfeited, or property or interests vested in others in consequence of the conviction and judgment."

In other words, as the other Watergate defendants well know, Nixon's pardon and his "new man" status don't restore or rescue them.

In dissent, Justice Miller stated the nature of the power a bit less grandiloquently. The pardon power, he said, "relieves the party from all penalties, or in other words, from all the punishment which the law inflicted for his offense.

"But it relieves him from nothing more."

Nixon might well ruefully agree were he inclined to cast a pragmatic eye on his fate insofar as public reaction to any washing away of a stain is concerned.

Either way, it is ironic for Nixon perhaps

that one ramification of the Garland rule is that courts hold that a pardon restores a person's competency as a witness. And in an old Ohio case, the state supreme court held that even though a full pardon is obtained by fraud it restores civil rights and privileges.

Who was the Garland whose pardon by the first President Johnson loosened Field's flood of royal rhetoric? A. H. Garland of Little Rock, an eminent attorney who practiced before the Supreme Court prior to the Civil War, was a representative and then a senator in the Confederate Congress.

Johnson in 1865 granted him a postwar "full pardon and amnesty" for any part he had played in the rebellion but conditioned it on a loyalty oath required by the U.S. Congress as the law said he must. The gist of the long oath was that the person taking it swore he had never supported the Confederacy in any way. For Garland that was a true Catch 22 trap.

Garland sought to get out of it by contending the loyalty oath was unconstitutional, or if it was constitutional the pardon released him from taking it. Field for the Supreme Court majority agreed. He held the exclusion that would have prevented Garland from practicing law in and federal court was a bill "of pains and penalties," an unconstitutional bill of attainder and an unacceptable ex post facto law that deprived Garland of a property right (the right to practice law) without due process. Congress, Field said, could prescribe qualifications for avocations, but not in the guise of punishment. Then Field swung into his expansive exposition of the pardon prerogative.

In his dissent, Justice Miller said practicing law was a privilege, not an absolute right, concerning which Congress could prescribe terms for admission, rejection or expulsion of attorneys. Because the oath as a condition for practicing law was not a punishment, the power of the president to pardon has no effect on releasing him from the oath.

A lawyer, he said, "may be saved by the executive pardon from the penitentiary or the gallows, but is not thereby restored to the qualifications which are essential to admission to the bar."

Nixon, of course, has apparently avoided any question about his disbarment by relinquishing his license to practice in New York and California.

But there remains a question about the meaning of the pardon as a tacit accusation. How can he be pardoned if he had never committed "offenses," as the constitutional formula puts it?

Or in Field's expatiation, note that he spoke of the pardon's reaching "every offense known to law" and said it can be exercised at any time after the offense's "commission "

Plainly, to get a pardon, it would seem one must first commit an act that makes a pardon necessary.

[From the Minneapolis Star, Sept. 18, 1974]

PARDON POWER SHOULD BE LIMITED

(By Sen. WALTER MONDALE, in a speech at American University)

I reject the notion that it would have been impossible for Richard Nixon to get a fair trial. That suggestion is an affront to the American jury system, to the American system of justice and to the American people.

If we cannot expect equal justice in this case through the judicial system because of Mr. Ford's unfortunate act, I believe we must seriously consider whether the true national interest might not be best served by a continuation of the impeachement process.

I believe we should consider whether a House vote on impeachment followed by a Senate trial might not provide another much-needed means for fully ventilating the Watergate facts and Richard Nixon's role. At the very least, we can then prevent Richard Nixon from again holding office in this nation.

One final measure must be given serious consideration in the wake of President Ford's action.

Although the pardon power has its rightful place in our constitutional system, it is one of the few powers that is unchecked. It is not subject to the normal process of checks and balances, found repeatedly throughout our Constitution.

In order to prevent abuse of that power, or use of that power in a questionable manner, I would propose a check on the pardon power. Specifically, I believe that we should consider a constitutional amendment which would allow an exercise of the presidential pardon power to be overriden by a two-thirds vote of both houses of Congress.

Sunday's events represent a sad chapter in American history. We saw the ultimate cover-up and the ultimate injustice.

As we all consider now where we go from here, how we are to put Watergate behind us in an honorable way, and how we are to prevent the results that may well follow from Sunday's events from ever happening again, I believe we will do well to remember the words of former Watergate prosecutor Archibald Cox. Although spoken in another context, they seem particularly relevant today:

"Regardless of the outcome, the value of the proceeding will depend on whether the process is so conducted that the country perceives it as a fair and legitimate measure for restoring the integrity to government."

ZOO MANAGEMENT

Mr. THURMOND. Mr. President, recently there have been some serious conflicts between curators of zoos and officials of the Animal and Plant Health Inspection Service, APHIS, of the U.S. Department of Agriculture. Managers of zoos naturally feel that their animal exhibitions provide an increasingly valuable educational and entertainment purpose in our rapidly urbanizing society. They also maintain that properly managed zoological environments offer the best hope of preserving many endangered animal species.

On the other hand, USDA animal health inspection officials are naturally concerned about the possibility of introducing into this country dangerous diseases or pests, which are sometimes found on imported wild animals and birds. They rightly have an obligation to protect our domestic pets and livestock from possible contamination by any imported disease organisms.

Several weeks ago I was glad to be of assistance in arranging a public meeting, at which representatives of APHIS and the Columbia Zoological Park discussed problems and mutual concerns. A number or recommendations for changes in APHIS regulations were presented at this meeting, and I understand that further conferences between zoo management representatives and USDA officials have been planned. I also understand that several bills relating to these matters have been introduced in this session of Congress, and I certainly hope that they will receive thorough study and careful consideration.

Mr. John M. Mehrtens, director of the Columbia Zoological Park in Columbia, S.C., recently sent me several copies of a commentary by John M. Chamberlain, which pertains to the advisability of Federal management of zoos. Mr. Mehrtens has requested that this thought-provoking column be printed in the CONGRESSIONAL RECORD. I believe that Mr. Chamberlain's remarks deserve wider attention, therefore I ask unanimous consent that this editorial be printed in the RECORD at the conclusion of my remarks.

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

[From the Chicago Tribune]

BUREAUCRATIC CAGE FOR ZOOS?

(By John Chamberlain)

There is a move on in Congress to federalize the zoos. Now, really!

The idea, of course, is well meant. But if the wild animals of North America could be interviewed on the subject of the federal government as nursemaid, one would surely be deafened by a hideous concatenation of yelps, screeches, yowls, and barkings, all sounding their objections.

The noble Department of the Interior, is supposed to be the keeper of wildlife on public lands. But not so long ago it was planting something called "1080" in explosive cartridges. Topped off with bait, or an appealing scent, the cartridges would be nibbled at by a coyote. The explosive would drive the "1080" down the coyote's throat and he would die in agony.

Livestock owners can make a good case that the coyotes are vermin, but the trouble with "1080" is that it also appealed to kit foxes, bobcats, pumas, and even domesticated dogs. Hoping to find a less indiscriminate killer, Interior has substituted sodium cyanide for "1080." But the kit foxes and pumas are, according to disinterested reports, still dying along with the coyotes.

The Golden Eagle supposedly counts on our Washington nursemaids for survival. But if a rancher shoots a Golden Eagle over his own acres from an airplane on the theory that his calves are endangered, nothing is done about it.

The reason for protecting sheep and cattle from wild predators is economic and is not to be condemned out of hand in a world that is short of protein. But what the history of federal coyote control proves is that Washington is always subject to pressure groups. Only a dictatorship could change that, and who wants a dictatorship? If the zoos of the nation were to be federalized, the humane societies would surely dominate the pressure on whatever zoo bureaucracy happened to be set up by the White House.

Well, what would be wrong about that? Let John Mehrtens, who runs the very successful Columbia Zoological Gardens in Columbia, S.C., tell you what is wrong.

The average save-the-animals American, he says, is a biological illiterate, and his reaction is always emotional. This illiterate deplores it when a cheetah is taken from its native habitate in South Africa, or when an Indian tiger is wrenched from his home in the Indian jungle. But the truth is that, in the not so distant future, the cheetahs and Indian tigers may very well owe their existence to protected zoo breeding banks.

"Habitat destruction," says Mehrtens, "is remorseless everywhere, and in South Africa the cheetah is regard as vermin to be exterminated."

The Mehrtens' statistics are ominous. A few years ago there were 40,000 tigers in India; today the number has dwindled to 1,800. There are more registered Siberian tigers in zoos than in the whole of Siberia. The last wild Balinese tiger was recently shot by a poacher. So the Balinese tiger is extinct simply because nobody had taken a pair out of their native habitat for a West-

ern zoo. One of three orangutans are now born in captivity, as are two of every four gorillas. As for the African lion, 50 years hence he will be lucky to be living in a game park.

Mehrtens' point is that zoos are merciful as well as useful, provided, of course, they are well run. In a period of inflation, Congress, though it would surely be responsive to the emotional pressures of the humane societies, would hardly be willing to provide money to make the zoos better or to build up their breeding banks of endangered species.

Rather than have a timorous and poorly funded Washington bureaucracy running our zoos for the 103 million people who visit them in a year, and doing the usual sloppy federal job of it, Mehrtens would have the American Association of Zoological Parks and Aquariums take the responsibility for the animal show much as the doctors and the lawyers provide professional competence for their own ranks.

Washington has run the U.S. currency into the ground, devastating thousands of human beings. Why, then, should it be trusted to keep the animals happy?

GENOCIDE AND EXISTING TREATIES

Mr. PROXMIRE. Mr. President, in 1949 the United Nations passed one of the world's most historic and significant pieces of international legislation, the Genocide Convention Accord. This was a direct reaction to the World War II extermination of millions of Jewish people, an appalling attempt to eradicate a people from the face of the Earth.

To date, 78 nations have joined together in ratification of this important document. But this country has failed to ratify the treaty.

Opponents of the treaty have often argued that genocide is largely a domestic matter and therefore not appropriate to the treaty making power. The subscribes to this school of thought, however, seem to overlook existing procedures in treaties concerning migratory birds, the hunting of seals, and the traffic in narcotics. They do not think mass murder is worthy of the same treatment.

Congress, as the stronghold of American ideals of freedom and justice, has a moral obligation to ratify the Genocide Convention Accords of 1949.

OUR $125-A-DAY HOSPITALS

Mr. McINTYRE. Mr. President, all of us are concerned about the rising costs in today's economy. Certainly one of the most startling rises is in the health care industry. Over the past 10 years, hospital costs alone have risen an alarming 500 percent.

We must consider, of course, that hospital expenses have risen as well, especially in the area of labor costs. But as a recent article by Mr. John Kelly points out, the proportion of the labor costs reflected in the patients bill has remained constant.

Mr. President, 4 years ago I introduced the National Healthcare Act. This bill called for an across-the-board effort aimed at increasing the efficiency, quality, and equity of our health system. It did so by focusing on measures to increase the supply and distribution of health manpower, continue and expand the health planning process, increase the number of ambulatory care centers, establish equitable charge structures, and promote prospective setting of reimbursement rates.

I have been pleased that separate bills dealing with the distribution and training of manpower, and increasing funds for ambulatory care centers, have been acted upon by this body. The health planning bill should soon be reported by committee, and will then be before us for action. I have long felt, Mr. President that passage of all these measures is mandatory if we are to come to grips with the problems in our current health system.

In the article by Mr. Kelly, from the September 29, 1974, issue of Family Weekly, we have further evidence of the seriousness of this situation. As we are soon to take up the health planning bill, this article is indeed timely, and 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:

OUR $125-A-DAY HOSPITALS: WHERE DOES ALL THAT MONEY GO?

(By John Kelly)

Almost everything is more expensive than it was a decade ago. But no item in the economy can match the precipitous 500 percent rise in hospital costs. In terms of your paycheck, this means that while you now work one-and-a-third times longer than you did in 1964 to purchase a loaf of bread and three times longer to buy a sirloin steak, you work five times as long to pay for a day of hospitalization.

Why?

According to Alexander McMahon, president of the American Hospital Association, hospitals have been caught in the same inflationary bind as the rest of the country—"but in our case, the situation has been worse. Our workers' wages have risen nearly 70 percent in the last six years alone. That's much larger than the pay increases given employees in other industries. Moreover," he adds, "people now expect much more from hospitals both in the way of treatment and personalized care."

All of which is true. But McMahon's answer tells only part of the story. While he's right that hospital workers' wage increases have outpaced those of the employees in other industries, in terms of the percentage of the patient's bill, labor costs are just the same. According to Harvard economist Martin S. Feldstein, an expert on hospital financing, labor costs in 1955 accounted for 60 percent of a patient's bill, and in 1971, they accounted for exactly the same proportion—60 percent.

It is also true that patients expect more from hospitals. But Louis A. Orsini, vice president of the Health Insurance Association of America (HIAA), says that the effects of this demand have been distorted by hospital administrators' "edifice complex." "When federal-loan funds became available for hospital construction, a lot of institutions began adding new facilities whether they needed them or not," says Orsini. "Cardiac monitoring units or a handsome new pediatric ward may add to a hospital's prestige, but if they aren't utilized, the cost will be passed on to the institution's other patients."

Government figures show that many of these new facilities aren't even being partially used. A study by the U.S. Comptroller General's office says that in 1971 only about 40 percent of the country's pediatric beds were occupied—36,021 out of a total of 89,420. Considering that each of these units cost an average of $15,000 to build, that means hundreds of millions of dollars worth of new facilities went unused. And, with our declining population growth, they will probably remain empty for some time to come.

The figures on cardiac-care units and emergency rooms make equally depressing reading. In 1972, only about three percent of the 416 hospitals equipped to perform open-heart surgery used their facilities more than four times a week. And of the 6,200 hospitals with emergency rooms, 3,744, or well over half, cared for less than 13 percent of all emergency cases reported.

Oklahoma City illustrates how out-of-hand the overbuilding mania can get. With a projected population of 700,000 in 1975, the community theoretically needs 2,696 hospital beds. But by the end of next year it will have 4,642—a surplus of 1,946. Each of these extra beds costs about $50,000 to build and another $20,000 to maintain each year. And since the surplus is expected to remain at about the 1,000-bed level for the next 30 years, the unneeded units could end up costing Oklahoma City residents $650 million.

But overbuilding is not the only problem. Another major villain is what's known as the "cost-plus" method of payment. Nearly 90 percent of the more than $35 billion collected by hospitals last year was paid for by Medicaid, Medicare, Blue Cross and commercial insurance companies.

Under the usual arrangement, Blue Cross or a private carrier agrees to pay the hospital for the expenses it incurs caring for insured patients, as well as an extra bonus payment. In effect, the institution is guaranteed a profit no matter how inefficiently it operates. Hospital administrators claim that the third-party plans monitor their costs closely. But critics don't agree. Even Walter J. McNerny, president of the national Blue Cross Association, Inc., concedes "that the system is relatively unchecked."

Take a simple matter like hospital wages. As a rule, administrators and staff physicians can pay themselves pretty much what they choose without fear of being brought to task by the third-party plans footing the bill. Thus, it's not at all unusual for the chief pathologist in a hospital laboratory to earn $100,000 a year or more.

Far more serious and expensive, however, are the duplications and inefficiencies spawned by the cost-plus system. "There are so many areas of potential savings in an average hospital, it would make your head spin," says Herbert S. Denenberg, former Insurance Commissioner of Pennsylvania and a leading consumer advocate. "I know one institution, for instance, that pays $7.50 for tape measures it could buy for 25 cents." Laundry service may seem like a relatively minor budgetary expense. But 24 Boston hospitals cut their annual cleaning bills by over $1 million just by pooling their laundry facilities.

If private business operated so inefficiently, customers would be up in arms. But, says Harvard's Feldstein, hospital costs have been so cushioned through medical insurance that the average consumer really doesn't feel the pinch (except, of course, in his steadily rising insurance premiums).

Another way we could all save money is if hospitals would perform more diagnostic procedures and minor surgery in out-patient facilities. But insurance companies often won't cover out-patient treatment. This encourages hospitals to admit patients who really don't need full hospital care.

There *are* hospitals that are pointing the way to a brighter future. For example, whereas in most hospitals a private room costs any where from $100 a day upward, patients at Memorial Hospital in Long Beach, Calif., pay only $20 a day. The reason? Memorial's special daily unit. Patients scheduled for minor surgery or diagnostic procedures check into

the hospital at 7 a.m. By 8 a.m. they've been given the necessary lab tests and presurgical preparations, and by 10 a.m. the operation is over. Most are home in time for dinner.

The 800-bed Albany Medical Center in Albany, N.Y., is also saving patients money. Instead of closing its operating rooms and labs at night and on weekends the center operates them on a seven-day around-the-clock basis. As a result, the average hospital stay at the institution has been cut from 11.6 days to 8.9 days. That adds up to savings of over $300 for the average Albany patient.

Baptist Memorial Hospital in Memphis, Tenn., has also been a leader in creating cost-saving programs. In its recently opened special minimal-care unit, blood pressures and temperatures are only taken when a physician requests them. The patients administer their own medications and go to treatments on their own. According to the hospital officials, the elimination of more elaborate forms of care cuts $20 to $30 off each patient's daily bill.

CAN HOSPITALS CUT COSTS?

HERE ARE 10 WAYS SUGGESTED BY CONSUMERISTS

1. Keep operating rooms and laboratory facilities open nights and weekends.
2. End needless duplication of costly facilities, such as intensive cardiac-care units. (Many communities that could easily get by with one ICCU have three or four.)
3. Full insurance-company coverage of outpatient services.
4. More coverage for extended-care facilities. (Many older patients are hospitalized simply because their insurance doesn't pay for care given in nursing homes and similar institutions.)
5. Limit the number of residents and interns a hospital may employ. (A large part of patients' bills go to pay their salaries.)
6. Hospitals should buy generic drugs rather than their more expensive brand-name equivalents.
7. Pool purchases of equipment and supplies. This would help save a great deal of money.
8. Each hospital should have at least one consumer representative on its board.
9. Liberalization of staff privileges. (A doctor should be permitted to practice in every hospital in his community.)
10. End overbuilding. The typical hospital administrator's "edifice complex" has resulted in the construction of thousands of needless, costly hospital beds.

WICKENBURG AND THE BUDGET

Mr. GOLDWATER. Mr. President, when a Senator goes home to campaign or to just visit around among the folks in his State, he invariably is approached by group after group and individual after individual as to how we can get more Federal money. At this stage in our history when more Federal money than we sensibly should spend has been spent, we find a time when we should be hearing from people that recognize too much Federal funding is the source of our present dilemma.

The other day I was in the little town of Wickenburg in Arizona. It is very close to me; my grandfather in 1868 ran the stamp mill for Henry Wickenburg when he discovered gold at the Vulture Mine and continue to run it for some time after Henry had sold the mine and left.

He later was a merchant in the town of Wickenburg. One of my relatives served on an autopsy board in Wickenburg to determine who was at fault in the event of a massacre by Indians that killed a number of people. The Hassayampa River, a famous river, runs through the town and they say if you drink looking upstream you will never tell the truth, but if you drink looking downstream, you will always tell the truth.

Frankly, on the occasion of my visit the other day drinking would have been hard, for the stream was dry. However, while I was there, the mayor of Wickenburg presented me with a letter which he had written to me in Washington explaining their feelings about Federal funds and because it is such a patriotic, loyal, and really needed type of thinking in this country, I ask unanimous consent that it be printed in the RECORD at this point in my remarks.

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

TOWN OF WICKENBURG,
Wickenburg, Ariz., September 17, 1974.

Subject: Federal Funds for the Town of Wickenburg and the Federal Budget.

Hon. BARRY GOLDWATER,
Senate Office Building,
Washington, D.C.

DEAR SENATOR GOLDWATER: We are writing to you, and identically to President Ford and to our Congressmen, to express our views on the need for and use of federal funds in our local community, and on balancing the federal budget.

We believe the federal budget must be balanced as soon as possible so that deficit spending will not contribute further to inflation. We view this as a priority matter in that continued inflation makes us less able to budget effectively for our community as well as ourselves.

We are not unaware of the importance of federal funds in supplying services to our community. Federal Revenue Sharing funds have made it possible for us to buy capital items and to provide services—an ambulance and ambulance service, for instance—the community would not otherwise have; federal funds will provide two flood control devices which will genuinely help protect local life and property; we hope for federal assistance with very necessary capital sewer and water improvement projects; federal funds have greatly helped local agencies provide necessary social services; and we could cite more examples.

Essential as federal assistance is in our community, we nevertheless would support postponement or a decrease of such local federal funds proportional to postponements or decreases in the funding of other federal programs in the interest of the more important matter of getting the federal budget in balance.

Yours truly,

E. Curtis Arnett, Mayor; Richard A. Hopfer, Vice Mayor; Julia Brooks, Councilwoman; Garth Brown, Councilman; Patricia A. Doom, Councilwoman; Fred Pisanelli, Councilman; Clifford Pollay, Jr., Councilman.

TENTH ANNIVERSARY OF SMALL BUSINESS SCORE PROGRAM

Mr. BIBLE. Mr. President, on October 5, 10 years ago, the U.S. Small Business Administration created a Service Corps of Retired Executives to provide free management counseling to small businesses. I am pleased to note that on its 10th anniversary, SCORE will receive the coveted Freedoms Foundation Award for its exemplary humanitarian service in "economic education."

Each SCORE volunteer has spent a lifetime developing successful small businesses. We join in honoring the dedicated men and women of SCORE for their selfless service, and for their invaluable contributions toward strengthening the free enterprise system.

SCORE is a nationwide program with a goal to serve every business community in the United States by matching specific volunteer skills with their corresponding small business problems. It is a businessman to businessman advisory relationship with services for every business, not just troubled ones.

The acceptance of SCORE by the small business community has influenced its rapid growth beyond original expectations. During the past 10 years, SCORE has grown from 1,000 volunteers in 100 chapters to 5,000 volunteers in 250 chapters across the country. They have responded to more than 250,000 requests for assistance and have a collective expertise that encompasses every realm of American business enterprise with an average business experience of 30 years. Today, the program is cosponsored by SBA and the volunteer ACTION agency.

Since 1964 the small business population has increased from 4.6 million to 8.8 million. Naturally, the complexities of managing a small firm in today's competitive market have increased as well. The years have demonstrated that 90 percent of all business failures are attributable to poor management.

As it is clear that plotting a proper course of action in implementing and improving business practices can be a matter of life and death for a small firm, and recognizing that experience and wisdom are vital national resources, SCORE's objective has been to make the small business owner-operator a better manager. Competent counseling and advice at the right time can save many failing businesses, strengthen those that are weak, and foster growth in well managed firms.

Mr. President, a strong, healthy, growing small business community is an integral part of our social and economic system. It is of the utmost importance that we strive to maintain freedom of opportunity in every way possible, while eliminating obstacles in the path of achieving that end. Indeed, the progress of this Nation rests on the cardinal principle of individual initiative with creative energies of the small entrepreneur, his wealth of new ideas, inventions and processes.

From inception, SCORE's purpose has been to provide advisory know-how to small businesses who need and want it, in a form that can be understood and used and convenient to the owner-operator at a charge that is affordable. During the first 18 months of operation, an estimated savings in counseling time of approximately $1 million was directly attributed to SCORE. This has multiplied over the years.

The SCORE effort has been an admirable and useful effort affording new and existing small businesses the best management decisions possible. Its volunteers are stalwart supporters of the free enterprise system freely giving of their time and talents. They offer highly com-

petent experience that provides a balanced approach to business. They are both leaders and teachers, working through individual counseling, team assignments, workshops, conferences, problem clinics, courses, and community organizations.

I know my colleagues are pleased to join in congratulating SCORE on its excellent record and wish it every success in the years ahead.

MAYOR WHITE URGES AN ECONOMIC PROGRAM OF CONSERVATION AND EQUITY

Mr. HUMPHREY. Mr. President, one of America's outstanding mayors, Kevin H. White of Boston, submitted important testimony to the presummit conference on inflation.

In his testimony, Mayor White points out the unique nature of our current economic crisis, and states that the "old time religion" is only making a bad situation worse.

Mayor White wisely calls for a two-pronged program of conservation and equity to spread the burden of economic decline as evenly as possible and to reverse the process of decline as soon as possible.

The specific elements in the economic program proposed by the mayor of Boston are:

A community and economic development program with public employment;

Systematic, long-term economic planning; and

Tax relief coupled with loophole closing tax reform.

Mr. President, I ask unanimous consent that Mayor White's excellent statement be printed in the RECORD.

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

STATEMENT OF KEVIN H. WHITE, SUBMITTED TO THE STATE AND LOCAL GOVERNMENT CONFERENCE ON INFLATION, SEPTEMBER 23, 1974

We all know the symptoms of our ailing economy: double-digit inflation, flat or negative growth, high and rising unemployment. But to prescribe a cure requires that we also recognize the disease underlying these symptoms.

What kind of inflation plagues us? What brought us to this point? Not excess demand. Excess-demand inflation is too much money chasing too few goods; there are indeed too few goods, but who has too much money?

Not excess Federal spending; the real volume of Federal spending is slightly lower now than it was at the end of 1972; and not runaway wages.

What then?

Quadrupled oil prices which then drove up other prices;

Increased food prices caused by short supply;

Imports and two devaluations of the dollar;

And the residual effects of the financing of the Vietnam War.

In addition, the fight so far has been waged with tight monetary policy which has driven interest rates up; has driven investment and employment down, and has brought both new housing and the rehabilitation of old housing stock to a virtual standstill.

What does this diagnosis imply?

That there is no immediate solution; prices next year will be higher than they are this year no matter what we do, and any politician who says it isn't so is either mistaken as to the facts or intentionally misleading his constituents;

That depressing aggregate demand by cutting the Federal Budget will only increase unemployment without significantly slowing the rate of inflation; and

That the costs of inflation have been distributed unequally and that deliberate governmental steps must be taken to redress these inequities. Income has been transferred from the urban wage-earner and consumer to the agricultural and fuel sector.

Yet what does this Administration propose to do? To return to the old time religion of tight money and budget cuts. This policy assumes we have classical demand-pull inflation when we don't. It will place even more burdens on the urban poor and urban wage-earner who have already been hurt the most.

What would a budget cut do? First, let's recognize what it won't do:

It won't lower oil prices;

It won't lower food prices; and

It won't head off or dampen a potential wage-price spiral, which will be self-perpetuating once begun, and it's not necessary—it's neither the only way nor the most effective way—to ease pressures on the credit market; the Federal Reserve can do that alone.

A budget cut of $5 to $10 billion will decrease the rate of inflation by less than one-third of one percent, but it will increase unemployment to 6.5% in the next year. Those who will be thrown out of work are the same people who now bear the heaviest burden.

A budget cut may look good or sound nice, but in reality it would attempt to fight inflation by making the country poorer, by throwing people out of work—putting them on welfare—and by decreasing economic activity.

Instead of fighting inflation by making the country poorer—by impoverishing the country, by throwing honest people out of work, by decreasing economic activity—we should be addressing the inequities exacerbated by the current inflation.

Nowhere is the impact of increased food and fuel prices greater than in the cities: where the cost of living is the highest; where unemployment is twice the national rate. Ironically, those in the city—who suffer the most—also offer the greatest opportunity to redress human equities and to keep our economy moving.

We must begin talking about a program of conservation and equity. Conservation means more than national parks; it also means preserving cities and enriching our most important natural resources—our people. We must not let 100 years of investment in the cities go down the drain through neglect and perverse tax incentives. Our urban areas are too important a part of the nation's productive capacity; the 30 largest cities account for one-third of the total output of goods and services in the economy; all metropolitan areas together account for four-fifths of the total output. In a period of shortages we should preserve the infrastructure of our cities. They offer an opportunity for increased productivity through better utilization of the economic infrastructure and existing capital investment, the existing housing stock and the urban labor force.

The other prong of the program—equity—means distributing burdens evenly. We cannot allow the continued bludgeoning of the working man and woman.

The elements of such a program are outlined below.

1. A community and economic development program combined with public employment. This would allow us to put local residents to work improving old and building new facilities which would then yield ongoing jobs. Note that we would not have created a group of people dependent on a PEP for their jobs, but that we would have used public funds as seed money, as an investment in the long-range enrichment of the city, its residents, and the nation. Public employment would thus pay for itself in real terms.

The Economic Development Administration program provides the outline: public works grants, public works improvement program employment, business loans and loan guarantees. Substantial funding of this program could provide funds to rebuild and preserve the urban infrastructure.

Housing infrastructure must also be preserved. Community Development Block Grants would provide funds for the rehabilitation of the central-city housing supply.

2. Long-range planning. A long-range enrichment program requires long-range planning. Currently no one in the Federal government is responsible for systematically looking ahead to employment needs, expanding capacity needs and programs, or economic growth requirements. Much of our current inflation is international in source and scope. We need to create a mechanism to foresee and evaluate global trends and to anticipate their impact on the United States.

3. Tax relief and tax reform to mitigate the inequities exacerbated by this inflation; to end incentives for unproductive activities; to end the favored position of unearned income, and to establish a social contract to head off or dampen the expected wage-price spiral.

Tax reform and tax relief would transfer money from those who benefit from loopholes and can afford to pay more to those who have suffered the most in the past. Prime candidates for immediate reform are: the oil depletion allowance, the foreign tax credit, and the (currently very ineffective) minimum income tax. Closing the capital gains loopholes would take longer, but the Congress should start now; there is no reason to tax income from stocks less than wages.

Tax provisions which make it more profitable for a business to leave an existing plant in the city to build a new one in the suburbs should be changed. It is time to begin a comprehensive review of tax incentives.

Tax relief should be targeted to those with incomes under $15,000. The burden of the social security payroll tax could be shifted without a loss in revenue by raising the ceiling on included income; this would at least stave off further increases in the rate. The option of a tax credit instead of a deduction for dependents would focus relief at this income level with the greatest benefit going to those with the least income.

In addition, a tax package could be used to forestall a wage-price inflationary spiral. Labor knows that wage increases gained this year will be stolen by price increases in an exorable process. If real wages were increased via tax cuts for those earning less than $15,000, wage demands could be moderated. If such a bargain could be explicitly negotiated between government and labor, a serious wage-price spiral could be dampened.

This package will not bring us to 4% inflation in the next year, but nor will the Administration's cure. There is no panacea, but we must avoid cures that will kill the patient. The Administration's approach would require two years of 8% unemployment to return to 4% inflation; that is too high a price to pay in lost economic growth and in human terms. The package proposed in this paper will let the economy revive without accelerating inflation and while redressing obvious inequities.

Attachments: Responses to questions posed in the conference invitation and other comments.

TIGHT MONEY AND AVAILABILITY OF CAPITAL

Inflation and tight money adversely affect the ability of a city to borrow money for

capital projects. When the situation becomes severe there is danger of serious cutbacks and revision in capital investment plans. Tight money also negatively affects tax revenues; real estate developers who cannot get sufficient financing fall behind in their tax payments.

Everyone is aware that tight money depresses housing starts and hurts home buyers. It also hurts home improvers. This is especially important to the central city and to our efforts to conserve, preserve, and revitalize deteriorating neighborhoods.

Local governments are heavily dependent on the property tax for their revenue. Inflation skyrockets the cost of city government without a comparable increase in revenues. Boston has reduced municipal employment by 9% through an austerity programs, but double-digit inflation may wipe out the benefits of this effort. Boston has managed to hold the line on property tax rates for 44 months. When property taxes have to be raised to pay for city government, the burden on already over-burdened city residents will be increased and the city's dynamic economy injured.

INTERNATIONAL CONSIDERATIONS

Inflation today is international in scope; other nations, in fact, are in worse shape than we are. This is not an excuse for inaction, but it must guide our actions. Now is not the time for the United States to turn isolationist in its economic concerns. International cooperation is important. If oil profits are reinvested by the oil-producing countries in the United States, we must be willing to lend funds to nations in need. Export controls will only exacerbate the balance-of-payments problem and do nothing to aid the international fight against inflation and recession.

CONSUMPTION PATTERNS

One of the reasons that the food problem is severe world-wide is that the rest of the world has "discovered" beef. The consumption of beef instead of grain uses up about five times as much grain. The increased demand for beef then becomes an increased demand for grain as well.

Energy consumption patterns cannot be held responsible for the oil cartel's decision to quadruple oil prices. Our consumption of energy, however, does help to explain why the increase in oil prices had such a large and negative impact. Increased Federal investment in capital expansion of more efficient mass transit systems and subsidies of operating deficit will help to conserve energy.

REGULATIONS AND ENVIRONMENTAL PROTECTION REQUIREMENTS

Environmental protection requirements should not be viewed primarily as dampening the economy or as increasing costs. It is important to know where costs escalate sharply and what improvement in environmental protection we get for what increase in investment. Any cost-benefit analysis, however, should count environmental protection and preservation as a valued condition or output. It should also be remembered that some environmental protection requirements require new investment and can thus create more jobs.

A similar comment should be made about many regulations. It is not possible to accurately and fairly evaluate the impact of a regulation or ruling on productivity if all the valued outputs are not considered. For example, the impact of a safety regulation must be evaluated in a way that includes the improved safety or the lives saved.

SUPPLY REGULATIONS BY THE GOVERNMENT

I can only support the plea that the Federal government end regulations which serve only to increase prices. If deregulation of the transportation industry will decrease freight prices by 20%, prices to urban consumers might drop—or at least increase more slowly.

AIRLINES TROUBLES

Mr. DOMENICI. Mr. President, I support the concept that the U.S. Government must assist American companies attempting to compete for the world market. The authorization of the Export-Import Bank has just been extended by the Senate because it was felt that such a lending and guaranteeing institution was a necessary tool in promoting American industry abroad. I am, however, quite concerned that our economic policies of today are not realistic and beneficial to our domestic economy.

The doctrine of laissez faire has long since vanished from the economic systems of the world countries. We have seen more and more countries nationalize their industries to compete for raw materials and thus the world market. This is no longer only a case of Communist countries subsidizing or controlling their industries but today countries like England, Japan, France, Mexico and the Middle East have determined that world prices and competition for raw materials no longer make it possible for private industry to profitably compete. Such countries are using government subsidies, discriminatory taxes and fees for foreign competition and enforcing private use of these government controlled industries.

Mr. President, the American businessman is faced with higher labor costs, increased cost of raw materials and now must face foreign competition that in many cases is financed at a lower interest rate than commercial banks are allowing. It may very well be that many of our present economic policies have proven detrimental to the American businessman, especially those attempting to compete in the world market.

I recently read an article in the Airline Pilot magazine which addresses this very same point. These facts even though seen from the airline industry illustrate a rather alarming and discriminatory policy. Pan American Airlines pays $4,817 to land a Boeing 707 at Sydney Airport while Quantas Airways pays $271 for a 747 landing at San Francisco. Another example of our own Government discrimination is the U.S. Postal Service which pays much higher rates to foreign carriers than to U.S. airlines for the transportation of international airmail.

Mr. President, I think the comments by Dana K. Henderson are very illustrative and, therefore, 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:

HOW U.S. AIRLINES ARE TAKEN

(By Dana K. Henderson)

The Australian government charges Pan American World Airways $4,200 to land a Boeing 747 at Sydney Airport. At San Francisco, Australia's Quantas Airways pays $271 for a 747 landing.

In Rome, Trans World Airlines is billed about $600 for each 747 landing (plus a 50% surcharge if the landing is at night). The Italian national carrier, Alitalia, pays nothing.

When U.S. airlines want to add airplanes to their fleets, they borrow money from commercial banks at interest rates currently in the 11%–12% neighborhood. When a foreign airline wants to buy a U.S.-built airplane, it finances the purchase at 7% through the Export-Import Bank. As a result, the U.S. airline pays about $7 million more for a wide-body jet than does the foreign airline that competes with it on its routes.

If an Italian industrialist needs to come to the U.S. on business, the Italian government requires him to fly on Alitalia. When an American businessman goes to Italy, the U.S. government places no restraints on his mode of travel. (If his destination is somewhere other than Rome, however, he may find that connecting space on Alitalia is "not available" if he crosses the Atlantic on a U.S. carrier. But the space will magically become available if he changes his transatlantic reservations to Alitalia.)

These startling facts are just a sampling of the discriminations with which U.S. flag airlines must contend as they compete for business in the world transportation marketplace. When the burdens of discrimination are coupled with traditional enormous wage disparities and the recent extraordinary escalation in fuel costs around the world, it is little wonder that the future viability of U.S. flag carriers is currently in serious question.

The gist of the problem facing the U.S. international airlines, says the Air Transport Association, is that they must vie as free enterprises against competitors that are controlled and financed by governments, and must do so in a market in which both prices and the costs of doing business are also a matter of government edict. What's more, foreign airlines have virtually unrestricted access to the U.S. passenger market, while U.S. carriers are hampered at every turn in their efforts to do business abroad.

That this nation's airlines aren't faring very well in the competitive arena is evidenced by the statistics.

In 1973, U.S. airlines exported an estimated $1 billion in air transport services to foreign countries, but the U.S. imported $1.7 billion worth of services from foreign carriers. The U.S. provided 68% of the passengers that crossed the North Atlantic, but 58% of the total passengers flew on foreign airlines. There are 57 foreign carriers providing service to and from the U.S.; only four U.S. carriers (Pan Am, TWA, Braniff and Northwest) are engaged in scheduled international service in a major way.

It is against this background that the U.S. flag carriers are currently seeking redress in Congress against the unfair and unequal competitive treatment visited upon them from two sources: foreign governments and their own government. "We have now reached the point where America's international airlines can no longer accept such unequal treatment and continue to be viable competitors carrying the United States flag around the world," says ATA.

The discriminations that disturb the carriers the most are those practiced by the U.S. government. For example:

(1) Foreign airlines spend less for the airplanes they fly than do American carriers because they are able to finance the purchase of U.S.-built aircraft through the Export-Import Bank at interest levels far below the U.S. prime rate. Over the past 17 years, Eximbank has loaned $4.2 billion to nearly 100 airlines for the purchase of 1,009 commercial jets, giving these airlines a significant cost advantage over their American competitors.

LANDING CHARGES [1] AT SELECTED UNITED STATES AND FOREIGN AIRPORTS—BOEING 747B (200 PASSENGERS)

	Landing fee	Per A/C change	Per pax charge	Total pax charge	Total charges
United States:					
New York (J.F.K.)[2]	$291	$48.86	$5.82	$1,164	$1,503.86
Chicago (O'Hare)	328		.40	80	408.00
Miami	118				118.00
Los Angeles	178				178.00
San Francisco	237		.17	34	271.00
Seattle	902				902.00
Honolulu	494				494.00
Foreign:					
Amsterdam	$1,036		$3.27	$654	$1,690.00
Frankfurt [3]	1,395	$177.25	1.96	392	1,964.25
London [4]	840	296.10	1.90	380	1,516.10
Paris [5]	1,180	94.94	3.54	708	1,982.94
Sydney [3]	4,200				4,200.00
Tokyo	1,215				1,215.00

[1] Landing charge defined as any charge related to movement of aircraft, passengers, or cargo into or out of an airport paid by an airline.
[2] Charges estimated for processing passengers through the International Arrivals Bldgs.
[3] To be increased.
[4] Plus $150 peak-movement charge.
[5] Night surcharge: $12.50.

Congress is now considering legislation that would extend the Eximbank charter for another four years and increase its lending authorization to $30 billion. The U.S. airline industry is seeking to attach to this legislation an amendment that would give U.S. carriers access to Eximbank financing for the purchase of U.S.-manufactured airplanes used primarily in international service. ATA cites as precedent for its request the maritime industry policy of providing a construction cost differential for ships built in the U.S.

"More favorable financing of foreign carrier aircraft purchases has become too much of a burden for the privately owned and financed U.S. carriers to bear," ATA told the Senate Banking Committee. "We believe that this major cost of doing business must be equalized for the U.S. flag airlines operating in competition with foreign carriers."

(2) The U.S. Postal Service pays much higher rates to foreign carriers than to U.S. airlines for the transportation of international air mail. The present rate paid to U.S. carriers is 31 cents per ton-mile, but the U.S. government, as a member of the Universal Postal Union, pays as much as $1.73 per ton-mile to foreign airlines to transport U.S. mail.

In an effort to rectify this and similar inequalities, the airline industry has rallied behind H.R. 14266, a bill "to deal with discriminatory and unfair competitive practices in international air transportation." One section of the bill would require the payment to U.S. airlines of mail rates no lower than those the Postal Service pays to foreign airlines for the transportation of the same mail.

(3) There is no legislative mandate requiring that U.S.-financed travel be accomplished on U.S. flag carriers. Most other nations, by contrast, require that their national carriers be used not only for official government travel, but for transportation required by businesses and organizations financed in whole or in part by the government. In many countries, most corporations have some measure of government control; thus, such policies mean that U.S. airlines are denied access to a large proportion of the world's business travel market.

H.R. 14266, if passed, would help this situation by requiring that U.S. government-financed movements of both people and cargo be accomplished on U.S. airlines wherever possible.

U.S. ROUTE CARRIERS ENGAGED IN FOREIGN OPERATIONS AND FOREIGN POINTS SERVED AS OF JUNE 30, 1973

Area	Countries	Points
Europe	21	39
Africa	14	14
Asia	17	22
Oceania	5	6
Western Hemisphere	32	58
Total	89	136

(4) Foreign governments spend a considerable amount of money to entice U.S. citizens to fly on foreign airlines, but U.S. airlines do not receive equal promotional assistance from the U.S. Travel Service. To remedy this problem, H.R. 14266 would require USTS to "encourage to the maximum extent feasible travel to and from the U.S. on U.S. carriers."

The second source of the discriminations suffered by U.S. flag carriers are the actions through which foreign governments extend preferential treatment to their national airlines.

The problems faced by U.S. carriers in this area are well recognized by the U.S. government. They were documented in country-by-country detail by CAB in a two-volume study published in 1973, and they are currently under study by an inter-agency task force that is engaged in a major effort to improve the financial situation of U.S. international airlines.

As ATA put it in testimony prepared for congressional hearings on H.R. 14266 and its Senate equivalent, S. 3481: "(We) emphasize most strongly the shocking difference between the competitive conditions U.S. airlines find in many foreign countries and the complete freedom and equality of opportunity found by foreign airlines in their operations here in the United States."

CAB was even more blunt: "(Foreign) government aviation policy is designed to protect the government interest and the carrier at all costs, or without regard for cost, as the case may be."

As described by CAB and ATA, here are some of the practices with which U.S. carriers must cope abroad:

(1) Because the government-owned national carrier frequently controls both domestic and international services, it is able to deny connecting domestic space to passengers who do not enter the country via the national airline. On occasion a rebate of the domestic portion of the transportation is also granted in return for booking the international portion on the national carrier.

(2) Discriminatory taxes and fees are often imposed on U.S. airlines. For example, a country may tax the gross sales of a U.S. carrier but collect taxes only on the net income of the national airline. Or it may exempt its own carrier from customs charges. Or it may charge duty on support equipment imported by U.S. carriers but not on equipment brought in by its own airline. In some instances, countries have reduced the duties charged on imported goods if the goods are transported by the national airline.

(3) Contrary to the policy that prevails in the U.S., many countries allow their airlines to own or control such travel subsidiaries as travel agencies, tour operators and freight forwarders. Since more than half of the total business of international airlines is produced by travel agencies and similar organizations, control of the retail marketing system in a foreign country by the national carrier severely curtails the marketing opportunities of U.S. carriers. By contrast, the vast U.S. travel retailing system is available on an equal basis to U.S. and foreign airlines.

(4) Currency restrictions create financial problems for U.S. carriers in many countries. Often a U.S. airline is not allowed to accept local currency in payment for air transportation. Some countries require elaborate authorization procedures of citizens who wish to use local currency to pay U.S. airlines, but impose no such restrictions on payments to the national airline. U.S. airlines experience long bureaucratic delays in seeking to convert and remit funds they hold in the national currency.

(5) The national carrier often is given preference in air traffic control handling, assignment of terminal and gate space, baggage handling, schedule slotting and similar matters. In some countries, the national airline is provided with free services by other elements of the government.

CAB characterizes the practices indulged in by other countries as "questionable or unethical" at best and "obviously discriminatory" at worst. Where the restrictions severely curtail the competitive freedom of U.S. carriers, says CAB, efforts to counteract them should receive "high priority" in bilateral negotiations. The prime objective of the United States, adds CAB, should be "equality of opportunity for U.S. carriers to compete for the national traffic on an equal footing with the national carriers."

Although governmental policies aimed at giving national carriers an edge in the market are looked upon with disfavor by U.S. airlines and the government, they are not nearly as objectionable as the blatantly discriminatory user charges that are found in many countries.

The airlines emphasize that they are not in any way opposed to paying a fair price for services they receive in the form of communications and navigation networks, air traffic control, and airports at which to land. What they object to is footing the bill for things they don't use, or paying excessive charges that are not related to the cost of the services rendered.

The "for instances" occupy a full volume of the CAB study of restrictive practices.

In some countries, like Italy and Greece, U.S. carriers pay healthy landing fees while the national carriers pay none. For example, U.S. airlines spent some $2 million for landing fees at Rome in 1973; Alitalia spent nothing.

To the argument that the payment of fees by a government-owned airline to a government-owned airport authority amounts merely to a transfer of funds from one pocket to another, the airlines reply that payment of such fees is carried as an expense in an airline's books and thus forms a part of the cost base for ratemaking purposes. Moreover, says ATA, "it must be assumed that the landing fee charged to the U.S. carrier is sufficient to compensate for the exemption to the national carrier." In other words, all of the airport's costs are being paid by outside users.

In other countries, like England and Australia, a different practice prevails. Here the airport authority has two mandates from the government: to operate a network of airports and to return a profit. It fulfills its obligation by establishing for its principal airport a landing fee structure high enough to balance the losses incurred at secondary landing fields.

It is for this reason that U.S. airlines pay $4,200 to land a 747 at Sydney Airport, and $1,965 for a 707 landing. Qantas, the government-owned carrier, pays the same charges to the government airport authority. Through these fees, the carriers are paying not only for the facilities and services they receive at Sydney, but for maintaining airports they do not use in places like Perth and Brisbane.

The situation is similar in Great Britain. There, the fees paid by airlines using London's Heathrow Airport are used not only to subsidize four other airports, but to provide a 14% return on investment for the British Airport Authority. This rate of return, incidentally, is somewhat above the 12% rate established by CAB as desirable for U.S. airlines, and seldom if ever achieved by them.

The startling disparity in landing fees that results from such policies becomes evident in a comparison between Heathrow and New York's JFK International. At JFK, where it has its own terminal, British Airways pays $291 to land a 747, plus about $100 in aircraft-related charges such as ramp fees, for a total of $391. At Heathrow, Pan Am and TWA pay an $840 landing fee for their 747s, plus a $282 terminal air navigation facility charge, $14.10 for the use of loading bridges, and $380 in passenger service charges for 200 passengers—along with an additional $150 surcharge if the airplane arrives during peak hours. The total bill comes to $1,675.

Says CAB: "The United States basically has no quarrel with levels of landing charges set to recover costs. But it is another question when the rates are designed to subsidize other airports—not used by U.S. carriers—or to meet unrealistic rates of return on assets. It is equally a problem to us when foreign air carriers are exempt . . . from the payment of landing fees which U.S. air carriers must pay."

CAB is also alarmed at the sharply rising levels of airways and enroute charges being levied around the world in a growing move to recover the costs of these services from the people who use them. "There is nothing inherently wrong with this objective if the increases are introduced in an orderly manner and the cost recovery objective remains centered," says CAB. "The real crux of the problem is whether the entire cost of recovery can be passed on to the carriers and users without doing harm in a wide economic context."

In an effort to combat the problem of excessive and unfairly levied user charges, the airline-backed unfair competitive practices bill proposes to give the U.S. government the authority to impose offsetting charges on foreign carriers. The amounts collected would accrue into a special account from which payments would be made to U.S. carriers "to compensate (them) for excessive or discriminatory charges paid by them to the foreign countries involved."

The airlines regard the offset charge authority primarily as an "ultimate weapon" to strengthen the U.S. position in bilateral negotiations, rather than as a revenue-producing venture. Pointing out that efforts to moderate excessive fees have not met with notable success to date, ATA contends that the authority to retaliate will give the government the clout it needs to force a more reasonable approach to user charges.

The airlines are hopeful that their efforts to improve their competitive position in the world will bear fruit this year, and that Congress will act on the unfair practices bill before it becomes embroiled in the impeachment proceedings this fall.

ATA summarizes the position of the U.S. flag carriers succinctly:

"We firmly believe it is time for the American government to be aware of these problems and to understand the necessity for equalizing the competitive balance that for years has rested in favor of the foreign competition. Our international airlines ask no more than an equal opportunity to compete."

ADMINISTRATIVE FAILURE OF FEDERAL POWER COMMISSION

Mr. MOSS. Mr. President, the General Accounting Office has recently published a scathing account of the administrative failure of the Federal Power Commission. While the GAO report concentrated on potential conflicts of interests among high-ranking FPC officials and illicit de facto deregulation of certain producers for short-term sales, it calls attention to this agency's overall mismanagement of the natural gas situation.

I realize that some would say that the serious shortage of natural gas we face this winter and in coming years is a result of the duty imposed on the Federal Power Commission to regulate natural gas producers' prices. I believe that the shortage, to the extent the FPC's regulation has had any effect, is more a function of the wishy-washy policies the FPC has implemented than of the fact of regulation itself. Since 1969 higher natural gas prices have constantly been dangled in front of gas producers' noses in one FPC proceeding after another, causing understandable uncertainty and hesitation about dedicating any gas at the lower prices which had already been approved and survived court review.

Regardless of whether one believes that poor regulation, regulation itself, or something else has led to the unavailability of sufficient natural gas, one would think that the FPC would take any steps necessary to remove obstacles blocking the transportation of natural gas which is available to customers who so desperately need it. There is no controversy about the FPC's authority and duty to do this. But here also, the FPC has apparently failed to live up to its responsibility.

A particularly egregious example of this failure has occurred in Utah. Mountain Fuel Supply Corp. has never had to curtail its firm natural gas customers. Through far-sighted planning, Mountain Fuel has obtained sufficient gas reserves to avoid curtailments this winter also. Yet because of the sluggish, if not dormant bureaucratic response on the part of the FPC, this gas may not get to those who need it, and Utah's first gas shortage could well ensue.

In February of 1973, more than 18 months ago, Mountain Fuel applied to the FPC for permission to build a small diameter pipeline over the Wasatch Mountains to bring gas from reserves in Coalville, Utah, to Bountiful, Utah, a distance of only 30 miles. No one has opposed this application, or even intervened in the proceeding. Mountain Fuel has the equipment, the pipe, and the right-of-way. Mountain Fuel has the contractors and crews lined up to do the work. The only thing that Mountain Fuel does not have is the FPC's permission to build the pipeline.

Only recently, the FPC denied Mountain Fuel's request to move the date of the hearing scheduled on the proposal up from October. This action removed the last slim possibility that this pipeline could be completed before the winter snows.

The lethargy of the FPC in this regard has jeopardized the jobs and security of the people of Utah. If this winter is severe, without the gas this pipeline could have provided, serious hardship will occur.

Mr. President, I can think of only one word which sums up my feelings about the FPC's wholly unwarranted lack of response to Mountain Fuel's application: outrageous. I ask unanimous consent to print in the RECORD a letter I have received from Mr. B. Z. Kastler, the president of Mountain Fuel, which eloquently describes the frustration he and the people of Utah must feel in the face of such an inexcusable and inexplicable delay on the part of the Federal Power Commission. I would also like to print a portion of the testimony of Mr. R. P. Work and Mr. Kastler presented on Mountain Fuel's behalf in a Senate Commerce Committee hearing I conducted in Salt Lake City in August.

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

MOUNTAIN FUEL SUPPLY CO.,
Salt Lake City, Utah, Sept. 17, 1947.

Senator FRANK E. MOSS,
U.S. Senate,
Washington, D.C.

DEAR TED: Like you, I thought that following your Commerce Committee hearings there would be some action on our long delayed application to build the 30-mile line we so vitally need. Time was very short, even then.

Unfortunately, the F.P.C. again denied our application and refused to alter the October hearing date. Inasmuch as it is too late to begin now, we must simply take our chances this winter. We have already taken steps to notify our larger firm customers that a severe winter may force curtailment.

We felt very badly about it all because in 45 years we've never ever had to say this to any firm user. It's even harder to take because our planning and timing were all right since we applied way back in February of 1973. Toughest of all, however, is the fact that F.P.C. has never assigned *any* reason why a February 1973 application cannot even be heard until October of 1974, and the only reason given at all for hearing this uncontested matter involving a really miniscule job by their standards, was that they feel it necessary that the matter be fully inquired into.

While need for the line has never been controverted by any pleading, and there are no intervenors, full hearing was deemed necessary to test our allegations. Since the "test" and cross examination cannot occur in time to allow us to construct the line before next winter, it may well be that old man winter will be the real test.

To answer your question and your good offer, however, since we've passed the point of no return there simply isn't anything that anyone can do now except pray for a mild winter.

While I have great faith in prayer, I hate to burden the Almighty with problems that need and should not have occurred.

Thanks again, Ted, for your concern and your help.

Cordially,

B. Z. KASTLER.

PREPARED STATEMENT (EXCERPT)

This lag in the regulation process is not only confined to rate problems, but in the authorization for construction of facilities. For example, in February of 1973, Mountain Fuel applied to the Federal Power Commission for a certificate to construct and operate a 30-mile pipeline from Coalville to Bountiful. After numerous exchanges of information over an 18-month period, the Federal Power Commission last month denied our request for temporary authority and will not even hear the matter until this year's construction season in the high mountain area concerned is over. This addition to our facilities was designed to facilitate Mountain Fuel's ability to serve its market area under severe weather conditions for the coming winter. The Federal Power Commission is now considering our appeal for a reconsideration. Failure to construct these facilities in the next two months will make it impossible for Mountain Fuel to deliver all of its available supplies to the market area and may create some hardship in the market area should severe weather conditions occur. I might add here that the statement that Mountain Fuel will not have firm curtailments through 1980 is probably quite correct if Mountain Fuel is permitted to install the necessary facilities to haul this gas to market. However, Mountain Fuel will do its utmost in that event to minimize the hardship. We would rather, however, have constructed this short segment and not risked the economy or comfort of our service area; and we point out that we are now and have been ready, willing, and able to do just that for some period of time.

QUESTIONS AND ANSWERS—EXCERPTS

Senator MOSS. If there is further curtailment in the Canadian supply and that has to be passed onto Mountain Fuel, and if we have a particularly severe winter, is there any likelihood you would have to curtail some of your customers with a firm contract for delivery of gas?

Mr. WORK. This situation is independent of this Canadian price situation. Mountain Fuel has available to it at Coalville, just on the other side of the Wasatch Mountains, sufficient gas to meet the firm requirements for next winter under very severe weather conditions. Should those severe weather conditions occur next winter, without the use of this pipeline that we have been trying to get authority to build, there will be some shortage of firm gas, which will be a new thing for Mountain Fuel. Mountain Fuel has consistently avoided getting into this type of a situation, but I can assure you that should this deficiency occur, we will do everything possible to mitigate the impact of the thing on our customers.

Mr. KASTLER. The point is we have the gas at Coalville, and we have to have it here, and we need to do something here to get that gas here, and we had hoped to be able to do it by now, because it is critical, as you pointed out earlier, to construct a pipeline of that magnitude in high mountain country, so we felt a very grave sense of urgency about this for some time. We feel we must start, and very soon, or we are going to take that risk, and it is not really a supply problem as much as it is a problem getting it to market, and it has been pending for so long, we feel there should be a resolution of it.

Senator MOSS. Without that we might have a curtailment situation here and a reserve of gas sitting out stored in Coalville, that close, and unable to get it to market?

Mr. KASTLER. That is right. If we were to receive prompt authority, we still think we might be able to get that line in, but we hesitate, if that doesn't come soon, to even undertake a project of that magnitude in that kind of country, but we are hopeful we are going to get it, and if we do, we don't think we will have any problems this winter.

Now, if I might expand just a little bit more on your question, if supplies to the Northwest Pipeline Company were curtailed very deeply, this could present a problem to us, too, but we do not foresee, nor have they announced, any such curtailment to date. There will be some, but not enough to affect us, if it is handled on a pro rata basis, as you suggested. If it is handled on some other basis and our curtailment is deeper than anyone else's, or if they were to loose a substantial segment of their supply, which we have no reason to believe they will, that could be a different problem.

Senator MOSS. Well, it is already late in August. Would it be feasible to get the work done before the severe weather this winter, if you could start immediately?

Mr. KASTLER. If we could start right now, we feel we could. We have everything we need. We have the pipe, we have the contractors, we have the rights-of-way, we have done all of the work necessary, the matter has been bid, but we have been advised by our contractors that we will have to rebid it now if they are going to bid. We still are of the opinion that if we could start promptly, we can get that done. We had hoped to start early in June so we could do it in an orderly way. This would be a crash program now, but we think it is of sufficient importance that we should undertake it if we get prompt authority. A lot of this, Senator, depends on the weather. You have hunted around these hills enough to know sometimes it shuts in early in October, and sometimes you can go all the way to December.

Senator MOSS. That is true, that is an unpredictable factor, and I was wondering, it seems to me, even though it is only thirty miles, it has to go through very high terrain, I am sure.

Mr. KASTLER. That is true.

Senator MOSS. And this would pose a considerable hazard to it.

OCEAN POLICY

Mr. HOLLINGS. Mr. President, the Senate Ocean Policy Study, which I am privileged to chair, has been examining the present status of ocean policy and the role of ocean resources in the future development of the country.

A recent article in Sea Power magazine has managed in a few short pages to summarize the importance of ocean policy in coping with three broad national concerns—energy, food, and the environment. It has become evident that one cannot shape energy policy independent of ocean policy. The debate over deepwater ports, offshore development, and energy facilities siting has made the point emphatically clear.

Nor can we pursue a goal of plentiful low cost food without strong emphasis on fisheries development.

And finally we are painfully aware of the recreational and esthetic role of the ocean to the large majority of Americans who live near the sea. I commend this article to my colleagues and ask unanimous consent that it be printed in the RECORD.

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

[From Sea Power, September 1974]

FROM THE NORTH SLOPE TO A PERILOUS OUTER BOUNDARY

(By Merle Macbain)

(NOTE.—Merle Macbain is a retired Navy commander and a former public affairs officer on the staff of the Oceanographer of the Navy.)

There are three hot items on the front burner in the field of oceanographic/oceanologic research and development.

Knowledgeable leaders in maritime matters in both congressional and executive branches of government, the ones exalted enough to be issued crystal balls, seem largely agreed that the areas due for the most attention in the Federal ocean program are: energy; food; and the environment.

Energy heads the list, for obvious reasons. The nation has just come through an energy crisis—specifically, a petroleum crisis. But the United States produces more oil than any other nation.

The domestic sources for significant increases in the oil supply are the outer continental shelf (OCS) and Alaska. *Less than* three percent of the continental shelf has been leased for exploitation, but it already accounts for 17 percent of domestic oil production, and 14 percent of natural gas. But the big pools are at the outer edges, where the U.S. Geological Survey estimates there are 160 to 190 billion barrels of oil and 820 to 1,110 trillion cubic feet of natural gas (three to four times the country's proven land reserves).

But if there is to be a crash program to get deep sea drilling underway by 1975, there will also have to be a crash research and development program. The R&D is needed to improve automatic downhole safety devices and to determine the best way to deal with oil spills on the troubled waters of the high seas.

Currently-programmed research by the National Oceanic and Atmospheric Agency (NOAA), the Environmental Protection Agency (EPA) and other government agencies will also have to be speeded up. There is a need to know a great deal more than is now known, for example, about the effects of oil on living sea organisms so that minimum environmental impact standards may be set up and policed.

With government and industry pulling together, officials say, the deep shelf can within a few years produce up to 2.6 million barrels of oil per day and as much as 9.1 trillion cubic feet of gas annually.

The North Slope of Alaska, once pipeline operations are underway, is also expected to produce 2.6 million barrels of oil per day, and 4.4 trillion cubic feet of gas per year. A Federal Task Force, with NOAA as lead agency, is already pushing research and development on a continuous environmental monitoring system of keep tabs on currents, seastates, and weather forecasts for the marine leg of the oil Coast ports. The information reports will be available to merchant shippers, fishermen and coastal residents as well as to the oil fleet.

SEA DOCK AND BUOY ARRAYS

Other oceanographic research keyed to the energy problem involves construction of offshore oil refineries, nuclear power plants and deep draft harbor facilities.

Since energy self-sufficiency, by the most optimistic estimates, is not possible before the 1980 target date, if then, the United States must continue to import oil.

This being so, it is expected that the next step to alleviate the energy crunch is the rapid construction of single-point mooring buoy arrays for unloading the super-supertankers which alone can provide economical transportation for their ever-more-costly cargoes. The loaded draft of the newest supertankers is approaching the 100-foot

mark; no U.S. port can accommodate them. An application for construction with private funds of two such arrays has been made by a consortium of American oil and petrochemical companies who have agreed to make the facilities available as a public utility for non-member users.

Project Sea Dock, a six-buoy array costing $410 million and featuring 56-inch sea-bottom pipelines, is planned for location in 110 feet of water 30 miles off Freeport, Texas, south of the Houston-Galveston area.

Planning and mechanical R&D work has been completed for a similar array 23 miles at sea southwest of the New Orleans area. If state and federal enabling legislation permits construction to start this year, the target date for completion is mid-1976. By that time it is hoped the way will be cleared for four more arrays—two each off the East and West Coasts.

Food, item two on the marine research priority list, has not been dramatized with the suddenness of the energy crisis—fish is still available on both odd and even days. But it is no less urgent. Fossil fuel drives the slowing U.S. industrial machine, but protein is the fuel that keeps human beings moving. It is fortunate that the oceans hold significant volumes of both resources.

THE SCALLOP SEARCH

The U.S. now imports 70 percent of its fish products, at a cost of well over a billion dollars annually to the U.S. balance of trade.

Speaking recently at the NOAA-sponsored conference on "The Oceans and National Economic Development" in Seattle, Wash., Warren G. Magnuson, the marine-minded chairman of the Senate Commerce Committee, said: "An abundant food supply is still the world's most urgent need, and food, at reasonable prices, is the most important consumer issue in the United States today."

At the same conference, John K. Tabor, Under Secretary of Commerce, speaking for the executive branch, added these thoughts:

"The concept of limitless fish resources, which induced many nations to increase their fishing fleets enormously, has proven a myth. We are now fishing many species at maximum capacity, and we are beginning to impinge upon the total limits of ocean productivity.

"The world harvest from ocean fisheries is now 70 million metric tons. Many experts believe it cannot much exceed 100 million tons on a sustained basis, a perilous outer boundary that may be reached in about 10 years."

Government assistance to the beleaguered U.S. fisheries industry will be pushed on several fronts, nearly all requiring continuing research aimed at self-sufficiency.

Among the present ongoing research efforts:

MARMAP (Marine Resources Monitoring, Assessment and Prediction), a massive four-year survey inaugurated in 1972 by NOAA's National Marine Fisheries Service, will evaluate all living marine resources in American fishing waters.

The Shadowgraph System, a towed, side-scanning acoustical sonar device designed by the Navy to search out seabottom obstructions and recently tested by NOAA scientists to determine its value as a fisheries research tool—the shadowgraph not only sent back profiles of objects capable of fouling fishermen's nets but picked up images of migrating fish schools.

RUFUS, a photographic sled resembling a giant waterbug which was also tested by the NOAA team of scientists, proved repeatedly successful in locating and mapping scallop populations.

NOAA's Marine Fisheries Service also helps to secure loans and tax deferments for construction or modernization of commercial fishing vessels, and provides design advice based on up-to-date fisheries research. Emphasis is being placed on the use of lighter, stronger nets capable of larger hauls and engineered to avoid the inadvertent capture of protected marine mammals.

During the late 1960s—when the haddock, cod and flounder catches off the New England coast began to decline—the Fisheries Service staged a successful research and public relations campaign to introduce such plentiful but little known species as pollock, smoked whiting and ocean quohog to consumers. Numerous other neglected species were soon added to the list, and Fisheries' research determined that some species unacceptable to American taste buds (such as squids, eels, sea urchin roe and dogfish sharks) are prized abroad as delicacies.

Machinery developed for removing the once-wasted meat close to the fish skeleton represents an important mechanical advance. The new "minced" meat, attractively packed as snack foods, has found a substantial market.

Another area where research, nourished by the NOAA Sea Grant program, is now approaching the payoff stage is fish farming—called mari- or aqua-culture by the PHDs at Sea Grant.

Oyster farming is already a going business, but Sea Grant has to share credit with the Romans, who did it first.

Salmon is also now grown commercially, in enclosed sea-water nets. The experimental work was done at the University of Washington in cooperation with National Marine Fisheries. The pampered salmon are being marketed commercially in the Puget Sound area by Domesea, Inc., a Union Carbide subsidiary whose oceanographer-in-residence is Jon Lindbergh, talented deep-diving son of the late "Lucky" Lindbergh. Similar enterprises have been started in Maine and Oregon. And a Florida firm is now test-marketing bay area shrimp grown in a fenced-in enclosure.

Finally, experiments with cultured lobsters have produced systems that increase the growth rate by a factor of four to one or better, while increasing the survival rate from 10 percent in the ocean to 90 percent in culture.

Sea Grant's Dr. Robert Wildman believes the most promising new possibilities for commercial success are cultivated prawns, a delicacy somewhat larger than a shrimp which is now being test-marketed in Florida, California and Hawaii.

With research and financial aid on track the big need now is to provide adequate legal protection for American fishermen in their own waters to assure the country a healthy fisheries industry capable of supplying all of its sea food requirements by the end of the decade.

PRIVACY, MONSTERS, AND DEEP-SEA BLINKSMANSHIP

The third priority item, one that cuts across all others in the national ocean program, is an intensified environmental research effort that will leave the world's oceans with very little privacy.

Potent new and improved research tools are in hand or under development for a global probe into the two-way effects of the environment on man and man on the environment.

Computerized research ships, instrumented for every kind of specialized study, will be backed up by commercial ships of opportunity equipped to gather basic information as they pursue their own missions on the seven seas. Monster automated buoys at strategic points around the globe will relay preprogramed synoptic reports and even answer questions. Manned and robot submersibles will examine the ocean floor and the subbottom of the deepest deeps, while flying laboratories soaring high above the water gather gravity, geomagnetic, sea-state and weather data.

The ultimate tool in the oceanographer's kit will be the family of satellites now being developed by the Space Administration for NOAA, the Navy, and, by extension, the commercial shipping and fishing and other marine-oriented industries. The unblinking satellite eyes in the sky represent nothing less than an overnight quantum jump in marine research and prediction capabilities. While providing pin-point navigation fixes they also issue global and, more important, constantly repetitive photographic and computerized numerical reports on cloud cover, ice pack formations, storm paths, shifting ocean patterns, sea states, sea surface temperatures, beach erosion and pollution of various kinds.

NOAA scientists, examining images from sensors aboard the first Earth Resources Technology Satellite (ERTS-1), spotted large, far-traveling underwater oscillations (known as internal waves and previously considered invisible from the surface). Scientists now speculate that the energy released by such great submerged tidal waves breaking on shallow bottom slopes may be the real cause of the slowing down of the earth's spin and the gradual lengthening of the day over millions of years. But the waves are of more immediate interest to the Navy for their effect on long range sound detection.

It is believed, according to NOAA's Information Office, that no tropical storm at sea has gone undetected since the beginning of the operational satellite system. The saving of lives and protection of property in threatened areas and through the safe rerouting of ships has been of incalculable value.

This is the beginning. Space scientists are currently perfecting the instrumentation for SeaSat, scheduled for launch in 1978 as the first satellite ever designed exclusively for study of the oceans.

WEATHER CONTROL SOON?

The oceans play a lead role in creation of the weather, an environmental element that affects everyone. And one weather program of particular interest is the North Pacific Experiment (NORPAX), a long-term effort jointly funded by the Office of Naval Research and the National Science Foundation's International Decade of Ocean Exploration (IDOE). NORPAX will focus on the shifting upper waters of the North Pacific Ocean and their interaction with the atmosphere. The goal is to better understand and hence predict the influence of that interaction on long-range ocean conditions and on weather patterns over the entire North American continent.

An intriguing study aimed at improving ultra-long-range weather prediction methods is IDOE project CLIMAP. Using an archaeological approach, CLIMAP researchers will attempt to divine the future by studying global weather on a time scale of hundreds of thousands of years. The plan is to study the series of meteorological events between the two known stable states of world climate, the ice age and the temperate age, and thereby determine the pattern—if there was one.

One of the least talked about but most important areas of meteorological research involves weather control. Here, as NOAA's Administrator Dr. Robert M. White puts it, "The Genie is leaving the bottle."

Sea Power asked Senator Magnuson to comment on both the legal and technical status of weather modification. His response:

"The technology is available right now. Field experiments, which require advance approval by the Commerce Department, have been necessarily cautious but very promising. Several states have asked NOAA's National Weather Service for assistance in rainmaking projects, and there has been demonstrable success in these experiments. The dissipation of warm fog over airports can be done routinely and it has been proved

that hurricane winds can be substantially reduced in velocity.

"Though more research is required, the present state of the art might well justify the launching of coordinated weather modification activities by the government and by private industry. What is lacking is the legal framework for such programs. Opening this Pandora's box calls for very careful consideration. Obviously, one man's rain can be another man's drought—or, also, another man's flood.

"My committee is studying the problem right now to the end that the Congress can be made aware of both the beneficial and potentially dangerous effects of weather modification. I believe we can have enabling legislation and move into a carefully supervised operational phase in weather control in the near future."

The other and less attractive side of the coin is man's effect on the environment.

WORLD'S BIGGEST GARBAGE CAN

Man-made pollution of estuaries, bays and near-shore areas has long been a highly publicized threat to the quality of life along crowded coasts. But a newer concern is the pollution of man's last frontier, the deep sea. The traditional belief that the very vastness of the great oceans insures their essential incorruptibility is now being seriously questioned.

"Business as Usual Pending Annihilation" was one subhead on a recent piece in the *Wall Street Journal* which pictured the oceans as "the ultimate sewer" where all wastes not piled, burned or buried on land must find their way. In support of the view that oceanic pollution may eventually kill the source of most oxygen necessary to life on earth, the article quoted Senator Ernest F. Hollings (D-S.C.), Chairman of the Senate Subcommittee on Oceans and Atmosphere: "We are killing the great oceans of this planet and, unless we stop this madness, mankind himself may perish from the face of this earth."

The favorite culprits in deep-ocean pollution have been radioactive fallout, tar from congealed oil, mercury (which gets into the human food chain through contaminated fish), the bits of immortal plastic that somehow find their way to sea and the indiscriminate dumping of human and industrial waste.

CRANK CASES AND OIL TARS

In a survey last year of 700,000 square miles of East Coast waters, NOAA scientists found oil-waste tar clumps and plastic particles cluttering the deep ocean environment from Cape Cod to South America. Strangely, oil contamination was greater in some open ocean areas than it was in the Gulf of Mexico, where so much oil production takes place. NOAA offered no explanation, but some theorists speculate that a large part of deep ocean oil pollution comes from crank case oil carried by rivers from cities to the ultimate sewer. But a substantial amount may simply be oil seeping from strata beneath the earth's surface—ancient mariners, including Columbus, skimmed similar tarry clumps from the sea surface and used them to caulk their leaky ships.

The preliminary opinion of NOAA investigators, incidentally, is that plastic bits are not necessarily harmful to immature fish and that, while the degradable life span of oil is yet to be determined, it is considerably less than eternal. Some of man's worst fears, as the *Wall Street Journal* pointed out, fail to stand the test of time.

Another example along the same lines; those crown-of-thorns starfish which were thought to be devouring the coral reefs of the Pacific as the result of some man-induced madness were, it developed, doing only what starfish have always done. And Smithsonian Institute researchers have found that the level of mercury in fish specimens preserved for thousands of years is about the same as the amounts more recently considered a modern phenomenon.

What oceanic-pollution research has proven is that more research is needed. The oceans, after all, *are* big enough to absorb a lot of punishment, so there is reason to hope that the final effect of man on the oceans will be less than catastrophic.

LEMMINGS UNLIMITED

Another field in which intensive environmental research is imperative is the so-called Coastal Zone, a limited sea coast strip, where 80 million Americans already make their home and more, like lemmings, keep coming. The United States has a combined Atlantic, Pacific and Arctic coastline of 88,633 miles, plus 10,980 miles bordering the Great Lakes.

To enable the Federal government to play the role of honest broker in such a fiercely competitive area of diverse interests and authority, Congress passed the Coastal Zone Management Act of 1972. After some delay, the Federal program is now underway, with first priority assigned to research, advisory guidance and matching fund assistance. The Department of Commerce, with NOAA as action agency, represents the national interest in protecting long-term values for all concerned.

Among the more highly-charged problems to be resolved are the location of coastal and offshore power facilities and deep-water ports, access to and development of marine recreation facilities, maintenance of water quality standards and protection of living marine resources. A blue ribbon array of Federal agencies will assist NOAA and the sovereign states in designing and implementing a workable master plan.

In addition to the three great research areas—energy, food, environment—oceanic planners and scientists are pushing research, both basic and applied, on a number of other oceanographic fronts. Among them:

Drugs—Several forms of marine organisms and bacteria offer possibilities for potent antibiotics and anti-tumor compounds.

Underwater Vehicles—Continued Navy work on automatic submersibles has resulted indirectly in two developments of interest to industry. One is a new type of long-lasting liquid battery cell which generates eight times the energy of a conventional dry cell and does not deteriorate when not in use. The second is an environmentally-conscious robot with the senses of touch, sight and hearing and the ability to obey commands in ordinary English.

Data Acquisition—Westinghouse research has developed, as an added capability for NOAA's global system of Monster Buoys, equipment to monitor pollution.

Navigation—Omega, the first truly worldwide radio navigation system (based on a new principle discovered by Harvard scientists working on an ONR research contract), will be fully operational by 1975. Experimental transmitters have given accurate fixes at ranges up to 8,000 miles. The Navy will make the system available to commercial ships and aircraft.

Diving—The technology is in hand to provide men with gills to enable them, like fish, to breathe water. Fluid breathers theoretically could go to depths of three miles or more. The only question, according to Captain George Bond of the Navy Medical Corps, who helped develop the Navy's current system of "saturation diving," is whether that trip is necessary.

Energy—A group of NOAA and Woods Hole oceanographers are investigating the possibility of capturing some of the almost limitless energy of the Gulf Stream with "underwater windmills." And Scripps Institute scientists, using Sea Grant funds, have developed a pump to harness the power of ocean waves. A single pump, so simple it has only one working part, can generate a thousand watts of electric power.

The economic impact of the revived national interest in the oceanological/oceanographic sciences is likely to be nothing short of stupendous, incidentally. A recent comprehensive study of "Military & Other Government Oceanography" by Frost & Sullivan, Inc., a technological market research organization headquartered in New York City (106 Fulton St. 10038), for instance, indicates likely expenditures in the billions of dollars for various Navy and NOAA programs already underway, and 10-year outlays of an estimated $120 million for feasibility studies alone of such future projects as "Deep Ocean Stations," "Seafront Stations," "Mobile Undersea Support Laboratory," "Large Stable Ocean Platform," and "Pilot Harbor Development Project."

Many additional research areas could be mentioned. Suffice to say that, if the current resurgence of interest in oceanographic research is translated into increasing financial support, the later part of the decade will see advances in the exploitation of the great mineral and protein resources of the oceans equal to the dramatic advances in oceanographic engineering capabilities of the 1960s.

THE EARNED REENTRY PROGRAM

Mr. JAVITS. Mr. President, I call to the Senate's attention a program designed as a positive response to President Ford's recently announced national amnesty program respecting the Vietnam war.

This plan was developed by my office in conjunction with the City University of New York and the New York City Board of Higher Education. It envisions the employment as tutors at the university of as many as 2,000 Vietnam military deserters or evaders who elect to participate in the President's earned reentry program. I have discussed this proposal, which constitutes an innovative form of alternative service, with our former colleagues Senator Charles E. Goodell, Chairman of the Clemency Board, and Attorney General Saxbe.

Mr. President, I ask unanimous consent that an exchange of correspondence between myself and the Honorable Alfred A. Giardino, chairman of the board of higher education of the city of New York be printed in the RECORD on this matter, as well as a news release from the City University dated September 22, 1974.

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

U.S. SENATE,
Washington, D.C., Septmeber 16, 1974.

Hon. ALFRED A. GIARDINO,
Chairman, Board of Higher Education, the City University of New York; New York, N.Y.

DEAR CHAIRMAN GIARDINO: As one who has long supported the concept of Open Admissions at City University, I share with you and your colleagues at the Board of Higher Education a desire to maximize the success of this important program. I am aware that limitations in state and municipal funding have prevented the colleges of the University from mounting the kind of remedial effort that would fully tap the potential of the thousands of high school graduates who arrive on your campuses each year with academic deficiencies. I am also aware that when the Open Admissions program was first introduced its proponents urged that it include a massive tutorial component but that the cost of this tutorial effort subsequently proved to be beyond the fiscal reach of the University.

The "earned re-entry" program announced by President Ford today, in my opinion, provides the opportunity to implement that vital tutorial component at CUNY. There are, doubtless, many young men presently categorized as draft evaders or military deserters who possess the academic qualifications to serve as college tutors and who would be willing to make a meaningful contribution through service at City University. This is the kind of public service I believe the President had in mind when he made his announcement. Accordingly, I have discussed with my colleague, former Senator Charles E. Goodell, Chairman of the Clemency Board, the earned re-entry and the Open Admissions tutorial idea. Mr. Goodell has given me assurance of his support in helping to direct qualified re-entry volunteers toward service as tutors at CUNY.

Also, I will discuss this idea with Attorney General Saxbe, who has a coordinate jurisdiction in earned re-entry.

I would therefore appreciate hearing from you at your earliest opportunity as to whether you believe such a tutorial system would be desirable at CUNY. Also, if you feel this idea is worthwhile, I would like to advise Mr. Goodell as to the number of tutors you estimate CUNY colleges could use; when they could be employed; and the qualifications the University administration would want to set for this kind of service.

Although the full details of the "earned re-entry" program are not as yet fully articulated, I assume that persons seeking reentry would receive from the Federal Government remuneration, food and shelter comparable to that provided men who enter the armed services. If you wish to pursue this matter further, I will assign a member of my staff to assist the University in working out the details for such a tutorial program.

With best wishes,
Sincerely,

JACOB K. JAVITS,
U.S. Senator.

CITY UNIVERSITY OF NEW YORK,
BOARD OF HIGHER EDUCATION,
New York, N.Y., September 18, 1974.

Hon. JACOB K. JAVITS,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR JAVITS: Many thanks indeed for your letter of September 16th just received. That earned reentry individuals may serve in substantial numbers as tutors to help those who enter City University with academic deficiencies is an exciting and highly constructive proposal. Such a program is both educationally sound and a major social contribution that will benefit the student recipients of such aid as well as those who will serve as tutors.

Immediately upon receipt of your letter I discussed the proposed program with Chancellor Kibbee who believes that it could make a substantial contribution to the academic success of our lesser prepared students.

While we have experienced an encouraging degree of success in our remedial programs, you are correct in identifying our severe fiscal constraints as having inhibited the massive tutorial assistance suggested by those who conceived open admissions. As you know, our university is still the victim of chronic financial shortfall and therefore would be unable to provide funds to support "earned reentry" volunteers other than for the managerial and administrative costs that would be involved for each campus. That is why the use of highly motivated reentry volunteers paid from federal funds is so ingenious an idea on your part. We were delighted to learn that the chairman of the clemency board appointed by the President under his amnesty proclamation has assured you of support of this imaginative and worthy proposal.

In response to some of the questions posed in your letter, you may wish to note the following:

1. A telephone survey today of our undergraduate campuses indicates that CUNY colleges could make immediate and effective use of up to 2,000 qualified tutors if that number is available. We expect our freshman enrollment for the current academic year to exceed 40,000, an all-time high. A substantial number will require tutorial assistance.

2. According to Dr. Kibbee, our minimum academic qualifications for tutors would be a baccalaureate degree from an accredited institution or successful completion of two years of undergraduate study with demonstrated tutorial competence in basic English, mathematics, the social sciences or the physical sciences. The university would want to select tutors from those who apply for this service, who are judged to be qualified and who meet our standards of character fitness and tutorial motivation.

The university is ready to assign administration of this program to its Office of Academic Affairs where it would come under the direction of Vice Chancellor Timothy S. Healy. Liaison with the colleges would be through that office and actual tutorial assignments would be supervised by the faculties of each of the colleges.

We have consulted with our college presidents and representatives of our faculty and can assure you of their enthusiastic support and cooperation. We are eager to move this program forward without delay. Yours is a brilliant proposal and your continued assistance would be invaluable in assuring cooperation with the federal agencies with whom we would work in implementing it. If you agree, we would like to make this plan public by announcing it over the weekend.

Sincerely,

ALFRED A. GIARDINO.

[News from The City University of New York, Sept. 22, 1974]

CUNY WILL SEEK 2,000 TUTORS UNDER JAVITS' AMNESTY PLAN

Senator Jacob K. Javits has initiated a plan whereby the City University of New York would make use of President Ford's "earned reentry" amnesty proclamation to recruit a small army of college tutors who would provide supplementary remedial assistance to academically disadvantaged high school graduates who enrolled in CUNY under its Open Admissions policy.

Announcement of the Javits Plan was made today by Alfred A. Giardino, chairman of the Board of Higher Education which oversees the 260,000-student City University system. Mr. Giardino said, CUNY "could make immediate and effective use of up to 2,000 qualified tutors if that number is available."

Elements of the Javits proposal were contained in an exchange of correspondence released by the B.H.E. chairman. In laying out his plan to tap a national pool of academic talent to strengthen CUNY's remedial efforts, Senator Javits revealed that he had already brought it to the attention of former Senator Charles E. Goodell who was named on Monday as chairman of the Presidential Clemency Board. Mr. Goodell indicated "enthusiastic support" for the idea, according to Senator Javits.

Chairman Giardino responded to the Javits Plan by describing it as "educationally sound and a major social contribution that will benefit the student recipients of such aid as well as those who will serve as tutors."

The B.H.E. chairman said that CUNY Chancellor Robert J. Kibbee had suggested "minimum academic qualifications for tutors" drawn from reentry service volunteers. A baccalaureate degree from an accredited institution of higher education or two years of successful undergraduate studies "with demonstrated tutorial competence in basic English, mathematics, the social sciences or the physical sciences," were the criteria stipulated by Dr. Kibbee.

The City University chancellor declared, "The infusion of 2,000 tutors into our system would fill a vital gap that has existed in CUNY's open admissions effort because of funding limitations from the very outset."

Under the Javits Plan, equivalent service volunteers would be made aware of CUNY tutorial openings through official listings at federal reception points throughout the country. They would submit applications to the university's Office of Academic Affairs which, if approved, would then be routed directly to one of CUNY's 18 undergraduate colleges. Specific tutorial assignments would be made and supervised by the faculties at each of the colleges.

Dr. Kibbee said that he had informed leaders of the union representing CUNY faculty that implementation of the Javits Plan would not displace university faculty or fill instructional positions normally funded through the university's budget.

MARITIME SOVEREIGNTY

Mr. BIDEN. Mr. President, in late August, the Delaware State Senate passed Resolution No 255 recommending that the 12-mile limit off the coastline of the United States be extended.

I ask unanimous consent that this resolution be printed in the RECORD.

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

RESOLUTION No. 255

Whereas, the established twelve-mile limit off the coastlines of the United States of America has been in effect for many years although at times posing a threat to our nation as a result of surveillance and spying by foreign powers; and

Whereas, commercial fishermen in this nation have respected the twelve-mile limit despite numerous hardships they have encountered because of its stringent enforcement; and

Whereas, fishermen of other nations, through the years, have fostered unending raids just beyond the twelve-mile mark on certain species of whales, salmon, and other varieties of fish important to the livelihood of this country's commercial fishing fleets; and

Whereas, other nations of the world, including Peru which has an established two hundred-mile limit, have extended their boundaries to benefit commercial and sports fishing interests of their nations, while at the same time heightening the national security of these nations; and

Whereas, it is most important that steps be taken by our elected representatives in the Congress to change the outmoded twelve-mile limit to a distance, perhaps one hundred to two hundred miles, which would be much more realistic in terms of national security and a healthy fishing economy.

Now therefore,

Be it resolved by the Senate of the 127th General Assembly in Extraordinary Session, that its members go on record as recommending that the United States Congress extend the present twelve-mile limit to a more realistic distance of one hundred to two hundred miles in the best interests of the nation's security and a healthy economy for United States' fishermen.

Be it further resolved that copies of this resolution be forwarded immediately to United States Senators William V. Roth, Jr. and Joseph R. Biden, Jr. and to United States

Representative Pierre S. duPont, IV at their respective offices with a plea for their support of the thoughts and ideas included in this resolution.

A 3,000-MILE JOG

Mr. MATHIAS. Mr. President, two young men, Phil Castleberg and Heinz Wiegand, recently completed a remarkable feat—a 3,000-mile jog across the United States. They did it to make the public aware of heart disease, America's No. 1 killer, and of the benefits of physical fitness. This extraordinary exercise had its origin in the city of Frederick, Md., and the two joggers appropriately stopped for "welcome home" ceremonies as they neared the end of the last leg of their trip. I am sure, Mr. President, that my colleagues from across the country join me in sharing with Frederick and the State of Maryland a large measure of pride in these two men and respect for what they have done. Mr. President, the Frederick News saluted this achievement in an editorial and the Honorable Ronald N. Young, mayor of Frederick, issued a proclamation in recognition of it. I ask unanimous consent that the editorial and the proclamation be printed in the RECORD.

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

[From the Frederick (Md.) News, Sept. 23, 1974]

FOR OUR HEARTY LIVING

It is no freak thing two young men have done in jogging what will be some 3,000 miles For Our Benefit.

Heinz Wiegand and Phil Castleberg arrived "home" Friday to a warm welcome after jogging over 2,800 miles en route from the Pacific to the Atlantic.

More than just a "fling" or a "publicity stunt," these two spirited young men—Heinz accompanied by his wife, Phil by his sister—undertook this marathon jog to show what a healthy body and healthy mind can do for one's health.

They will be honored Sunday in Washington, D.C., and these and other honors are well deserved.

Even more noteworthy than the fact that their bodies and minds and faith could propel them through the heat and rains of such a long trek is the fact that the expenses have come not out of the sponsoring Heart Fund's money, but out of their own pockets.

Castleberg and Wiegand are adding their efforts to those of other major private and governmental programs of public education about heart disease prevention which have been identified as possible factors in the recent dramatic decline in fatal heart attacks in the United States.

The suggestion that there may be more to the decline than improved medical care for heart disease patients came from Dr. Richard Ross, president of the American Heart Association (AHA).

Dr. Ross was commenting on a study by the National Center for Health Statistics which shows that the death rate from coronary heart disease fell 10.5 per cent in the period from 1963 to 1971. The rate had risen 19 per cent in the period from 1950 to 1963.

The AHA and the President's Council on Physical Fitness and Sports (PCPFS) have been leaders in advancing regular vigorous exercise as one means of reducing the risk and the seriousness of heart attacks.

The AHA recommends a 6-point program: (1) reduce saturated fat and cholesterol in the diet; (2) avoid excess weight; (3) control high blood pressure; (4) stop smoking; (5) exercise regularly; and (6) have regular medical checkups.

In an effort to assist the AHA and the PCPFS in advancing regular, vigorous exercise as one way of reducing the risk of heart disease, our two Frederick runners have spent their summer jogging from Seattle, Washington to Rehoboth Beach, Del.

Heinz and Phil are avid joggers who have spent years training for this run. Averaging 30–45 miles per day, they have been through 13 states giving lectures, interviews and participating in testing programs to educate the public about the dangers of heart disease and ways of preventing it.

The duo will be honored by the AHA and PCPFS at the annual picnic of the Washington, D.C., Road Runners Club at 5 p.m. tomorrow in Rock Creek Park

A special program is planned to recognize the achievements of these two individuals who have committed so much of their time and energies to the battle against heart disease.

Not only should Frederick personally doff its hat to these two Hearty Living men, but, we, who have a need to, should also don our jogging garb and shape up for a longer, healthier life.

CITY OF FREDERICK—PROCLAMATION

Whereas, Phil Castleberg and Heinz Wiegand have nearly completed a three thousand mile cross country jog to promote physical fitness, and

Whereas, These gentlemen have ably represented the City of Frederick in this remarkable endeavor, and

Whereas, The administration and the people of Frederick City are extremely proud of their accomplishment on behalf of "hearty living" and physical fitness,

Now, therefore, I, Ronald N. Young, Mayor of the City of Frederick, Maryland, do hereby officially declare Friday, August 23, 1974, to be "Runners for Heart Association Day" in the City of Frederick.

In witness whereof, I have hereunto set my hand and caused the Seal of the Mayor to be affixed this twenty-third day of August, 1974.

RONALD N. YOUNG, *Mayor*.

ANTITRUST ACTION IN THE AGE OF CONSUMERISM

Mr. MOSS. Mr. President, Commissioner M. Elizabeth Hanford, of the Federal Trade Commission, has recently set forth an important program at antitrust law enforcement in a speech entitled, "The Antitrust Imperative in an Age of Consumerism." The consumer today has learned that the most important rules of the marketplace are the rules which foster competition. As long as competition is humming smoothly, the pitfalls which the consumer faces are significantly eliminated. But once anticompetitive practices take a foothold in the marketplace, the consumer suffers. The consumer suffers from the elimination of new ideas, the restriction on availability of goods or services, and the increased prices which an anticompetitive marketplace fosters.

Mr. President, I urge that my colleagues read the speech which Commissioner Hanford has given on this subject. I ask unanimous consent that the text of the speech be printed in the RECORD at the conclusion of my remarks.

There being no objection, the speech is ordered to be printed in the RECORD, as follows:

[From the Federal Trade Commission, Sept. 9, 1974]

THE ANTITRUST IMPERATIVE IN AN AGE OF CONSUMERISM

(An Address by M. Elizabeth Hanford, Commissioner)

It is always a pleasure to meet with women in varied leadership roles to explore important issues facing us all. When it was suggested to me that I focus my comments and observations on the consumer movement, I felt this would be a good opportunity to share with you my thinking as to where consumerism stands in the diverse American spectrum today—and, perhaps more importantly, where this powerful and important movement should direct its primary efforts in the future.

From my vantage point on the Federal Trade Commission, I think it is undeniable that we live in an age of consumerism. At a time when market forces seem to grow ever more impersonal—and complex—the American consumer appears less and less willing to accept unfairness in the nation's marketplaces; less willing to accept a lack of competitive product and service options, less willing to acept inadequate—or inaccurate—information concerning the products and services he buys; less willing to run undisclosed—or unreasonable—health and safety risks created on the seller's side; less willing to accept the frustration of a world in which his complaints too often remain unheard, unweighed, and unanswered.

In other words, the American consumer has found his voice—and that voice is strong and steady. The credibility of a Ralph Nader whose persistent dedication to principles of corporate accountability and citizen involvement are aimed at "making the system work" is not subject to dispute; or can one question the sincerity of a Virginia Knauer or a Bess Meyerson.

This cast of mind has not always been with us, for the primary demands of the American consumer have changed significantly in the past 40 years. In the difficult economic times of the early 1930's—the so-called "great depression"—the rudimentary problem facing the American consumer was to meet the family's basic needs in terms of providing food, shelter and clothing. There seemed to be little time for the problems of environmental quality, deceptive advertising or defective warranties. Most people—unable to borrow money—were hardly concerned with cost-or-credit disclosures of the type now mandated by law in the Truth-in-Lending Act. Then, the choice was not which cereal container would be selected, but whether cereal could be afforded at all. Then, the object of the trip to the grocery store was the purchase of day-old bread and no complaints were heard about proliferating packages of cakes and cookies.

Of course, we came out of that period in a burst of unprecedented productive capacity. Unparalleled demand was generated and sustained by a world war, a post-war baby boom, and the continued development of international markets. At the same time, more and more Americans completed high school and went on to college; and, as if in reward for two decades of severe strain and effort, increased automation gave us more leisure, and the credit economy gave us a new, high level of consumer buying power. In this context—with the leisure, and with the increased buying power, and, above all, with the increased educational opportunities—the American consumer reached a degree of sophistication unmatched in an earlier day. It is in this context that the current consumer movement emerged.

Now, I characterized the present time as an "age of consumerism," but I am certainly not suggesting that we have achieved the millenium. No, this is certainly not an age

of consumerism in the sense that all our problems are solved. The continuing good-faith efforts of so many businessmen, working jointly with consumers and public officials throughout the country have doubtless been beneficial; but many challenges remain. I believe, however, that it is the very tension created by our expectations and demands—by our growth as a people—which ultimately provides the motor force for all social change; and it is this source of raw human energy which, if disciplined and directed, can generate meaningful solutions to the underlying causes of our frustrations. It is in this sense—in the sense of vast opportunity for achievement—that we are in an "age of consumerism."

It has been estimated that unresolved consumer controversies involve in excess of $100 million each year. Based on my years in the consumer field, I have seen enough egregious consumer wrongs, apparently without consumer remedies, to conclude that, as high as this might seem, it is not inconceivable that this $100 million figure may be too low an estimate.

I suspect this comes as no surprise to any of us who have experienced the frustration of seeking satisfaction when a purchase was delivered with a defect the warranty did not quite seem to cover—nor is it a surprise to those of us who have wondered in vain how justice would be done when it became clear that a purchased item was simply and indisputably not what it was represented to be. Shoddy workmanship: advertising filled with irrelevancies and half-truths, often pandering to the vulnerabilities of the young or the gullible; hard-core fraud—the range of actual and potential consumer abuses is wide indeed; and, to highlight one problem area from among them presents obvious pitfalls. Nevertheless, as I consider how the energies of Americans interested in consumerism could best be spent in the coming months, and years, one broad area stands out clearly in my mind.

I refer here to sustained enforcement of the nation's antitrust laws. Speaking again from my perspective as a Commissioner of the Federal Trade Commission—the federal agency jointly responsible in partnership with the Antitrust Division of the Justice Department for the enforcement of our antitrust laws—let me state clearly my commitment to a policy of vigorous and uncompromising antitrust enforcement. In essence, the heart of consumerism is antitrust.

It may strike some as surprising or strange that I should choose a women's forum—a forum taking the theme "today's woman"—as the appropriate setting for a discussion of antitrust; but I suggest to you that a view of antitrust enforcement as a man's issue is no more acceptable than the notion that consumerism is a woman's cause.

Unfortunately, to many consumers of both sexes, the notion of antitrust enforcement is an uncertain and ethereal concept—suggesting images of the early tobacco, sugar and oil trusts, robber barons, and the Grange and Populist movements of the late 19th Century. It suggests to many the seemingly impenetrable legal maze of anticompetitive corporate mergers, monopolization attempts, and subtle price-fixing conspiracies. But we can ill afford to view antitrust as either antiquated or unfathomable.

The national antitrust laws are no less than our most direct and vital affirmation of the free enterprise system. The goal embodied in these laws—that of maintaining markets in which consumers can turn to a multiplicity of sellers for their needs insures healthy competition for the consumer's dollar; significantly, such competition is most often reflected in lower prices, better service and workmanship, and an intensified effort at product development and innovation.

The statement of this goal, however, is not a self-fulfilling prophecy; and the history of increasing economic concentration in America makes it clear that markets, absent vigorous antitrust scrutiny, tend to lose their competitive character; that competitors can become colleagues in joint action against their customers; and that prices can go up while quality and value go down.

As we are all well aware, we find ourselves today in the midst of a severe economic crisis. The President has rightly determined that an important step in the fight against inflation is implementation of certain federal spending cuts; and the pending economic summit meeting will doubtless produce a number of additional government initiatives for an across-the-board effort to force spiraling prices downward. It is, I think, imperative that federal antitrust enforcement be enlisted as a potent weapon in this fight. This requires not only prompt prosecutorial initiatives, both by the FTC and the Antitrust Division, but—at a time when federal spending must be stringently curtailed—it requires significant increases in our budget commitment to antitrust. It appears to me that through the years the Federal dollar commitment to antitrust has clearly been inadequate to the challenge. Simply put: we must have more for this task. I think it vitally important that this message—the need for vigorous antitrust enforcement and for significant increases in funding—be focused upon in the current dialogue now underway in Washington.

In the final analysis the American people—the American consumer—will receive effective antitrust enforcement only to the extent that it is demanded; and I think that it will be demanded only if there is enough understanding of the underlying issues to appreciate that, in essence, lasting success with so many consumer problems is inexorably bound up with the success of antitrust enforcement. Let me add that I am in complete agreement with Attorney General Saxbe's recent commitment to an educational effort which will explain the implications of antitrust to an audience wider than the antitrust bar.

We meet here today as concerned citizens and concerned women. It is essential, in my view, for today's women to be increasingly active and involved in the economic affairs of our nation. I reiterate that consumerism should in no way be considered a woman's issue; yet opportunities for "today's woman" to participate in the challenging work of the consumer movement are manifold. The enhanced awareness of "today's woman" as a person of individual identity and potential, her increasing participation in the world of events beyond the home, her willingness to translate her potentialities into power and action combine with the day-to-day expertise so many American women possess on the dollars-and-cents issues that are basic to consumer programs.

While the opportunity for careers in consumer-related fields is increasing, much of the crucial work can be done on a volunteer, part-time basis, in perfect consonance with other career choices. Consider, for example, the young leader of a consumer organization who recently visited my office to express her group's concern that the sharp rise in prices which she continually faces as her family's chief procurement officer might, in some instances, be caused by anticompetitive behavior flourishing in the current inflationary climate. Citizens have joined in organizations throughout the country to reflect their consumer concerns before committees of Congress and state legislatures; they are in the forefront in urging that consumer education be taught in their schools; they are pressing businessmen to voluntarily resolve consumer frustrations in the market, to provide methods for handling consumer grievances in an effective and expeditious manner. In short, the opportunities for participation abound.

Thomas Wolfe was right: you can't go home again. The frustrations we feel as consumers—as well as women—will not abate in any permanent or lasting way until the problems are faced and solutions are found. It is ultimately a job we must do for ourselves as women—as well as consumers.

SENATOR WALTER MONDALE ON THE ECONOMIC CHALLENGE

Mr. HUMPHREY. Mr. President, I would like to bring to the Senate's attention an editorial in the Minnesota Tribune on October 2, 1974, concerning an article by the senior Senator from Minnesota (Mr. MONDALE), which has recently appeared in Foreign Affairs magazine.

This article was prepared over the summer, before international economic issues had become fashionable. It sets out simply the fact that our economic problems are not just domestic and it also underlines the fact that our most pressing international problem is economic. It points out clearly the pressing problems we now confront because of the oil price hike, because of inflation, and in the field of trade. The article also spells out how economic issues must become the central touch stone of our evolving relations with the Soviet Union.

But the most important point, I think, is the Senator's argument that foreign policy must be an extension of domestic policy and not some abstract and separate arena of Government action. I believe this is a basic and challenging concept which deserves further thought by all of us.

Mr. President, I ask unanimous consent that a recent editorial in the Minneapolis Tribune regarding Senator MONDALE's article, and the text of the Foreign Affairs article, entitled "Beyond Détente: Toward International Economic Security," be included in the RECORD.

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

[From the Minneapolis Tribune, Oct. 2, 1974]

MONDALE ON THE ECONOMIC CHALLENGE

Sen. Walter Mondale argues that all other international security matters are now overshadowed by threats to the world economy. He is not alone in that view. President Ford and Secretary of State Kissinger have begun saying the same thing lately, and theirs are only the most prominent voices in a growing chorus.

Writing at length in the October issue of Foreign Affairs, Mondale reaches conclusions that break little new ground. If anything, he is less radical (in the sense of making fewer veiled threats) than the Ford administration, and he is more inclined to recognize that shortcomings in American policy have contributed to the problems.

Thus while he describes oil-price increases as "irresponsible price-fixing," Mondale mentions ways in which Western countries, including the United States, also have been guilty of destabilizing actions. And he recognizes that raw-materials cartels spring partly from feelings in underdeveloped supplier countries that they have been exploited in the past.

Mondale offers familiar solutions, including coordinated policies among industrialized nations and greater participation by oil-exporting countries in international economic policy-making. But his observations have significance at another level.

First, they suggest a moderation in cer-

tain views. For example, there is no suggestion in the Foreign Affairs article of the food embargo Mondale was advocating a year ago. Second, his analysis shows an increasing grasp of subjects beyond the domestic issues for which he is better known.

Mondale does not have the reputation of, say, a Jackson in national-security matters or a Fulbright in foreign affairs. But in 1968 he was in the forefront of the move to liberalize East-West trade when detente was not the accepted principle it is now. Later, when criticism of defense spending tended to be diffuse, Mondale focused on a specific, costly aspect: Although carefully researched, his challenge to the size of the Navy's carrier program seemed unlikely to have much effect. But it did.

The Minnesota senator's commentary on international economic problems extends that pattern; recognizing issues of ascending urgency, studying them with care and offering reasonable courses of action. This speaks well for his abilities as a senator. Some might even consider those abilities suited to a higher office.

[From Foreign Affairs, October 1974]

BEYOND DÉTENTE: TOWARD INTERNATIONAL ECONOMIC SECURITY

(By WALTER F. MONDALE)

Economic issues are now front and center for the world's political leaders, topping the agenda of both domestic and foreign policy concerns. While the major international security issues of the last quarter-century are still with us—the competition in strategic nuclear arms, the struggle of differing political systems, the confrontation of massively armed alliances in Europe, the menace of great-power involvement in local conflict—these are now being overshadowed by the risk that the operation of the international economy may spin out of control. For if this happens there will be no graver threat to international stability, to the survival of Western democratic forms of government, and to national security itself.

Last June West Germany Chancellor Helmut Schmidt spoke plainly at the NATO summit meeting. As he saw it, the most serious risks facing NATO were not military. The growing economic difficulties of its members, he said, "include dangers that cannot be exaggerated. Inflation and the necessarily following recession pose the greatest threat to the foundations of Western society."

Throughout the crisis of the President, it was difficult for the American public to focus on international issues. What serious discussion there was dealt almost exclusively with the problems of détente with the Soviet Union. It is on this issue that Secretary Kissinger has called for a great debate, and Senator Fulbright is responding by holding extensive hearings to air the views of both critics and supporters of the Nixon Administration's dealings with the Soviet Union.

Certainly détente is important. The gains in East-West relations must be consolidated on a realistic basis;; negotiations on strategic arms, the European Security Conference and the question of force levels in Europe must be pursued, and the attempt to progress toward a peace settlement in the Middle East (itself in part a test of the scope of détente) must command special and unremitting attention.

But just as inflation has now emerged as by far the most pressing domestic concern, so international economic policy is now our top external challenge. In terms of the scale of the problems and the imagination required for their solutions—and especially in light of the inadequate attention economic questions have received in recent years—this is the area which calls for our greatest efforts. The priority we have accorded for years to traditional political and security concerns must now be given to international economic issues. If we do not resolve them, the security problems that may ensue could dwarf those that now remain.

II

That economic problems have become critical in their own right should now be evident to us all. The first serious talk of major depression since World War II is gaining currency. Editors and economic analysts, from *The Journal of Commerce* to *The New Republic*, are pointing to the danger signs of economic collapse. By midyear, even though the shock of the Arab oil embargo and price rises had been largely absorbed in the United States, inflation was running above ten percent, real GNP was declining by 0.8 percent, while unemployment stayed higher at 5.2 percent and was expected to rise.

In Europe and Japan the situation is, if anything, worse. By August the rate of inflation was roughly 18 percent in Great Britain, more than 20 percent in Italy, 15–16 percent in France, and about 25 percent in Japan. Real GNP was dropping in Britain and Italy, while even West Germany, with the healthiest economy in Europe, and Japan, with almost miraculous growth rates in the past, were both down to only two percent growth. High interest rates have choked off investment everywhere while unemployment has grown ominously in almost all major European countries. To these grim statistics must be added the oil bill, which this year will contribute to a European balance-of-payments deficit estimated at $20 billion, and growing concern, fed by the collapse of the Herstatt Bank in Cologne and the near collapse of the Franklin National Bank in New York, that the world's major financial institutions may be in jeopardy. Bankers in Europe and the United States are deeply worried that more banks may go under.

The outlook for the bulk of the poor nations is even more bleak. The additional aid required this year to meet the increased cost of food and energy is not materializing. This shortfall, and the lower North American harvest now projected for this fall, may be laying the groundwork for widespread famine and food shortages.

So far, however, the main dangers lie in the future, at least for the industrialized countries. At this writing, competitive devaluations have not taken place. Arab oil receipts are being recycled. The IMF has acted to help Italy and other countries meet their massive balance-of-payments problems stemming from the oil price rise. In early July, central bankers meeting in Basel agreed to try to help banks in financial trouble. The OECD is now predicting a lower inflation rate in the major industrialized countries for the last half of 1974.

Yet industrialized countries will remain under economic pressure. Even if oil prices soften somewhat, the energy bill will remain staggering. In the United States serious proposals have recently been advanced for at least two more years of stagnant growth to tame inflation, and the prospect of more than six percent unemployment has been greeted with equanimity by Administration officials.

Austerity measures in Italy, France and West Germany now appear to be slowing inflation, but before these countries can breathe a sigh of relief they are already gritting their teeth over the possibility of recession. Europeans and others must confront growing internal pressure to resort to unilateral beggar-thy-neighbor actions—export and import controls, exchange controls, devaluations and dumping. Arab oil revenues may grow into a massive and mercurial threat to international financial stability. Informal cooperation among economic authorities in the major countries, which has been instrumental in containing the crisis thus far, may not be able to stand up under persistent stress.

Ultimately, the intensity and duration of the current economic crisis will depend upon what governments do about it. While it is imperative to avoid self-fulfilling prophecies of economic doom, there is no automatic guarantee that things will come out all right. Therefore, responsible leaders of all political persuasions throughout the industrialized world must, as a matter of prudence, give serious consideration to the grimmer assessments.

As they look upon the international economic scene, moreover, apprehension is fueled by frustration, because the problems are beyond the span of control of individual nations. With the growth in economic interdependence, the problems are inextricably linked, and only a comprehensive and systematic international efforts can deal with them.

III

There is nothing new in the idea of a comprehensive approach to dealing with the world's economic problems, nor in giving such concerns high priority in our foreign policy. Even as World War II raged, and with the consequences of the Great Depression still vivid, major efforts were made to build new economic institutions on a worldwide basis. The Soviet Union was represented at the Bretton Woods Conference in 1944, which established the International Monetary Fund and paved the way for the World Bank, and the Soviets also were invited to participate in the Marshall plan.

Both Bretton Woods and the Marshall Plan stemmed from the recognition of interdependence—that the economic health of the major countries of the world affected the security and well-being of the others. It was clear that some kind of international economic system would rise from the ashes of World War II and the real task was to assure that it promoted recovery and did not go haywire as it had after World War I.

During this same period, the late 1940s, there was a parallel effort to build a comprehensive system of collective military security via the United Nations. This, too, was based on the conviction that security was interdependent, or as it was fashionable to say at the time, indivisible.

These first tentative structures for a reasonably universal economic and security system cracked apart in the intensity of the cold war. The industrialized market-economy countries ended up organizing the international economic system on their own while the Communist countries withdrew into autarky and set up their own more rudimentary arrangements. The Third World was so dependent on the industrialized world as to be only an appendage of it.

Over the next two decades, the 1950s and 1960s, the colonial nations of the Third World became independent, but wielded little economic or political power. Competition between East and West, along with traditional ties to the West, assured the Third World a certain amount of development assistance. Over time the Communist countries grew stronger and came to trade more with both the West and the Third World, while the latter began to participate to some degree in the management of the international economic system through the World Bank and IMF—in particular the Committee of 20 dealing with monetary affairs.

But at the beginning of this decade, we in the United States and the rest of the Western industrialized world, including Japan, clearly controlled our own economic security. Interdependence seemed only limited. For practical purposes the international economy *was* the economy of the Western world. We did not depend on the economic behavior of the Communist world in any significant way, and we were largely in control of what we needed from the Third World, despite the clamor of its representatives for greater equity.

The situation has changed markedly in the

last four years. The West's international economic system is no longer insulated. Both the Third World and the Communist countries have dramatically demonstrated a capacity to disrupt it through cartel pricing of oil and massive grain purchases respectively.

In addition, just this year a "Fourth World" has precipitated out from the Third. Its members are those who lack major resources or economic power. The nations in this group are more dependent, more deprived and more aware of it than any large segment of the world's population in history. That some of the desperate nations of this Fourth World now may have access to nuclear weapons only adds to the prospects for tragedy.

There is a new distribution of the economic power in the world and we must learn to deal with it. However, the sudden emergence of this changed economic equation is not just the result of Soviet grain purchases and the oil crisis. The impact of those developments has been directly proportional to the long-range changes already underway inside the Western international economic system.

By the early 1970s this system faced a visible breakdown in the way it managed its monetary affairs, and was already in the throes of an acute crisis of inflation—which spread from country to country in accordance with a sort of Gresham's Law toward the highest national rate. Inflation accompanied by stagnation was a new and bewildering phenomenon, undermining confidence in our ability to manage our industrial economies. Aid to developing countries had declined, generating increased desperation and resentment. In the last year, all these developments combined to form the essence of what may now be termed as a total crisis; one that is both economic and political and involves the entire international system.

Fortunately this crisis coincides with a period in which political and military security issues are muted, and some of the major divisions in the world are being bridged and even healed. But we must seize the opportunities presented by détente and other improvements in the international picture to deal effectively with our economic problems, or the progress we have made toward a more secure world may be undone.

In the late 1920s there was also a version of détente, symbolized by the Treaty of Locarno, and at the same time an emerging depression. When the nations of the world failed to cooperate to deal with the depression, its consequences rapidly unraveled the elements of that détente, and in the end economic collapse contributed mightily both to the emergence of grave threats from Germany and Japan and to the paralysis of other nations, including the United States, in the face of those threats.

It is not alarmist to suggest that something of the same sort could happen today. If the economic crisis continues to deepen, détente, now stalled at several key points, could well go into reverse. Already the economic pressures on the members of NATO are undermining their defense postures and reducing Soviet incentives to negotiate. A more grave economic crisis in the West could generate dangerous temptations for the relatively less-affected Communist countries, possibly reviving their hope for the "demise of capitalism" and encouraging a more aggressive and interventionist foreign policy.

However, the dangers are not solely from the Communist world. New or dormant ambitions may be kindled in countries internally divided by economic disruption. Economic differences could precipitate a breakdown in our security relationships with Japan and Europe, leading perhaps to go-it-alone defense policies with profound consequences for regional stability. Other countries may become so self-absorbed as to completely withdraw from their responsibilities for international security: Great Britain may be nearing this point already, and some believe that Italy is past it.

The time has come to face the fact that the fundamental security objectives underlying the process of détente are now linked to the world economic situation. The economic cooperation that is required will involve us most deeply with our traditional postwar allies, Western Europe and Japan, but it must also embrace a new measure of comity with the developing countries, and include the Soviet Union and other Communist nations in significant areas of international economic life. Only thus can the present precarious period of détente lead beyond uncertain balance-of-power arrangements to the worldwide sense of common economic interest that is an essential underpinning of a relatively peaceful world.

IV

The economic and financial dislocations created by last year's fourfold increase in oil prices pose the most urgent set of issues with which we must deal. The size of the price increase and the abrupt manner in which it was imposed (not to mention the use of oil as a political weapon) smacked of economic aggression. The first task of a foreign policy aimed at enhancing economic security should be to try to get an oil price rollback. Because of overproduction and decreased consumption there is some prospect for lower oil prices. We should do all we can to encourage the trend (and ensure its being "passed through" to the consumer), but as a realistic matter we must also plan our economic strategy on the assumption that high oil prices will continue.

The oil price hike is like a huge tax levied on most of the world's economies. However, it is a form of taxation without representation, for the size and expenditure of this tax is beyond the control of those who pay it or of their governments. Most of the payments made to the oil producers are remaining in Geneva, London and New York, where they are recycled back into the world economy. Nonetheless important problems remain:

The burden of recycling the oil receipts is threatening to undermine the stability of the international banking system; and

The recycling of oil "tax" receipts is not putting funds into the hands of those who need it most.

To these pressing issues must be added the longer-term problem of how to handle the continued acquisition of foreign exchange reserves by the oil-producing countries—an accumulation which could reach over a trillion dollars by 1980.

Today oil revenues are taking the form of short-term demand deposits in European, and increasingly American, banks, while the banks themselves must make longer-term loans for normal purposes such as capital investment, and now also to help governments meet the balance-of-payments cost of the oil price increases. The possibility of being caught in the squeeze (borrowing short and lending long) is real, particularly since no one knows how volatile the oil funds will prove to be.

Banks are also being pressed to hedge against potential exchange rate fluctuations stemming at least in part from the balance-of-payments drain of higher oil prices. This can involve extensive foreign exchange dealings of the kind that drove Franklin National and Herstatt to the wall.

The private international banking system must not be asked to take on alone this task of recycling oil receipts. Not only is it too great a burden on the system, but it also means that the recycling, the loans that are made, will be on the basis of commercial criteria when larger political and security objectives often should be controlling. Thus, we find bankers understandably concerned about the credit-worthiness of countries such as Italy, when unfortunately the overriding issue is whether democracy will survive or be replaced with a far Left or rightist revolutionary regime—with profound effects on NATO and stability in the Mediterranean.

To ensure that such political and strategic requirements are met, and to calm the anxieties of the international banking community, governments must not take on the task of reapportioning credit and financial resources. Acting together with the central banks and the IMF, governments must in some fashion assume the responsibility of lender of last resort. Clearly, certain safeguards must be built-in so that private banks do not have a blank check that they can cash to save themselves from the consequences of imprudence and mismanagement. But this risk is far less significant than the risk of collapse of major financial institutions and even of governments.

Such support for the international banking system, hopefully, will be sufficient to meet the reallocation problems of the industrialized countries without the need to resort to large-scale direct government aid, although such a possibility has been the object of lively debate among policy planners in Washington throughout the summer. For the have-not nations of the Fourth World, however, a substantial governmental aid effort is required.

The poorest countries—primarily on the Indian subcontinent, in Africa, and in parts of Latin America—are suffering severely from the oil price hike. It has been estimated that the increase in the oil bill for the developing countries this year more than cancels out the aid they are receiving. The skyrocketing costs of food and fertilizer are equally large. As a result, the developing countries face a total increase in import costs this year of $15 billion, which is twice the amount of all the aid they receive.

While some of the developing countries will get by, for others—notably India, Pakistan and Bangladesh—it is not an exaggeration to characterize the situation as desperate. Just to get through this year will require an estimated $3 to $4 billion in additional aid, if the lives of nearly one billion people are not to be threatened by economic collapse and ultimately starvation. The special $3 billion oil loan facility set up last June by the IMF will be of some help, but because of the IMF's formula for lending to its 126 members, the poorest countries cannot get sufficient assistance from this source.

Additional help is needed; it can take many forms, from financial assistance to concessional sales of food, fertilizer and energy. The U.N. Secretary-General's effort to develop a special emergency fund or the IMF's Committee of 20 proposal for an IMF-World Bank joint Ministerial Committee on aid to the less-developed countries could become means to work out a package of emergency help. Moreover, the joint Ministerial Committee in particular, to be set up in October with its membership from both the developed and developing countries and strong representation by finance ministers, holds out the possibility of becoming a much needed vehicle for more long-term planning and greater support for international economic development.

Whatever the means of international cooperative action, the main need now is for the United States, the other industrialized countries, and the oil-producing countries to make a firm commitment. We have to stop waiting for the other fellow to act, and as a practical matter this means the United States must take the lead in proposing a specific commitment for itself. Once that decision is made, the logjam should break on other countries' contributions, and we can turn to the resolution of technical issues such as whether assistance will be in the form of debt rescheduling, food assistance, etc.

Even though American leadership is essential, the United States cannot, and should

not, become the primary source of increased development assistance—which by 1980 should amount to an estimated $12 to $13 billion annually according to a World Bank study. Along with Western Europe and Japan, the oil-producing countries and the Soviet Union need to pick up their share of this responsibility. The oil-producing Arab countries in particular will soon have massive reserves and liquidity. By the end of this decade it is estimated that Saudi Arabia, Kuwait, Qatar, the United Arab Emirates and Libya may accumulate up to $966 billion in reserves. A significant part of this should somehow be brought to bear on the plight of the Fourth World.

The vast projected increase in Arab financial reserves underscores the fact that the oil price crisis is not a one-shot affair. Even if oil prices soften, the balance-of-payments drain will go on and on. Loans and interest will pile up. The burden will be great not only in the developing countries but also on the industrialized countries which are the oil producers' largest customers. There will be a continuing challenge to handle the stresses of recycling on the banking system and the industrialized economies.

Over time there is hope that the oil producers will put their excess funds into longer-term securities and equity investments. We should welcome such investment. However, there may be real limits, political and economic, to the amount of Arab equity investment that can be absorbed in the Western industrialized countries, including the United States.

The problem is not just economic nationalism, although there is already popular concern in the United States about Arab and Japanese purchases of American industry and real estate—and it is not hard to imagine the reactions to a Saudi Arabian purchase of 25 percent of U.S. Steel along the lines of the recent Iranian investment in Krupp. There are serious policy questions, too. For example, we regard equity investment as an essentially long-term proposition, but it is not clear the Arabs view it the same way. If Arab countries bought large holdings and then pulled out from companies like General Motors or General Electric, this could have a major impact not only on the companies, but on the stock market and the U.S. economy. We and others will want some measure of control to provide safeguards against these and other possible actions inimical to our overall national interest.

On the other hand, Arab governments will be concerned about the hospitality their investments are to receive. Although they are now in the process of taking over the holdings of the international oil companies in the Middle East, they clearly do not want the same thing to happen to their foreign investments. Given the benefits and potential risks for both sides, there appears to be a reasonable incentive to work out reciprocal assurances on how Arab equity investments will be handled in the industrialized world.

Thus the outline of a new pattern of cooperative effort can be envisioned. The oil-producing countries should be granted a larger role in the IMF and the World Bank, where today they have almost no executive positions. The developed countries could make commitments to protect the equity investments of the oil-producing states in their countries in return for appropriate assurances about the stability of such investments. In addition, the oil producers should put some of their reserves into the international lending institutions and engage in long-term aid to the less-developed countries (and possibly provide some short-term balance-of-payments assistance to troubled developed countries). Such a broader distribution of oil producers' revenues would also serve to reduce somewhat the volume of short-term bank deposits, ease the pressure on the banking system, and limit the size of equity investments in the developed countries.

The difficulty in arriving at such a new pattern of relationships and responsibilities cannot be overstated. There is an impressive lack of enthusiasm on the part of the oil producers toward helping their former brethren of the Third World, apart from Arab nations and a few others with whom they seek special ties. But there are a few encouraging signs, too. The World Bank is apparently finding it possible to borrow from Saudi Arabia, Kuwait and even Venezuela, and if the rate is not exactly concessional (reportedly eight percent), it is a step in the right direction.

If some such pattern of greater cooperation is to come about, American leadership is again essential. The United States has the largest single voice in the World Bank and the IMF. It is our overall support that reduces the risks to the oil producers who are channeling funds to the less-developed countries through loans to the World Bank. The United States is the greatest potential market for Arab equity investment, and the response of the American government in providing assurances and establishing rules for such investment is likely to set the standard for the rest of the world.

V

We must also give priority attention to the international dimensions of inflation and the threat of recession. Inflation is the most politically regressive force at work in the world today. It has been said that no country has ever had an inflation rate of more than 20 percent and continued with a democratic government. There may be no magic in this figure, just as there is little precedent for our current situation. But it is sobering to recognize that the United States is about halfway to this rate of inflation, Britain and France are approaching it, and Italy and Japan have been beyond it. Elsewhere, among semi-industrialized and developing countries, rates are usually far higher. No other phenomenon provides as firm a common denominator for all the weak and minority governments now prevalent in the non-Communist world.

Even factoring out the impact of the oil price hike, the present economic situation is essentially unprecedented. The international economy, characterized for decades, if not centuries, by boom-and-bust cycles, was brought under reasonable control after World War II. The objective of full employment was for a time achieved in most developed countries through Keynesian management. However, "stagflation"—high inflation and low growth—began to appear in the 1960s in Great Britain and elsewhere. Now we have what *The Economist* has called "slumpflation," in which there is recession or zero growth while inflation is soaring.

Unfortunately, our comprehension of the problems involved in this phenomenon has not kept up with our vocabulary in describing it. There is grave concern that no one really understands the present economic conundrum, nor knows how to deal with it.

This concern is exaggerated. The monetary and fiscal tools of economic management can be adequate to deal effectively with the present situation. What is needed are new, more selective measures for the domestic application of these tools and a new appreciation of the need to take into account the international aspects of our economic difficulties.

It is an obvious but important fact that we are in the grip of two quite contradictory pressures. On the one hand, even the most economically powerful nations, the United States included, are now highly vulnerable to international economic developments. On the other hand, national governments are expected to deal effectively with all aspects of domestic economic conditions from unemployment to the supply of beef. The choice for governments is between trying to reduce problems to proportions they alone can manage, by seeking to insulate the domestic economy through a return to trade and monetary controls, or going on to a new and deeper level of international coordination of domestic economic policies.

One of the hopes in adopting a more flexible exchange rate system has been that it would make it possible for countries to pursue different national policies in their struggle with inflation and recession. While the system has worked well in many areas, it appears that the increased flexibility of countries to follow their own monetary and fiscal policies under the floating rate system may be seriously overrated. For example, if the policies of individual countries stray from the international norm, they may import too much inflation or suffer too much competition. Hence countries are likely to coordinate their monetary policy at least as closely with their major trading partners as they did under the fixed rate system—witness Giscard d'Estaing's recent and unprecedented pledge to conform France's policies and inflation targets to those of West Germany. This sense of interdependence significantly constrains most countries' abilities to fight inflation unilaterally, since monetary policy has become a central if not the exclusive weapon in this struggle.

Thus, although controlling inflation is preeminently a national responsibility, there is now a requirement for closer international coordination to ensure that the major countries are not working at cross purposes with one another. Several cooperative efforts can be envisioned. Adequate international funding for oil-generated balance-of-payments deficits will help avoid devaluations and the consequent boost to inflation. The balance-of-payments objectives of the major trading countries should be brought into line. Efforts to coordinate monetary policy, an elusive objective in the past, deserve renewed emphasis. Each country should try to assure that its domestic policies are not really exporting inflation or unemployment; all must avoid beggar-thy-neighbor reactions.

In effect, industrialized countries must coordinate their overall economic programs concerning growth, inflation and employment. The United States cannot, for example, consider unilaterally embarking on a policy of controlling inflation by two or more years of stagnant growth, oblivious to the fact that this could lead to a major recession in Europe (not to mention its impact on the American people).

We are fortunate that the American economy of all the market economies is least sensitive to international economic pressures. But we are not invulnerable, and ill-considered policies which look good in the short run can have an important adverse impact on our economy through the effects they have on others.

The United States therefore has an important stake in better international economic coordination, whether through existing institutions or through the creation of some new, more efficient international mechanisms. But even the existing institutions such as the OECD can be much more effective if we are prepared to exercise leadership, use our influence on behalf of increased international coordination, and, of course, accept the constraints that may well go with it.

VI

The handling of trade policy will have a major impact on whether we are effective in fighting inflation and holding the line against recession. In the short run, the most urgent task is to head off increasing pressures for trade restrictions. In the long run, we

need to find ways to assure fair access to commodities and raw materials at prices which are stable and reasonable.

The liberal international trading system that exists today, and which has been one of the key elements in the growth of the international economy over the last two decades, is now under serious political and economic pressure. Increasing unemployment and sluggish growth in sectors of national economies are tempting governments to control imports and to subsidize exports in selected cases. At the same time, inflation or shortages in still other economic sectors encourage export controls.

With interest rates as high as they are, the utility of monetary policy alone as a tool to manage economies is approaching its limit, and the use of fiscal policy is constrained in many countries by the dictates of internal social and political cohesion. There is therefore a real prospect of increasing reliance by governments on a patchwork of import and export controls to manage their national economies. The likelihood of turning to trade restrictions is, of course, increased in many countries by the balance-of-payments drain resulting from high oil prices.

An encouraging sign came from the OECD in July when the members pledged not to resort to such controls. However, without more concrete action on the underlying economic issues, the pledge may count for little. Italy slapped on import restrictions in the teeth of major Common Market obligations. While she faced a clear emergency and the import control measures are supposedly temporary, other countries may face similar emergencies. Moreover, there is doubt about how temporary these controls are, since the consequences of the oil price rise will continue indefinitely.

To contain such pressures, it is imperative to start up the long-immobilized trade negotiations. The Europeans and Japanese, once reluctant participants, are now eager to move ahead before protectionist pressures in their countries intensify to the point that negotiations become impossible. The Europeans want to begin serious bargaining this fall and fear that further delay, even to December, could entail serious risks.

This requires prompt action on the trade bill which is before the Senate. The reasons for the delay on the trade bill illustrate the pull between the issues of the past and those of the future on our response to the international economic crisis.

From the outset, the Nixon Administration pursued the strategy of linking most-favored-nation treatment for the Soviet Union, a matter more political than economic, to the broader economic purposes of the trade bill. Confronted with the issue of the right of Jews in the Soviet Union to emigrate free of harassment, President Nixon stalled, apparently hoping the problem would either go away or that the need for the other parts of the bill, combined with the threat of a veto if an emigration amendment were included, would be sufficient to get the bill he wanted. In other words, his Administration viewed the trade bill primarily as a vehicle to advance its détente objectives rather than as an essential means for dealing with the grave international economic issues that confront us. Understandably, a vast majority of U.S. Senators also found it appropriate to pursue what they considred valid political objectives vis-à-vis the Soviet Union by tying MFN to freer emigration.

At this writing there are encouraging signs of progress on the emigration issue, as the Executive has come to realize that the only approach is to work out a firm agreement on this subject with the Soviet Union. Such a solution would pave the way for prompt passage and an early start to the next round of trade negotiations.

A major long-term issue, which should be given priority attention at the trade negotiations, is the issue of access to commodities and raw materials. The rules of the General Agreement on Tariffs and Trade (GATT) focus on the problem of access to markets. What is also needed are rules and other arrangements providing for fair access to sources of supply at reasonable and stable prices.

The impulse to assure access to supplies is not a new form of colonialism. First, while the oil price increases are one obvious example of the kind of irresponsible price-fixing that should be brought under control, it is important to recognize that this is not solely or even primarily, an issue between the less-developed and industrialized countries. The U.S. embargo on soybeans, the Japanese embargo on fertilizer, and widespread controls on scrap iron are all examples of steps by industrialized countries inimical to international economic stability.

Second, complicated equities are involved. Supplier countries which are also underdeveloped have an economic and moral case for an increased return on their products. Cartel pricing of oil and the efforts to build producer cartels in bauxite and copper are in part aimed at redressing what developing countries have always considered unfair terms of trade. Rightly or wrongly, they have felt that the industrialized countries set the price of their commodity exports as well as the price of their imports, and did so to the developing countries' disadvantage.

The problems the copper- and bauxite-producing countries have encountered in developing a cartel arrangement lend weight to the view that commodity cartels are difficult to achieve. However, efforts to construct such cartels have a destructive impact even if they fail; and continued inflation in the price of imported industrial goods will further stimulate efforts to raise commodity prices—if not by cartels then possibly by unilateral tax increases such as those imposed on bauxite by Jamaica.

The desire on the part of producers of raw materials to revalue their output is also based on concern over the exhaustibility of their resources. The developing countries now have a clearer appreciation of the enormity of the development task as well as little reason to believe that they can depend on anyone but themselves for the resources required. Those with finite resources are therefore particularly anxious to squeeze all they can out of them and are not likely to be very responsive to lectures on economic morality by the developed world.

Third, there may be justifiable reasons for individual countries to impose export controls in legitimate short-supply situations. However, the objective of such controls should be to allocate the short supplies equitably between the domestic economy and foreign purchasers and not solely to export inflation. Otherwise export controls can lead to retaliation, disruption in trade, and further disorder in the international economic system.

Stability in the price and supply of commodities is important if we are to deal with inflation over the long term. In comparison with other goods, most commodities were, until recently, low priced and there was thus a low rate of investment in producing them. With the surge in demand in 1972–73, production could not respond, causing shortages and large price increases. New investment in commodity production will bring the cycle down again, but this wide up-and-down swing in commodity supplies and prices is both wasteful and inflationary. It operates to the disadvantage of suppliers and consumers of commodities alike. To deal with this issue, as well as head off pressures for further cartels, means must be found for stabilizing individual commodity prices and supplies to the extent possible.

The United States bears a special responsibility and burden in this regard. We are now the major source of foodstuffs traded in world markets. Since 1971 U.S. farm exports have more than doubled and in 1973 amounted to $18 billion. The United States and Canada control a larger share of grain exports than the Middle East does of oil. The world has literally come to depend on U.S. agriculture for its well-being. At the same time, the surge in world food demand has also directly affected inflation in the United States. The temptation to resort to export controls, as we did briefly for soybeans last year, could well recur.

On the other hand, the United States also has a big stake in unfettered access to raw materials. For example, we import 100 percent of our chromium and tin and more than 90 percent of such important commodities as platinum and nickel. The United States thus has a particular interest in developing reasonable rules governing export controls, along with arrangements for assuring access to supplies at reasonable and stable prices. These rules must protect the domestic economy of countries from world inflation, and yet provide a responsible source of supply.

In addition to the clear need for new GATT rules on access to resources, and the urgent need to explore stabilization arrangements for specific commodities, there is the question of commodity reserves. At present the United States has large strategic reserves of several key raw materials, which might be used to help stabilize world prices more than has been the case to this point. However, if we move in this direction it should be in concert with others, and under arrangements through which other countries would share in the cost.

The creation of a world food reserve is urgent. This is a complex problem, made more difficult and pressing because American and Canadian reserves have been drawn down to perilously low levels in recent years. They should now be reconstituted, but if they are to form the bulk of a world food reserve (designed both for price stability and to meet famine situations) then others must act in parallel and the direct and indirect costs must be fairly apportioned.

Moreover, it is inconceivable that the United States could take on the task of world food supplier through a reserve system, while markets for American food exports are restricted and denied by trade barriers. The forthcoming World Food Conference can be a major forum for addressing proposals for world food reserves. At the same time the trade negotiations should give priority attention to reducing trade barriers to American foodstuffs.

VII

The task of working out suitable forms of economic cooperation on the foregoing issues will fall mainly to the industrialized market-economy countries and to a lesser extent, the developing countries. However, the actions of the Communist world can either help or hinder these efforts.

Today the Soviet Union and the other Communist countries, including China, are at least superficially insulated from the economic tides sweeping the rest of the world. But, as we saw in the 1972 Soviet grain purchases, their erratic actions in world markets can have profound effects on international economic stability and, in particular, inflation.

The problem is how to integrate the growing volume of economic transactions with the Communist countries into the world economy. Its solution will take patience and a long-term effort. We need to find ways to deal with the issue of unfair pricing and dumping on the one hand, and massive unpredictable interventions in short-supply situations on the other. The former will be difficult because the Communists' concept of price, and of its function in their econ-

omies, is totally different from our own. The latter also will be hard, not least because the Soviet Union and other Communist countries do not perceive a problem. But a start can be made by pressing the Soviet Union to play a constructive role in alleviating the world food situation—at least to the extent of agreeing to provide the U.N. Food and Agricultural Organization (FAO) with all relevant agricultural information and not to jump into the market for large quantities of food without warning. And the Soviet Union should participate directly in whatever can be worked out for fertilizer supply and for a world food reserve.

The Soviet Union is also potentially a much greater source of economic development assistance than it is today. Total economic aid by the Soviet Union last year was only $622 million, while its military assistance was estimated at $1.7 billion. With the less-developed nations in such desperate condition, the Soviet Union should be persuaded to reorder its aid priorities.

Finally, the Soviet Union must be brought to realize that the need to exercise restraint in East-West political competition has an economic dimension as well. Soviet efforts to get the Arabs to maintain their oil cutback and embargo were just as menacing to Western security interests as Soviet military support (and apparent encouragement) for the October War. Certainly progress toward a reasonable and viable Arab-Israeli settlement is fundamental to a lasting arrangement on oil supplies and prices, and this in turn is a major economic security interest of the United States and its allies. This is an additional reason why, if the Soviet Union imposes obstacles to peace in the Middle East, it will be running grave risks of jeopardizing improved East-West relations.

We must, of course, have no illusions about the difficulty of moving the Soviet Union to recognize the long-run interest it has in cooperating in these areas. Soviet officials often regard the raising of legitimate trade problems as being "anti-détente." Economic aid to the less-developed world has always been regarded as a political weapon. The notion of exercising restraint is novel and controversial to Soviet leaders in regard to political issues, let alone economic interests.

Yet, the Soviet Union's hopes for basic internal improvement—hopes central to the power position of the Soviet leadership—hinge on the development of much greater economic ties with, and in effect economic assistance from, the industrialized world. Moreover, it was the Soviet Union that became in World War II the greatest victim of the chain of political and security consequences stemming from the Great Depression. If there is another worldwide depression, the Soviet Union too will suffer.[1]

Hence it should be in the Soviet interest to involve itself more responsibly in world economic cooperation. Indeed, the West is now justified in making such cooperation a central test and touchstone of détente. Western credits and peaceful non-strategic trade should be related to commitments on the part of the Communist countries to work out a reasonable code of economic behavior with the Western market-economy countries, and to participate in the new aid effort required for the developing countries.

Today, the fact that major aspects of détente—SALT, MBFR and the European Security Conference—are bogged down is raising serious questions about ultimate Soviet intentions and the durability of détente. However, we need not, indeed cannot, remain fixated on issues that divide East and West. By taking advantage of the measure of détente we now have, and by moving forward to systematically engage the Soviet Union in some of the economic problems besetting us, we can test the strength of détente and the broad intentions of the East. This also may be the only way to establish the kind of relationship that will enable us to resolve the East-West issues we still face.

VIII

From this examination of the specific immediate and long-term actions now required, it is possible to envision the general outlines of a system of international economic security:

A deeper measure of coordination of national and international economic policies among the industrialized nations in Europe, North American, and Japan;

A new role for the oil-producing countries in the management of the international economy and new responsibilities for aiding stability, growth, and in the poorest countries, economic development;

A new relationship between the industrialized and raw material producing countries assuring more stable prices and supplies; and

A more constructive involvement of the Communist countries, particularly the Soviet Union, in world trade and the task of economic development.

Not all of these broad objectives should be pursued at the same time or with equal vigor. Some of the specific issues in the present crisis are clearly more urgent than others, and for a few problems there may not be ready answers. But the important thing is that U.S. policies be informed by a comprehensive vision of the kind of world economic system we hope to achieve.

And we must begin at once. With each passing week the economic problems we face become less susceptible to wise solutions. Progress on the urgent issues will facilitate tackling the longer range questions.

Initiatives and cooperation must come from many quarters if such a vision of worldwide economic relationships is to be realized. In particular, American leadership is indispensable. We are still the largest single economy and have the greatest impact on international trade and finance. Only if the United States plays its full part can the current trend toward economic fragmentation and disorder be turned around in the direction of a comprehensive and global effort of economic cooperation.

At present our government is poorly equipped in terms of talent and organization to handle such a role. Compared to the credentials of the Secretary of State and Secretary of Defense in the field of international security, those charged with international economic affairs are by no means the kind of strong group the United States put together in 1947 on a bipartisan basis and could surely assemble again.

Organizational remedies are no substitute for political commitment and capable people. But one clear need is to coordinate the diverse governmental organizations that affect international economic policy: State, Treasury, Commerce, Agriculture, the Council of Economic Advisers, the Federal Reserve, etc. The present Council on International Economic Policy has never been able to perform the task of developing coherent policies and strategies. Perhaps what is needed is something more akin to the National Security Council, with a stautory base and a strong substantive staff that can cut through the welter of conflicting interests and views to develop clear policy alternatives.

But there should be at least one major difference from the NSC system: the director of such a staff on international economic policy must be accessible to the Congress and to the public. The issues involved are too closely related to domestic policy to be shrouded from public view by the trappings of diplomatic or even presidential confidentiality. And the Congress must, as it did in 1947 and 1948, play a crucial affirmative role. For this it will need to exert greater efforts to coordinate the work of the many committees and subcommittees that have an impact on our economy. The new Budget Committee and the congressional Office of the Budget can make an important contribution in this regard by exerting more responsive and responsible control over fiscal policy.

IX

Finally, an effective international economic policy must be grounded on a sound and equitable domestic economic program. Help for the international banking system or emergency aid for the have-not nations cannot possibly command the necessary support if the new Administration turns a blind eye to six percent unemployment. President Ford has an opportunity now to explain the facts of our current economic crisis to the American people and to take and propose decisive action. There may be strong differences over the right combination of policies and how the cost of meeting our present difficulties should be apportioned, but there is also a tremendous desire in Congress and the public for firm and bold leadership.

Because international economic issues bear so directly on our domestic concerns, moving toward a new system of international economic security and making it our first priority in world affairs could provide a basis for rebuilding the consensus among the American people in support of our foreign policy. The source of increasing isolationist sentiment in the United States is not some atavistic streak in the American character, but rather the fact that the ordinary American no longer sees his primary interests as being served by the current definition of American foreign policy.

If we can redefine our foreign policy and our national security to include not only the concern over strategic position and political influence but also the basic issues of inflation, economic stability, jobs and growth, and in fact make these a key concern, we will find that once again a broad consensus on our world role is possible. If such domestic needs gain a prominent place in our diplomacy, the American people will not only support efforts of international leadership, but will be willing as they have been in the past to accept short-term sacrifices in order to achieve long-range success. To meet the threat we now face to our economic security, foreign policy must truly become the extension of domestic policy by other means.

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[1] In a recent column, Victor Zorza comments on the Soviet attitude: "While some Soviet leaders appear to welcome the opportunity for gain with which the instability of the West may present them, others are not so sure. 'We are well aware,' says Georgi Arbatov, head of the Soviet Institute of U.S. Studies, 'that the crisis of bourgeois society may have various political results, that the crisis of the 1930s produced Roosevelt and the New Deal in the United States, and Hitler, Fascism and war in Germany'." *The Washington Post*, July 30, 1974.

PRINCE GEORGES COUNTY HERITAGE DAY

Mr. MATHIAS. Mr. President, last weekend I was privileged to attend Prince Georges County Heritage Day, marking the 279th year of a county whose founding precedes that of our Nation itself. The history of Prince Georges County spans the era from the tobacco plantation economy of the 17th century to its present status as an active, modern county whose government has won nationwide recognition for many of its programs. The county has a rich heritage. John Hanson, President of the Congress and, therefor often called the "First President of the United States," lived at one time in

Prince Georges County. It was the scene of crucial battles in the War of 1812, and it was in Riverdale that Samuel Morse perfected his invention, the telegraph. America's first thoroughbred horse, Selima, was stabled at "Belair." The county encompasses the Nation's first airport, at College Park, and the Goddard Space Flight Center. Its school system is the 10th largest in the Nation. Its history and its present role as a progressive example of local government are summarized in a brief history, for which I ask unanimous consent that it be printed in the RECORD.

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

PRINCE GEORGES COUNTY—A 300-YEAR TRADITION OF ACHIEVEMENT—HERITAGE DAY 1974

More than 400 years ago—long before "progress" turned forests into freeways and lush wilderness gave way to high-rise apartments and sprawling suburbs—the land nestled between Maryland's Patuxent and Potomac Rivers was home for a handful of peaceful Indian tribes.

The Piscataways, Mattawomans, Chopticans, Patuxents and other tribes of the Algonquin nation hunted, fished and farmed along the river banks. They had towns and villages and even a simple form of government. Largest by far of the tribes was the Piscataways, a powerful band that lived along the Potomac at the creek that today bears their name. Their capital was Killamaqundi, about 15 miles south of Washington and there was a special residence nearby for their *tayac* or emperor.

Their land, destined to become Prince George's County in less than a century, was a green, fertile countryside. The woods teemed with game and the rivers were abundant with fish. The air was unpolluted and the hills had yet to echo with the sounds of war.

Until a summer morning in 1608, white men had yet to invade this rich, unspoiled tract of the new world. It was then that Captain John Smith, later associated with the Jamestown colony in Virginia and an Indian maid named Pocahontas, led a band of explorers as they sailed into Piscataway Bay.

Captain Smith plainly was impressed with what he saw, describing the region as "fed with many sweet rivers and springs . . . from the bordering hils. These hils . . . yield no lesse plentie and varietie of fruit, then the river exceedeth with abundance of fisth." He also drew the first maps of the area which were remarkably accurate for their time. Before sailing on to Virginia, he located a number of Indian villages, identified their tribal names and indicated they were more or less friendly to the pale-faced intruders.

Some 20 years after John Smith's exploration Piscataway, Sir George Calvert, the first Lord Baltimore, journeyed the Chesapeake Bay area of what is now Maryland and returned to England to seek a land grant from the King for a colony in the new world.

George Calvert died in 1632 before the charter could be granted. Later the same year, however, King Charles I bestowed on Calvert's eldest son, Cecil, what was possibly the largest land charter ever given to a single family—nearly 7,000,000 acres in all. In gratitude, Calvert dubbed the new colony Maryland, in honor of Queen Henrietta Marie.

An expedition of 200 persons, mostly Roman Catholics seeking religious freedom set out aboard the Ark and Dove for Maryland in 1633. Under the leadership of Leonard Calvert, the two ships arrived on the Virginia coast in February, 1633, remained a few days and sailed for the banks of the Potomac.

In March, Calvert's pilgrims landed at St. Clements Island in the Potomac where they planted the English flag and a cross as a symbol of the land or religious freedom they hoped to establish. Venturing on to Piscataway, Calvert met with the powerful emperor of the Piscataway Indians before sailing down the Potomac to erect the first permanent settlement at St. Mary's City in what is now St. Mary's County.

A rudimentary government was quickly founded with the first legislative assembly meeting in 1635 and again in 1639.

The Maryland colony drew settlers rapidly, particularly along the Patuxent River and the Chesapeake Bay. Gradually, civilization pushed inward from the river banks, due in large measure to numerous land grants made by Lord Baltimore. These land gifts, to families who were later to engage in profitable plantation operations and simple manufacturing and mining, thus set the stage for the baronial "plantation" way of life in the colony.

The early sessions of the Maryland Assembly found the "freemen" members at odds with the Calvert family and later, around 1650, the Maryland colony suffered because of disputes between the King and Parliament. It wasn't until 1660 that a member of the Calvert family, Philip, came to Maryland to govern in person.

By 1674, the counties began to emerge as local government entities and the Assembly provided each with a courthouse and jail. In 1695, mostly at the urging of discontented citizens from what was then Charles County, the Assembly created Prince George's County. The new jurisdiction encompassed all of what is now the District of Columbia, Prince George's, Montgomery, Frederick, Washington, Allegany and Garrett Counties—easily the largest of Maryland's counties. The original act, in fact, mentioned no western boundary because western Maryland was as yet unexplored.

It was named for Prince George of Norway and Denmark who was later consort to England's Queene Anne.

The difficulties of travel in those days and the county's original size made it all but impossible to govern efficiently, so in 1748, Prince George's was reduced to its approximate present size. The county was to yet undergo one more reduction in its area in 1791 when most of the land for a national capital, later Washington, D.C. was carved from it.

The actual colonial government consisted of the Governor of the state and two justices of the peace for each county whom he appointed. The High Sheriff was clerk to this combination administrative and judicial court. Each smaller section of the county, called a "hundred" was protected by a constable.

In time, the county government and the courts separated and evolved into the "county commissioner" form of government, still with strong ties to the state legislature. This survived until 1970 when the voters approved the present Charter and installed the elected County Executive-County Council form of government, thus becoming the fourth Maryland county to do so.

During pre-revolution days, Prince George's County grew and prospered both economically and culturally. Many of America's founding fathers, including George Washington and Patrick Henry were frequent visitors to the county for business and social purposes.

American horse racing got its start here at the present site of the Marlboro Race Course and General Washington, according to his diary, was among the first to wager and lose at the track. John Carroll, born in 1735 where the present courthouse stands, was an early American religious leader, founded Georgetown University, and was part of the delegation sent to Canada by Washington to seek aid for the colonists.

John Hanson, first President of the United States under the Articles of Confederation, lived for a time in the county and is buried at Oxon Hill Manor.

Although no battles were fought on county soil during the more than five years of the American Revolution, Prince George's contributed many soldiers to the struggle. Because of the county's easy access to the Chesapeake, county residents joined other Marylanders at watch stations along the Potomac in case of an attack by the British fleet.

When the first U.S. Census was taken in 1790, a little more than 21,000 persons were living in the country. The land still was largely wilderness. Farming, mostly of corn and tobacco, was the core of the economy. Upper Marlborough (original spelling) and Bladensburg bustled as shipping, commercial and cultural centers.

The War of 1812 found the county again in the thick of history. Battles near Marlborough and at Bladensburg were key military victories for the British in their march on Washington. The failure of the Americans to hold Ft. Washington on the Potomac as a first line of defense for the capital also contributed heavily to the city's destruction.

It was to negotiate the release of Dr. William Beanes of Marlborough that took Francis Scott Key to a British ship in Baltimore Harbor. As the two men watched the bombardment of Ft. McHenry, Key was moved to write "The Star Spangled Banner."

After the war, the county again began to grow and prosper. Westward expansion had begun with the invention of the "iron horse" and by the early 1830's, Prince George's was one of the first counties in America to have a railroad line.

It was during this same period that another event took place here that was to have an inestimable effect on the growth and development of America.

In 1832, Samuel F. B. Morse conceived the idea of sending messages in code over wires—the telegraph. After years perfecting the device, Morse, with the aid of Charles Calvert, a member of Congress and a prominent Prince Georgean, managed in 1843 to squeeze a $30,000 appropriation out of Congress to test his invention. Morse was to set up an experimental telegraph line from Washington to Baltimore. By April 9, the line had reached the vicinity of Riversdale, the home of Congressman Calvert in what is now the Riverdale section of Prince George's County. A preliminary test over the six-mile line was successful and about six weeks later the famous "What hath God wrought?" message was sent to Baltimore, thus sealing Morse's success.

Twenty years later, America was on the brink of Civil War and once more, Prince George's County was destined to play an important, though unpleasant role in the conflict.

As a border state with Confederate leanings, the county's role in the Civil War was often controversial. Prince George's was a popular hideout and a thoroughfare for southern spies and one county newspaper was barred from the U.S. mails because of its southern persuasion. Even so, in more than one battle, Marylander fought Marylander in this bloody and devisive war.

After assassinating President Abraham Lincoln, John Wilkes Booth fled into Prince George's County and to a Clinton tavern owned by Mary Surratt, an alleged coconspirator in the plot. The Surratts tavern still stands today, is owned by the county and is being restored as an historic landmark.

When industrialization swept the nation after the war, the character of the county began a gradual change. As the population grew, business, industry and federal facilities found their way into Prince George's County.

Shortly after the turn of the century, the

county found itself in the forefront of aviation science. The College Park Airport near the University of Maryland was the first airport built in this country. There in 1908, Wilbur and Orville Wright taught many of America's early military flyers the skills of piloting. The nation's first airmail service was initiated there in 1918 and the first airborne weapons were tested at the airport as well. It was also the site of the earliest experiments with the helicopter in the 1920s. Planes still land and take off from this field and the local government now is in the process of purchasing the College Park Airport for preservation as an historic landmark.

Yet today, Prince George's County is the background for much of man's efforts to explore the heavens. At the federal government's Goddard Space Flight Center in Greenbelt, thousands of scientists and workers and millions of dollars worth of equipment form a major link in America's space program.

Among the other federal facilities in the county are the U.S. Agricultural Research Center and the National Agriculture Library in Beltsville, the Suitland Federal Complex which includes the U.S. Census Bureau and the U.S. Weather Service, Andrews Air Force Base, and the soon-to-be-opened Federal Law Enforcement Training Center.

By 1960, the county's population had been tabbed at about 350,000 people. The following 10 years saw a period of unprecedented growth and in 1970, the U.S. Census rang up a Prince George's population of well over 660,000, earmarking the county as the state's largest and one of America's fastest growing.

From a sleepy, rural community often thrust by fate into the heat of our nation's early history, the county had swelled into a throbbing suburban sprawl diverse in culture and economy, humming with commerce and industry and deeply committed to the future of the metropolitan Washington area.

And yet, along country roads and highways, tobacco and corn flourish on farms and plantations where the way of life still remains pleasantly free from the crunch of a burgeoning suburbia.

Prince George's County now is larger than six states and operates the nation's 10th largest school system. It is the largest and one of the most influential of the Washington suburban jurisdictions. In recent years the county government has been a leader in regional mass transportation programs and creative legislation in the fields of ecology, human relations, consumer protection, land use and economic development.

BUDGET REFORM

Mr. BIDEN. Mr. President, certainly history will note as one of the major accomplishments of the 93d Congress the passage of the Congressional Budget and Impoundment Control Act of 1974. As Murray L. Weidenbaum comments in an article in the September 1974 issue of Dunn's, it is "* * * the first comprehensive revision of congressional budget-making in over half a century."

Professor Weidenbaum, formerly Assistant Secretary of the Treasury, has just recently testified before the Senate Budget Committee and added much to its deliberations. I am encouraged to see that the interest of the business community in the new budget process is being stimulated by articles such as this. As Professor Weidenbaum comments in his article: "How far down the road to sensible budgeting Congress will actually go will depend in large measure on citizen support." Certainly the support and understanding of the business community will be essential.

This article points out the unique opportunity that the Congressional Budget Act offers, but warns of the difficulties of effective implementation and of dealing with so-called uncontrollable expenses.

Mr. President, I am pleased to see such articles. They serve a valuable educational purpose. I ask unanimous consent that this article be printed in the RECORD.

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

[From Dunn's, September 1974]

BUDGET REFORM—AT LAST

(By Murray L. Weidenbaum)

Although it has been overshadowed by more dramatic events, one of those watersheds that loom large in history may have occurred on July 12, 1974. That is the day President Nixon signed the Congressional Budget and Impoundment Control Act of 1974, the first comprehensive revision of Congressional budget-making in over half a century.

Superficially, the new law deals with internal fiscal procedures. To give Congress more time to consider the annual budget, the fiscal year will be moved from the traditional July 1 starting date to October 1. Budget committees will be created in both the Senate and the House. And to give the legislative branch the staff muscle it needs to grapple with the White House, the legislation calls for the creation of a Congressional budget office.

Yet there is good reason to dig deeper into the 47-page statute. It also requires Congress, early in the budget cycle, to set a ceiling on government spending for the coming year and—of even greater consequence—to put a ceiling on the amount of appropriations that can be enacted. That second step indicates that the new approach is not mere window dressing.

Too often in the past, Congress has enacted huge appropriations and then passed the buck to the President to keep spending down. If the new law just puts an end to that fiscal "con" game, it will be a fine contribution.

The new statute goes further toward enhancing Congressional power over the public purse. It requires Congress to allocate by May 15 of each year the budget ceiling by major categories that correspond to the committees with jurisdiction over budget matters. Thus, Congress will now have the opportunity to close the major gap in its budget review procedures—the inability to relate its actions on a specific appropriations or program authorization to the total fiscal picture.

Moreover, the new budget office provides Congress with staff to keep it informed of the progress of the budget as the numerous appropriation and authorization bills wend their way through the lengthy legislative process. This staff will also give legislators the ability to make independent appraisals of proposed federal activities and expenditures. A larger analytical role also is provided to the General Accounting Office, that fine nonpartisan agency that has done so much to ferret out waste and wrongdoing in federal programs.

The center of the action on the appropriation and expenditure ceilings will be the two new budget committees. Toward the end of the budget review cycle, they will reevaluate the expenditure and appropriation targets in light of changes in the economy. But if the actions of the individual committees exceed the targets, the new law requires Congress, no later than two weeks before the start of each new fiscal year, to decide whether the projected deficit (or, theoretically, the projected surplus) is acceptable. If not, it must pass a "reconciliation" bill that either reduces approved outlays or increases taxes. Thus, Congress will be forced to face up to the central budget issues.

The new law also severely limits the President's power to impound appropriations. The President can still order a federal agency not to spend money when he believes that the objective can be achieved at lower cost, but that action will become subject to veto by the Congress. Moreover, no President can any longer impound an appropriation for a program that he simply does not like.

The 1974 Budget Reform Act should not be viewed as a panacea. All of the details—and there is much more than I have space to cover here—boil down to giving Congress better tools to do its budget work. The real question, however, will be its willingness to use these new tools.

For example, when Congress gets down to the wire, will it raise the budget ceiling to accommodate popular programs? It will only take a simple majority to do so when Congress starts using the new procedures next year.

The current plan is for the budget committees and the Congressional budget office to begin operations for a trial run on the budget that the President will submit next February. The full system is slated to be operational for the budget for the fiscal year beginning October 1, 1975.

Yet the Act is merely a step forward. It does not come to grips with several key obstacles to effective governmental budget-making. The bulk of non-military spending is still dominated by "fiscal sacred cows," the many programs that are protected from being cut during the budget process by special legislation. These "uncontrollables," ranging from welfare benefits to farm price supports, severely limit the ability of Congress to reduce government spending during this inflationary period.

A study by the Washington-based American Enterprise Institute for Public Policy Research, *Matching Needs and Resources*, spells out the further changes that need to be made to achieve a truly modern federal budget procedure. A key proposal is a fundamental reexamination of the host and variety of ancient Congressional statutes that require the government to spend money for a particular program, regardless of how priorities have changed.

Advocates of budget reform should be pleased at the new breakthrough represented by the Congressional Budget Act. How far down the road to sensible budgeting Congress will actually go will depend in large measure on citizen support. If the initial advocates of exceptions to the budget ceiling—and there are bound to be many—succeed in constantly lifting the lid on federal spending, the effort will fail despite the bright prospects for reform. In the critical first few years under the new procedures, strong public support for economy in government will be the key to the outcome.

ECONOMIC REMEDIES

Mr. MONTOYA. Mr. President, when the President left the summit conference on Friday he promised a program of action within the next 10 days. Certainly the people of the United States had every right to believe that action program would include help for those "on whom the burden falls excessively," as the President promised, and especially tax relief for low-income Americans.

I am appalled to find that the first trial balloon floated by the White House on Monday of this week was the possibility of a 10 cent tax on gasoline. This was a proposal which we all thought Mr. Ford had rejected weeks ago. Yet press reports of White House "leaks" said

this regressive excise tax was among the steps being considered by the new Economic Policy Board.

Today's paper reports another trial balloon by the Federal Energy Administration—this one the possibility of boosting the Federal gasoline tax to 30 cents a gallon as a "conservation fee" forcing people to spend their money elsewhere.

Surely, Mr. President, simple arithmetic would show the President's advisers that a 10-cents-per-gallon increase in the gasoline tax would raise the price of gasoline by 16.6 percent. Is that noninflationary?

The idea that raising the price to 80 or 90 cents a gallon with a 20- to 30-cent tax increase—the FEA's suggestion—is even more ridiculous.

One of the major causes of the inflation which the people of this Nation are now struggling to absorb is the massive increase in the cost of gasoline and home heating. That increase has pushed even higher the inflated food prices, and the inflated cost of other consumer items. It has added fire to demands for cost-of-living wage increases.

The most amazing thing about these ideas being floated by the White House is that they seem to indicate a complete lack of understanding by the President's economic advisers of the regressive nature of this kind of economic action. Those who would be hurt the most by these suggested taxes are the lower- and middle-income families who have already been hurt the most.

Why is it always necessary to remind the White House that the working men and women of this Nation are the victims, not the cause, of inflation? I am growing tired of having to point out over and over again that if we are going to solve our inflation problems we are going to have to do it with equity and fairness. Why is it that every new tax idea which comes from the White House means that the same group of American citizens has to run for cover? Why do the poor and the working poor and the middle income people have to cringe every time a White House "leak" is used to float another economic idea on inflation fighting?

Seventy-eight percent of all Americans use their cars to get to work. Working people would pay this tax—and they are the people least able to pay it. In areas of the country where farmers must use gasoline in order to run their machinery or their trucks, the inflationary impact of this tax would be totally destructive. In rural areas of the Nation where people must drive many miles to work, this tax would mean a cruel and unfair burden on those who can least afford to bear more.

In my own State of New Mexico we will use approximately 504 million gallons of gasoline in 1974. If we have to pay 10 cents more per gallon, this tax would cost us $5.04 million. If the tax were 20 cents that cost would be double, of course.

In most parts of my State the median income is less than $9,000—and the worker or the farmer is not wasting gasoline or money, I can promise you. If we ask these people to pay this exorbitant tax for transportation to and from work, we will simply be insuring that money needed for food or clothing will go for a regressive tax instead.

I notice that FEA suggests a possible tax refund at the end of the year if the 20-cent tax is imposed. The idea that lower income workers and farmers can afford to wait until the end of the year for such a refund while they pay this huge increased gasoline cost today is indicative of the complete lack of understanding which many of the President's advisers seem to have. These working people are already paying more than they can afford for gasoline. To add to their burdens at this time would cause incredible and unbearable suffering.

Beyond this insult to the individual taxpayer in the middle- and low-income brackets, the overall impact on the economy would be staggering. Through the mechanism of the "multiplier" the loss to the economy of New Mexico would be in the millions of dollars. My State cannot afford that loss, and I am sure that there are few States which can.

Mr. President, the time for playing games with the public is long past. The floating of this kind of threatening trial balloon has been a part of White House policy for too long. It is an advertising man's trick. "Run it up the flagpole and see who salutes!" is the advertising phrase which describes the practice, I believe.

I think the cruel burden of the inflation and the difficulties we face in the energy crunch are much too serious to allow this kind of advertising game-playing to go on in Government. The public is sick to death of "trial balloons" which are suggested by White House sources as a possible course of action only to find out how much adverse reaction results.

I can assure them the reaction to these two latest balloons is and will continue to be strong. But I think they should also realize that it is time to begin treating the people of this country with respect. That will mean going back to the drawing board and finding a solution to the twin problems of energy and inflation which involves some equitable measure of sacrifice by the upper income members of our society, the business and corporate interests of the economic community, as well as the middle and lower income working family.

When we tighten belts, as we probably will have to do, let us be sure all the belts are tightened the same amount—and that we have thought through the consequences of our "action plan."

COURT HOLDS FAIRNESS DOCTRINE UNFAIR

Mr. PROXMIRE. Mr. President, the U.S. Court of Appeals for the District of Columbia decided last week that the Federal Communications Commission should restrain itself when trying to interfere with investigative reporting by broadcasters.

The appeals court refused to sustain the FCC's ruling that NBC should provide extra air time so that private pension operators could tell how good they are. The decision was over a documentary called, "Pensions: The Broken Promise."

I call attention to this decision because, as the appeals court said:

> This is the first case in which a broadcaster has been held in violation of the fairness doctrine for the broadcasting of an investigative news documentary that presented a serious social problem.

The FCC's fairness doctrine—which I chose to call the unfairness doctrine, with some justification as this court decision shows—sounds good but is fraught with dangers to a free press. I have been pointing that out in a series of speeches. I have been maintaining that the fairness doctrine is unconstitutional.

The appeals court last Friday did not go that far. It stopped short of ruling on NBC's contention that the fairness doctrine violates the first amendment. The court said it did not have to consider that question because it reversed the FCC. The court found only that the FCC had misapplied the fairness doctrine.

The importance of the court's decision, I believe, is that it limits the application of the fairness doctrine. It makes it difficult for an agency of Government to interfere with the proper editorial judgment of a broadcast journalist.

Although the court did not rule on the constitutional question, it referred to the first amendment over and over again.

Here is what the court said at one point:

> The salutary intent of the fairness doctrine must be reconciled with the tradition against inhibition of the journalists' freedom. That tradition, which exerts a powerful countervailing force, is rooted in the constitutional guarantee of freedom of the press, a guarantee that has vitality for broadcast journalists, though not in exactly the same degree as for their brethren of the printed word. And the same statute that provides authority for the FCC to implement the fairness doctrine for its licensees contains a clear provision (in section 326) disclaiming and prohibiting censorship as part of the legislative theme. In construing the fairness doctrine, both the Commission and the courts have proceeded carefully, mindful of the need for harmonizing these often conflicting consideration.

In this case, of course, the court told the commission it should have been more careful in guarding the discretionary rights of the broadcaster.

Here is another reference to the first amendment in the opinion:

> Not only is state censorship forbidden, so also is the government prohibited from compelling editors to include state approved material. . . . In Miami Herald Publishing Company v. Tornillo, a "right to reply" law—analogous to the personal attack rule that is part of the fairness doctrine—was ruled unconstitutional. The "benign" purposes of the state statute were deemed irrelevant. . . .

The appeals court did not neglect looking at the argument that scarcity of radio frequencies is the basis for the fairness doctrine: limitations on the freedom of the broadcaster—even those that would be unacceptable when imposed on other media—are lawful in order to enhance the public's right to be informed.

Those are all very orthodox arguments in limiting application of the first amendment broadcasters. Circuit Judge Harold Leventhal, who wrote the ap-

peals court's 2-to-1 decision, is very careful, to point out the warnings given in the Supreme Court cases on the fairness doctrine. But the judge goes out of his way to make clear that the FCC cannot step on the first amendment willy-nilly.

Judge Leventhal says that the Supreme Court in CBS against the Democratic National Committee—

Reaffirmed the principle that scarcity requires that the broadcast media be treated differently than other forums of expression, but observed that this is not a principle without bounds, that not all regulation can be justified in the name of scarcity. Overzealous invocation of rules such as the fairness doctrine could cause an "erosion of the journalistic discretion of broadcasters in the coverage of public issues." . . . No broadcaster can present all colorations of all available public issues . . . Choices have to be made and, assuming that the area is one of protected expression, the choices must be made by those whose mission it is to inform, not by those who must rule.

At that point, Judge Leventhal quotes Chief Justice Burger in that CBS case in which the Supreme Court upheld the FCC in ruling that licensees legally could impose a blanket ban on all editorial advertising. In a footnote, Judge Leventhal noted that the Supreme Court used the same thought in the Tornillo case, which applies to newspapers.

That thought of Chief Justice Burger—which the highest court in the land applies to both publishers and broadcasters—is this:

For better or worse, editing is what editors are for; and editing is selection and choice of material. That editors—newspaper or broadcast—can and do abuse this power is beyond doubt, but that is not reason to deny the discretion Congress provided. Calculated risks of abuse are taken in order to preserve higher values. The presence of these risks is nothing new; the authors of the Bill of Rights accepted the reality that these risks were evils for which there was no acceptable remedy other than a spirit of moderation and a sense of responsibility—and civility—on the part of those who exercise the guaranteed freedoms of expression.

In still another reference to the first amendment in this NBC decision, Judge Leventhal writes:

The court has a greater responsibility than is normally the case, when it reviews an agency's fairness rulings that upset the licensee's exercise of journalistic discretion, both because the area is suffused with First Amendment freedom and because Congress has determined that the interest of the public, and its right to know, is furthered by giving primary discretion not to the government agency but instead to the regulated licensee.

Again, in the first paragraph of the decision's conclusion, Judge Leventhal writes:

The First Amendment is broadly staked on the view that our country and our people—rich in diversity of strains and viewpoint—is best served by widest latitude to the press, as broadening input and outlook, through a robust and uninhibited debate that is subject only to minimum controls necessary for the vitality of our democratic society.

I hope I am not reading too much into his supplemental concurring statement, but Judge Leventhal apparantly thought he had to go beyond the opinion he wrote for the majority. He makes clear that the FCC watchdog can, if safeguards are not adhered to, become a censor. He writes:

In the context of the fairness doctrine, the twin principles of latitude for the licensee and narrow review for the Federal Communications Commission merit special vigilance when the question is whether the "issue" in a program of investigative reporting is one of evils described or a broad subject canvassed, because government latitude to redefine the issue enfleshes the specter of a subtle and self-serving government censorship impeding the ventilation of abuses.

In the last paragraph of his supplement concurring statement, the judge again cites the constitutional issue:

The First Amendment freedoms established in the interest of an informed citizenry "are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference."

Senior Circuit Judge Charles Fahy in his concurrence notes the first amendment mandate of wide latitude for the press, except for the limitation imposed by the fairness doctrine:

One may hope that this latitude will not encourage in a different context abuses which, even though protected by the First Amendment, should be discouraged, or lead to claims of such protection which could not be sustained.

From a footnote, it is learned that Judge Fahy is worried about violence on television. Nevertheless, what comes through to me is the respect the FCC, the courts and others must have for the first amendment.

The dissent was written by Circuit Judge Edward A. Tamm. Judge Tamm is worried about the power of the television industry. And he, too, cites the first amendment and Bill of Rights. He writes:

The history of democracy is a record of the fear and distrust by the people of unrestrained power. This is the womb in which was gestated the constitutional amendments which we identify as the Bill of Rights. First Amendment guarantees were and are designed to afford the people an effective weapon against the existence or use of destructive and abusive power. . . .

I would be able to agree with Judge Tamm 100 percent if he stopped there. I agree the Bill of Rights, which is led off by the first amendment, was designed to save ordinary people from an oppressive government.

There are five freedoms protected in the first amendment. In addition to the freedom of speech and the freedom of the press, there are those of religion, of peaceful assembly, and of petition for the redress of grievances. All of these freedoms were missing in the rest of the world when the Bill of Rights was adopted by the United States. Governments elsewhere had deprived their subjects of those freedoms.

Judge Tamm shifts abruptly—he does not even start a new paragraph—from unrestrained power of Government to the power of television. Within a few sentences he asks a rhetorical question, and still in the same paragraph:

Is it an exaggeration to say that the telecasting industry constitutes a power system comparable if not superior to government itself but basically free of the restraints imposed on government power?

Mr. President, I think I have demonstrated that throughout this important court opinion—as well as in a concurring opinion, a supplemental statement and in the dissent—the first amendment could not be ignored. Even though the appeals court did not choose to act on the petition urging a finding that the first amendment had been violated, the fairness doctrine had to be addressed in terms of the freedom of the press.

The first amendment will not go away. It keeps pricking the conscience of the judges, those on both sides.

The courts will have to deal with the first amendment again in connection with the fairness doctrine. It is inevitable.

Only Congress could head off that encounter by removing the abridgement to the freedoms of speech and of the press that is the fairness doctrine.

Logic will win over emotion.

The fairness doctrine is a misnomer. The doctrine is not fair. It has, as Judge Leventhal noted, a "salutary intent." But it is also an inhibition against journalists' freedom. And that freedom is not intended for the benefit of the journalist; it is intended to give the people—to quote Judge Tamm—"an effective weapon against the existence or use of destructive and abusive power."

To carry on this syllogism, if the Government or its agent—the FCC—can make rules to force the media to be fair it can make rules to stop the media from reporting something or to make it report something. At that point, freedom of the press truly would have been abridged.

Freedom of speech, of religion, of peaceable assembly, of the right to petition for redress would be in danger under such circumstances.

It is time that we think clearly about this thing. It is time that we realize that seeking first-amendment freedoms for broadcasters is not a favor for broadcasters—although it could help them save some money in legal fees; it is a favor for us as citizens. It can keep Government from gaining more and more power over us.

And let us face it, the favor carries with it some work for us. The freer the broadcaster the more ideas will come tumbling out into living rooms—ideas we will have to sort out and either reject or accept; ideas that will be both pleasant and repugnant; ideas that will force us to do more than write letters of complaint to the FCC. We will have to join organizations, political parties, pressure groups, to get action on those ideas that we accept or to stop those that we reject.

We will have to become more active citizens.

This "pensions" case, when summed up, provides a lesson of how complex a job it is to sit in judgment on ideas.

Accuracy in Media, Inc., complained to the FCC that the NBC documentary did not tell the viewers enough about the good private pension systems. AIM complained that the program dwelt too much on the bad things about private pensions. The FCC, while actually praising the network for its journalistic effort and finding that NBC had in fact presented views on the overall performance of the private pension system, nevertheless con-

cluded that although there were "propension" viewpoints expressed in the program that the "overwhelming weight" of "antipensions" statements required NBC, in light of the fairness doctrine, to present more propension views.

The court says no, NBC does not have to present more "propension" views. And it says the FCC should restrain itself in trying to decide what is controversial and what is not controversial.

That is an important point because the fairness doctrine requires that licensed broadcasters must devote time to controversial issues of public importance and that when such issues are presented, the broadcaster must present responsible conflicting views.

The appeals court ruled in this case that there was no basis for the FCC's conclusion that the need for reform legislation in the pensions field was a controversial issue. No controversy, no fairness doctrine requirement.

The court hinted that the ruling might have been different had the "pensions" program dealt with the specific proposals for legislation on pensions then before Congress.

Since then, of course, the Congress has passed and the President has signed a law regulating private pensions designed to protect persons from the very abuses persons complained about on camera in the telecast, "Pensions: The Broken Promise."

The court took note of that new law, but said in a footnote that its passage did not make the "pensions" case moot.

What we have then is a court saying that subject matter important enough to bring major new legislation was not controversial in the legal sense because the specifics of the bill were not treated in a broadcast before the bill was passed. We also have the FCC contending, although overturned by the court, that the question of private pensions is a controversial issue of public importance. We also have Accuracy in Media, a self-styled public interest group, complaining because the good pension plans were not given more air time. AIM complained that the bad features of the pensions—bad enough to get Congress to act—got too much air time on national television.

AIM also said in the course of the case that the Washington Post handled a story on the problems with private pension plans in a more balanced way than NBC. But, that newspaper article considered specific proposals for legislation.

What makes this whole case even more ironic is the fact that the NBC "Pensions" show ran a poor third on September 12, 1972, behind shows on the other two networks. NBC got only 16 percent of the potential audience that night. And it got revenue from only 2½ minutes of advertising time. Left unsold were 3½ minutes. For this program, NBC won four awards including the prestigious Peabody, and it was nominated for an Emmy.

Here we have a court opinion that says there is no occasion to consider the first amendment because it has decided the FCC misapplied the fairness doctrine. But even after that, the court discussed the fairness doctrine in light of the first amendment.

My point, Mr. President, in relating these ironic twists in this case is that a tangled web is woven when we begin to judge the right of others both to impart and receive information and opinion.

One sentence from the "Pensions" opinion shows the difficulties encountered:

> The licensee does not incur a balancing obligation solely because the facts he presents jar the viewer and cause him to think and ask questions as to how widespread the abuses may be.

Those people who want to control the press, print, and broadcast, really are afraid of ideas. They are afraid of being jarred by that which is repugnant to them. They are afraid that those who disagree with them will influence those who are neutral. They want freedom of speech for themselves; they do not want freedom of speech for others.

The tangle of the "Pensions" case should teach us a lesson other than the legal one.

The legal lesson is that the fairness doctrine can interfere with journalistic discretion, particularly in investigative reporting.

The other lesson is that the writer of the first amendment knew what he was doing when he wrote, "Congress shall make no law . . ." When we put limits on freedom—other than self-imposed limits—we have no freedom. Solomon in all his wisdom could not fathom the fairness doctrine.

Mr. President, I ask unanimous consent that the opinion of the U.S. Court of Appeals be printed in the RECORD.

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

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

(No. 73-2256)

NATIONAL BROADCASTING COMPANY, INC., PETITIONER V. FEDERAL COMMUNICATIONS COMMISSION AND THE UNITED STATES OF AMERICA, RESPONDENTS

ACCURACY IN MEDIA, INC., INTERVENOR

(Decided September 27, 1974)

Petition by television network for review of a decision of the Federal Communications Commission that a television documentary entitled "Pensions: The Broken Promise" violated the Comission's "fairness doctrine". The Court of Appeals, Leventhal, Circuit Judge, held that the principle of deference to licensee judgments, unless the licensee has departed from underlying assumptions of good faith and reasonable discretion, is an integral part of the "fairness doctrine"; that the question before the court was whether the network exceeded its "wide degree of discretion"; that the court would abstain from determining whether the "fairness doctrine" should be reserved for license renewals; that the Federal Communications Commission's function is limited to correction of the licensee for abuse of discretion; that the reviewing court has greater responsibility than normally when it reviews a fairness ruling that upsets the licensee's exercise of journalistic discretion but it does not have authority to interpolate its own discretion or judgment; that where a broadcaster has made a reasonable judgment that a news or investigative journalistic program relates to the "broken promise" abuses in various private pension plans, and there is no controversy as to existence of such abuses, the "fairness doctrine" does not permit the Federal Communications Commission to make its own determination of the subject matter and require that an opposing view be presented; that the network did not act in bad faith or unreasonableness in exercise of its editorial judgment; that the program achieved a reasonable balance; that the record did not support the Commission's findings on controversiality of issue of need to reform legislation; and that it would be an impermissible intrusion on broadcast journalism to insist that it adopt techniques congenial to newspaper journalism.

Reversed and remanded with directions,

Fahy, Senior Circuit Judge, joined in the opinion of the court, and also filed concurring opinion.

Leventhal, Circuit Judge, also filed supplemental concurring statement.

Tamm, Circuit Judge, dissented and filed opinion.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 73-2256

NATIONAL BROADCASTING COMPANY, INC., PETITIONER V. FEDERAL COMMUNICATIONS COMMISSION AND THE UNITED STATES OF AMERICA, RESPONDENTS

ACCURACY IN MEDIA, INC., INTERVENOR

Petition for Review of an Order of the Federal Communications Commission

Decided September 27, 1974

Floyd Abrahams with whom *Dean I. Ringel* and *Howard Monderer*, were on the motion for petitioners.

John W. Pettit, General Counsel, with whom *Joseph A. Marino*, Associate General Counsel and *Lawrence W. Secrest, III*, were on the motions for respondent.

Timothy B. Dyk, with whom *J. Roger Wollenberg* were on the brief for Columbia Broadcasting System, Inc., as *amicus curiae*.

J. Laurent Scharff, was on the brief for Radio Television News Directors Association and the Society of Professional Journalists, Sigma Delta Chi, as *amicus curiae*.

Ellen S. Agress, with whom *Earle K. Moore* was on the brief for the Office of Communication, United Church of Christ, as *amicus curiae*.

Stanley H. Kamerow was on the motion for intervenor, Accuracy In Media, Inc. *Thomas F. Ragan* also entered an appearance for Intervenor, Accuracy In Media, Inc.

John B. Summers was on the brief of National Association of Broadcasters, as *amicus curiae*.

Douglas Caddy was on the brief for the Center for the Public Interest of the Robert M. Schuchman Memorial Foundation, Inc., as *amicus curiae*.

Ellen S. Agress was on the brief for National Citizens Committee for Broadcasting as *amicus curiae*.

Henry Geller was on the brief for the Rand Corporation, as *amicus curiae*.

Alexander Greenfield, was on the brief for New York Times Company as *amicus curiae*.

Carl D. Lawson, Attorney, Department of Justice, entered an appearance for Respondent, United States of America.

Before: Fahy, *Senior Circuit Judge*, Tamm and Leventhal, *Circuit Judges*

Opinion for the Court filed by *Circuit Judge* Leventhal.

Concurring opinion filed by *Senior Circuit Judge* Fahy.

Supplemental Concurring Statement filed by *Circuit Judge* Leventhal.

Dissenting opinion filed by *Circuit Judge* Tamm.

Leventhal, *Circuit Judge*: On September 12, 1972, the television network of the National Broadcasting Company broadcast its documentary entitled "Pensions: The Broken Promise," narrated by Edwin Newman. On November 27, 1972, Accuracy in Media (AIM) filed a complaint with the Federal Communications Commission charging NBC had presented a one-sided picture of private pension plans. The handling of this case by the Commission will be discussed in more detail subsequently (section II). For introductory purposes it suffices to say that on May 2, 1973—as it happens, the same day NBC received the George Foster Peabody Award [1] for its production—the Commission's Broadcast Bureau advised NBC that the program violated the Commission's fairness doctrine.[2] That decision was upheld by the Commission. We reverse.

I. THE PROGRAM

The "Pensions" program is the heart of the case, and for that reason it is set out in Appendix A to this opinion.

For convenience, we will summarize the main outlines of the program—with notation that certain aspects are dealt with more fully subsequently.

The "Pensions" program studied the condition under which a person who had worked in an employment situation that was covered by a private pension plan did not in fact realize on any pension rights. Its particular focus was the tragic cases of aging workers who were left, at the end of a life of labor, without pensions, without time to develop new pension rights, and on occasion without viable income.

The program had no set format, but its most prominent feature was a presentation of tragic case histories, often through personal interviews with the persons affected.

One group of workers lost pension eligibility when their company decided to close the division in which they had worked. The first of these was Steven Duane, who after 17 years with a large supermarket chain, lost his job as foreman of a warehouse when the company closed the warehouse and discharged all its employees, leaving them with no job and no pension rights. Now in his fifties, starting again with another company, he felt ill-used and frightened of the future.

There were a number of other specific examples of employees terminated by closing of plants or divisions. The program also focused on the problems of vesting, the years of service with the company required for a worker to become eligible under its pension plan. NBC interviewed employees with many years of service who were suddenly discharged just prior to the date on which their pension rights were to have become vested. Thus Alan Sorensen asserted that he was the victim of a practice—a "very definite pattern"—under which his employer, a large department store chain, fired men just prior to vesting, assigning "shallow" reasons to men who had served with records beyond reproach.

A similar account was given by Earl Schroeder, an executive fired by Kelly Nut Company, after he more than met his 20 years of service requirement but was six months shy of the age 60 condition.

The program also set forth abuses in the literature given employees ostensibly explaining their plans—pictures of contented retirees and words comprehensible only to the most sophisticated legal specialist. It took up examples where the company had gone bankrupt prior to their date of retirement, leaving the employees without pension funds.

The documentary gave instances of pensions lost for lack of portability, citing plans that required the employee be a member of the same local for the requisite period. NBC interviewed a number of teamsters who had worked for the same employer for over twenty years, but who later found that certain changes in work assignment entailed changes in union local representation and ultimately loss of pension.

Much of the program was a recount of human suffering, interviews in which aging workers described their plight without comment on cause or remedy. They told of long years of working in the expectation of comfortable retirements, finding out that no pension would come, having to work into old age, of having to survive on pittance incomes. Interspersed with these presentations by workers were comments by persons active in the pension field, public officials, and Mr. Newman.

None of those interviewed—and these included two United States Senators, a state official, a labor leader, a representative of the National Association of Manufacturers, a consumer advocate, a bank president, and a social worker—disputed that serious problems, those covered by the documentary, do indeed exist. Some of the comments related to the overall performance of the private pension system. We shall discuss these later (section VI B). In addition to comments on the private system generally, there were isolated expressions of views on the related but nonetheless quite distinct issue of the wisdom of reliance on private pensions, regardless of how well they function, to meet the financial needs of retirees.[3] Finally, several speakers gave broad, general views as to what could be done.[4]

There were also comments on legislative reforms that might be taken to cope with problems. These will be discussed separately in part VI D of this opinion.

Concluding Remarks

It may be appropriate to quote in full the concluding remarks of narrator Edwin Newman, since the FCC considered them "indicative of the actual scope and substance of the viewpoints broadcast in the 'Pensions' program." He said:

NEWMAN. This has been a depressing program to work on but we don't want to give the impression that there are no good private pension plans. There are many good ones, and there are many people for whom the promise has become reality. That should be said.

There are certain technical questions that we've dealt with only glancingly, portability, which means, being able to take your pension rights with you when you go from one job to another, vesting, the point at which your rights in the pension plan become established and irrevocable.

Then there's funding, the way the plan is financed so that it can meet its obligations. And insurance, making sure that if plans go under, their obligations can still be met.

Finally, there's what is called the fiduciary relationship, meaning, who can be a pension plan trustee? And requiring that those who run pension funds adhere to a code of conduct so that they cannot enrich themselves or make improper loans or engage in funny business with the company management or the union leadership.

These are matters for Congress to consider and, indeed, the Senate Labor Committee is considering them now. They are also matters for those who are in pension plans. If you're in one, you might find it useful to take a close look at it.

Our own conclusion about all of this, is that it is almost inconceivable that this enormous thing has been allowed to grow up with so little understanding of it and with so little protection and such uneven results for those involved.

The situation, as we've seen it, is deplorable.

Edwin Newman, NBC News.

Success of program

Like many documentaries, "Pensions" was a critical success (*supra*, note 1) but not a commercial success. We shall consider the television reviews in more detail subsequently, but it may be observed here that they were generally enthusiastic. Critics called it, "A potent program about pitfalls and failures of some private pension plans . . . ." "a harrowing and moving inquiry . . .," and "a public service." [5] Dissenting notes were also struck.

As to the viewing public, "Pensions" ran in competition with a popular medical drama and a crime movie, and ran a poor third, garnering only a 16% share of the viewing audience. In fact, NBC was able to sell only two-and-one-half minutes of advertising time out of an available six.[6]

II. COMMISSION PROCEEDING

Watching the program with particular interest was Accuracy in Media ("AIM"), a "nonprofit, educational organization acting in the public interest" [7] that seeks to counter, in part by demanding aggressive enforcement of the fairness doctrine, what it deems to be biased presentations of news and public affairs. On November 27, 1972, the Executive Secretary *of AIM* wrote to the FCC complaining of the following:

"Our investigation reveals that the NBC report gave the viewers a grotesquely distorted picture of the private pension system of the United States. Nearly the entire program was devoted to criticism of private pension plans, giving the impression that failure and fraud are the rule. . . . The reporter, Mr. Newman, said that NBC did not want to give the impression that there were no good private pension plans, but he did not discuss any good plans or show any satisfied pensioners." [8]

In subsequent correspondence, AIM added the accusations that NBC was attempting "to brainwash the audience with some particular message that NBC is trying to convey" [9] and that the program was "a one-sided, uninformative, emotion-evoking propaganda pitch." [10] Thus AIM not only claimed that the program had presented one side of an issue of public importance, the performance of private pension plans, it also charged that NBC had deliberately distorted its presentation to foist its ideological view of events on the viewing public.

In its reply, NBC rejected the allegations of distortion. It asserted that the "Pensions" broadcast had not concerned a controversial issue of public importance:

"The program constituted a broad overview of some of the problems involved in some private pensions plans. It did not attempt to discuss all private pension plans, nor did it urge the adoption of any specific legislative or other remedies. Rather, it was designed to inform the public about some problems which have come to light in some pension plans and which deserve a closer look." [11]

Since, in the view of NBC, there was no attempt to comment on the overall performance of private pension plans, no controversial issue had been presented, for all agreed that the examples of suffering depicted were not themselves subject to controversy. Even so, NBC pointed out that it had presented the view that the system as a whole was functioning well; consequently, it asserted, even if it had inadvertently raised the issue of the overall performance of private pension plans, the side generally supportive of the system had been heard.[12]

In a letter to NBC,[13] the Broadcast Bureau of the Commission rejected AIM's allegations of distortion as being unsupported by any evidence but upheld the fairness doctrine complaint. The staff took issue with "the reasonableness of your [NBC's] judgment that the program did not present one side of a controversial issue of public importance" and concluded that the program's "overall

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thrust was general criticism of the entire pension system, accompanied by proposals for its regulation." [14]

The staff opinion included extensive quotation from the transcript of the documentary, but little explanation as to how the quoted portions sustained the staff's conclusion. Only four brief statements were singled out as containing "general views" on the overall performance of the private pension system. NBC appealed the Broadcast Bureau ruling to the entire Commission.[15]

On December 3, 1973, the Commission issued a "Memorandum Opinion and Order" affirming the decision of its staff.[16] Although it acknowledged that the broad issue upon review was "whether the Bureau erred in its ruling that NBC's judgment on these matters was unreasonable," it emphasized that:

"The specific question properly before us here is therefore not whether NBC may reasonably say that the broad, overall "subject" of the "Pensions" program was "some problems in some pension plans," but rather whether the program did in fact present viewpoints on one side of the issue of the overall performance and proposed regulation of the private pension system." [17]

The Commission found that "Pensions" had in fact presented views on the overall performance of the private pension system. It took note of the "pro-pensions" views expressed during the documentary, but concluded that the "overwhelming weight" of the "anti-pensions" statements required further presentation of opposing views. The Commission commended NBC for a laudable journalistic effort, but found that the network had not discharged its fairness obligations and ordered it to do so forthwith. This petition for review followed.

NBC petitioned the Commission for a stay, but was informed that the Commission "expects prompt compliance with its ruling." NBC filed a motion in this court for an expedited appeal, a stay, and expedited consideration. That motion was heard and granted on February 14, 1974, and the case was heard on the merits on February 21, 1974. AIM has intervened on the side of the Commission. The stay that has been in effect during the pendency of this appeal reflected, in part, an estimate of the likelihood of success by NBC as petitioner. We now set forth the reasons why we have decided that the case should be determined in favor of NBC.[18]

III. THE FAIRNESS DOCTRINE: GENERAL CONSIDERATIONS

Petitioners urge that the Commission's decision be set aside as a misapplication of the fairness doctrine and a violation of the First Amendment. Since we reverse on the former ground, we have no occasion to consider the latter.

Now twenty-five years old, the fairness doctrine imposes a double obligation on the broadcast licensee. First, he must devote a substantial portion of available time to the discussion of "controversial issues of public importance." [19] When he presents such an issue, the licensee has a further duty to present responsible conflicting views.[20] The doctrine, particularly as applied to newscasts and news documentaries, has been given statutory recognition in section 315 of the Communications Act,[21] and has been held to inhere in the "public interest" standard governing the grant of license applications and renewals.[22]

The essential task of the fairness doctrine is to harmonize the freedom of the broadcaster and the right of the public to be informed. Except for limited areas like libel and obscenity, the First Amendment generally forbids government regulation of the content of journalism. Not only is state censorship forbidden, so also is the government prohibited from compelling editors to include state approved material. Even a carefully limited statute giving political candidates attacked on a newspaper's editorial page the right to reply in kind was recently invalidated by the Supreme Court as an unconstitutional encroachment upon journalistic discretion. In *Miami Herald Publishing Company v. Tornillo*,[23] a "right to reply" law analogous to the personal attack rule that is part of the fairness doctrine was ruled unconstitutional. The "benign" purposes of the state statute were deemed irrelevant:

"[T]he Florida statute fails to clear the barriers of the First Amendment because of its intrusion into the function of editors. A newspaper is more than a passive receptacle or conduit for news, comment, and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size of the paper, and content, and treatment of public issues and public officials—whether fair or unfair—constitutes the exercise of editorial control and judgment. It has yet to be demonstrated how governmental control of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time." 94 S. Ct. at 2839–40.

But almost from the beginning, the broadcasting press has been treated differently. Congress created the Federal Communications Commission and its predecessor, the Federal Radio Commission, because the available space on the electromagnetic spectrum was far exceeded by the number of those who would use it.[24] It was necessary to ration this scarce resource, for "[w]ithout government control, the medium would be of little use because of the cacaphony of competing voices, none of which could be clearly and predictably heard." [25]

Scarcity required licensing in order to bring order to chaos, but the dangers of control in the hands of a relative few were early recognized. The public interest did not countenance delegation to a few licensees to pursue their purely private interests at the expense of listeners and viewers, and instead the broadcaster was held to have an obligation to serve and inform the public.[26]

Under the fairness doctrine the public is not to be confined to hearing only the views approved by those licensees, but is entitled to be informed of the diversity of opinion in the land, to have that presented by appropriate spokesmen for its consideration and judgment.

The salutary intent of the fairness doctrine must be reconciled with the tradition against inhibition of the journalists' freedom. That tradition, which exerts a powerful countervailing force, is rooted in the constitutional guarantee of freedom of the press, a guarantee that has vitality for broadcast journalists, though not in exactly the same degree as for their brethren of the printed word.[27] And the same statute that provides authority for the FCC to implement the fairness doctrine for its licensees contains a clear provision (in section 326) disclaiming and prohibiting censorship as part of the legislative scheme. In construing the fairness doctrine, both the Commission and the courts have proceeded carefully, mindful of the need for harmonizing these often conflicting considerations.

In *Red Lion Broadcasting Company v. FCC*, 395 U.S. 367 (1969), the Supreme Court approved the Commission's personal attack and political editorializing rules,[28] which are relatively narrow corollaries of the general fairness obligation. Under the personal attack rules a licensee must afford reply time to "an identified person or group" whose "honesty, character, integrity, or like personal qualities" are attacked in the course of presentation of views on a controversial issue of public importance. The political editorializing rule imposes a reply obligation where the licensee endorses or opposes a candidate for public office.

These rules were the target of sharp attack. The essence of the challenge was that no matter how slight, how narrow, or how precise, any limitation on the freedom of the licensee to broadcast what he chooses perforce violates the First Amendment. Rejecting this contention, a unanimous [29] Supreme Court reminded the broadcaster of the essential difference between the print and broadcast media: the physical limitations of the latter restrict the number of those who would broadcast whereas expression by publication is, at least in theory, available to all.

To posit a First Amendment restriction on government action taken to enhance the variety of opinions available to the viewer is to protect those fortunate enough to obtain broadcast licenses at the expense of those who were not. In now-famous language the Court stated:

"Because of the scarcity of radio frequencies, the Government is permitted to put restraints on licensees in favor of others whose views should be expressed on this unique medium. But the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." [30]

This has become the guiding principle of the fairness doctrine: limitations on the freedom of the broadcaster—even those that would be unacceptable when imposed on other media—are lawful in order to enhance the public's right to be informed.[31] The Court's opinion, written by Justice White, reflects the circumspection of this principle of decision. While rejecting as unfounded claims that the personal attack and political editorializing rules would induce self-censorship by licensees in order to avoid the rigors of compliance with their requirements, the Court cautioned that its judgment might be different "if experience with the administration of these doctrines indicates that they have the net effect of reducing rather than enhancing the volume and quality of coverage.[32] . . ." And the Court expressly stated that in approving the personal attack and political editorializing rules, it did not "approve every aspect of the fairness doctrine.[33] . . ."

Four years later, in *Columbia Broadcasting System v. Democratic National Committee*,[34] the Court again discussed the fairness doctrine. The Commission had held that licensees could impose a blanket ban on all editorial advertising. An intermediate court ruling that such a ban, even if consistent with the fairness doctrine, violated the First Amendment,[35] was reversed by the Supreme Court, in an opinion by Chief Justice Burger.

In *CBS* the Court reaffirmed the principle that scarcity requires that the broadcast media be treated differently than other forums of expression, but observed that this is not a principle without bounds, that not all regulation can be justified in the name of scarcity. Overzealous invocation of rules such as the fairness doctrine could cause an "erosion of the journalistic discretion of broadcasters in the coverage of public issues." [36]

Journalistic discretion, the Court emphasized, is the keynote to the legislative framework of the Communications Act.[37]

The limitations of broadcasting both spawned the fairness doctrine and establish that it is dependent primarily on licensee discretion. Perfect compliance is impossible. No broadcaster can present all colorations of all available public issues. 412 U.S. at 111. Choices have to be made and, assuming that the area is one of protected expression, the choices must be made by those whose mission it is to inform, not by those who must rule. In the words of Chief Justice Burger:

"For better or worse, editing is what editors are for; and editing is selection and

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choice of material. That editors—newspaper or broadcast—can and do abuse this power is beyond doubt, but that is not reason to deny the discretion Congress provided. Calculated risks of abuse are taken in order to preserve higher values. The presence of these risks is nothing new; the authors of the Bill of Rights accepted the reality that these risks were evils for which there was no acceptable remedy other than a spirit of moderation and a sense of responsibility—and civility—on the part of those who exercise the guaranteed freedoms of expression." [38]

There are no other decisions on the fairness doctrine from the Supreme Court, but this court has had occasion to consider the doctrine in several cases and it has endeavored to maintain the balance between broadcaster freedom and the public's right to know. Commercial advertising cases present different considerations than those before us and we need not reexamine the doctrine as there applied.[39] More related to the present issue is the public service announcement discussed in *Green v. FCC*,[40] where we refused petitioners' request to require a licensee to present a point of view on the Vietnam conflict that had already received extensive coverage. In *Green*, as in the instant case, there was some initial difficulty in defining the issue allegedly presented in the offending broadcast. We stated that this determination, as well as the decision as to the number of views to be presented and the manner in which they are portrayed, is one initially for the licensee, who has latitude to make all pertinent judgments and is not to be overturned unless he forsakes the standards of reasonableness and good faith.[41] Reliance on the reasonableness standard, "which is all that is required under the fairness doctrine," [42] preserves licensee discretion and serves the essential purposes of the fairness doctrine "that *the American public must not be left uninformed*." [43]

In *Democratic National Committee v. FCC*,[44] we faced knotty problems in sorting out the fairness obligations generated by a radio and television address by the President and a reply by the opposition political party. In upholding the Commission decision that the licensees had not abused their discretion, Judge Tamm, writing for the court, stressed the importance of reliance on licensee judgment:

"By its very nature the fairness doctrine is one which cannot be applied with scientific and mathematical certainty. There is no formula which if followed will assure that the requirements of the doctrine have been met. Procedurally, *the doctrine can only succeed when the licensee exercises that discretion upon which he is instructed to call upon in dealing with coverage of controversial issues*." [45]

Finding no abuse of discretion, we affirmed.

In *Healey* v. *FCC*,[46] petitioner claimed to be within the ambit of the personal attack rule, which requires the licensee to afford opportunity to reply to an individual attacked in the course of a discussion of a controversial issue of public importance. As in the case now before us, the critical question was whether the broadcast involved a controversial issue of public importance. Petitioner, an American Communist, claimed that her role as a Communist within her community was such an issue. Judge Wilkey, the author of the *Green* opinion, pointed out that there is a substantial difference between what is newsworthy, *i.e.*, that which is interesting to the public, and what is controversial:

"Merely because a story is newsworthy does not mean that it contains a controversial issue of public importance. Our daily papers and television broadcasts alike are filled with news items which good journalistic judgment would classify as newsworthy, but which the same editors would not characterize as containing important controversial public issues." [47]

Converting every newsworthy matter into a controversial issue of public importance and requiring editors to "balance" every presentation creates a danger. Again in the words of Judge Wilkey:

"To characterize every dispute of this character as calling for rejoinder under the fairness doctrine would so inhibit television and radio as to destroy a good part of their public usefulness. It would make what has already been criticized as a bland product disseminated by an uncourageous media even more innocuous." [48]

The principle of deference to licensee judgments, unless the licensee has simply departed from the underlying assumptions of good faith and reasonable discretion, is an integral part of the fairness doctrine, and a fixture that has been reiterated and applied with fidelity by the courts.[49] It is the backdrop against which Judge Tamm's opinion for the court in the *Democratic National Committee* case takes note, that "in the opinion after opinion, the Commission and the courts have stressed the wide degree of discretion available under the fairness doctrine. . . ." [50]

The question is whether NBC has been shown to have exceeded its "wide degree of discretion" in its "Pensions" documentary.

IV. ABSTENTION FROM PRELIMINARY ISSUE—WHETHER FAIRNESS DOCTRINE SHOULD BE RESERVED FOR LICENSE RENEWALS

A preliminary issue has been presented to us by amicus curiae Henry Geller, Esquire, formerly general counsel of the Commission, and a serious student of the fairness doctrine.[51] Mr. Geller's view is that under the law the FCC could not properly issue the ad hoc fairness ruling on this program, but was limited to consideration of the matter only in connection with NBC's application for renewal of license, and then only to determine if some flagrant pattern of violation of the fairness doctrine is indicated by NBC's overall operation, with a renewal standard, comparable to that voiced in *New York Times v. Sullivan*, 376 U.S. 24 (1964), requiring a showing of "malice"—either bad faith, or "reckless disregard" of fairness obligations.

Initially, it appears, it was the FCC's procedure to refer complaints to the station as received, obtained its response, and then consider the matter definitively at renewal in connection with the overall showing of the station.[52] This practice was being followed in 1959, when the Communications Act was amended to codify the standard of fairness.[53] In 1962, the Commission changed its procedure to resolve all fairness matters as they arose and, if the station were found to have violated the doctrine, to direct it to advise the Commission within 20 days of the steps taken "to assure compliance with the fairness doctrine." [54]

Mr. Geller puts it that the resulting series of ad hoc fairness rulings "have led the Commission ever deeper into the journalistic process, and have raised most serious problems." [55] The effect, particularly on the small broadcaster, has been to inhibit the promotion of robust, wide-open debate. Thus, in a case where the FCC found that a licensee had afforded reasonable opportunity for opposing viewpoints,[56] the FCC process was long (decision 21 months after broadcast) and arduous. The licensee's burden included not only substantial legal (about $25,000) and other expenses (*e.g.*, travel), but also required top-level station personnel to devote substantial time and attention, with attendant dislocation of regular operational functions. In sum, Mr. Geller says that a substantial inhibiting effect derives not merely from any rulings adverse to the broadcaster, but the strain, time and resources involved in coping with particular challenges even if they are unsuccessful.

Amicus cites expressions in *Columbia Broadcasting System v. Democratic National Committee, supra*, rejecting a contention (right of access for editorial advertisements) that would involve the government too much in the "day-to-day operations of broadcasters' conduct," and stating the fairness doctrine, in terms of the legislative scheme and purpose, in these terms, 412 U.S. at 127:

"Under the Fairness Doctrine the Commission's responsibility is to judge whether a licensee's overall performance indicates a sustained good-faith effort to meet the public interest in being fully and fairly informed. The Commission's responsibilities under a right-of-access system would tend to draw it into a continuing case-by-case determination of who should be heard and when."

We have stated the amicus position at some length because we do not wish our opinion to be misunderstood as inadvertent on the point. The position is a serious one, and it deserves serious consideration.[57] The fact that *Red Lion* reviewed a particular ruling is no bar, for this point was not raised. Indeed, even as to points that were raised, the Court was careful to say that it would be alert to reexamine its assumptions upon an appropriate showing.

We do not think, however, that the present case is an appropriate vehicle for determination of the contention presented by amicus. It is resisted by petitioners, who seek reversal but not on this basis, which might enhance their risk. Moreover, it was not expressly considered by the Commission. While amicus states that a copy of the underlying study, see footnote 51, *supra*, was distributed to each Commissioner prior to the Commission's consideration of this case, that is not the same thing as putting the matter in issue in the proceeding. The proposal is one that merits consideration by the Commission before it can be discussed by this court as a legal imperative.[58] We abstain, then, from any determination in this case concerning the merits of the proposition put by amicus curiae.

V. APPLICATION OF THE FAIRNESS DOCTRINE TO NEWS DOCUMENTARIES

Our assumption of the propriety of the FCC's current practice that it may make rulings whether particular programs violate the fairness doctrine does not lessen our concern as to those rulings; it rather enhances the need for careful scrutiny, particularly where, as here, a ruling is challenged on the ground that it displaces the judgment entrusted to the broadcast journalist.

A. The function of the FCC

The principal controversial issue the Commission identified for the "Pensions" program is "the overall performance of the private pension plan system." In NBC's submission, the focus of the program was the existence of abuses, of "some problems in some pension plans." While one understands NBC's point as made, it might be refined as a statement that NBC was engaged in a study in abuses and did not separately examine how pervasive those abuses were. On what basis did the Commission reject NBC's position, and accept AIM's view that the point of the program was the performance of the common run of pension plans?

The staff ruling of May 2, 1973, said this (p. 11):

"The Pensions program thus did in fact present views which were broadly critical of the performance of the entire private pension system and explicitly advocated and supported proposals to regulate the operation of all pension plans. Your judgments to the contrary, therefore, cannot be accepted as reasonable."

One is struck by the palpable flaw in the staff's reasoning. The staff actually put it that because the staff found as a fact that

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the program was broadly critical of the entire private pension plan system, NBC's contrary judgment "therefore" cannot be accepted as reasonable. The flaw looms the larger, in that it appears in the ruling of the staff of an agency operating under the Rule of Administrative Law. Under that Rule, agencies daily proclaim that their findings of fact must be upheld if reasonable and if supported by substantial evidence, even though there is equal and even preponderant evidence to the contrary, and even though the courts would have found the facts the other way if they had approached the issue independently.

The Commission's opinion of December 3, 1973, corrected the staff's error of logic, but it made a mistake of law. It stated (see para. 17, JA 210):

"The specific question properly before us here is therefore *not whether NBC may reasonably say* that the broad, overall "subject" of the "Pensions" program was "some problems in some pension plans," but rather whether the program did *in fact* present viewpoints on one side of the issue of the overall performance and proposed regulation of the private pension system." [emphasis added.]

Thus the Commission ruled that even though NBC was reasonable in saying that the subject of "Pensions" program was "some problems in some pension plans," in determining that this was the essential subject of the program, its dominant force and thrust, nevertheless NBC had violated its obligation as a licensee, because the Commission reached a different conclusion, that the program had the effect "in fact" of presenting only one side of a *different* subject.

The Commission's error of law is that it failed adequately to apply the message of applicable decisions that the editorial judgments of the licensee must not be disturbed if reasonable and in good faith. The licensee has both initial responsibility and primary responsibility. It has wide discretion and latitude that must be respected even though, under the same facts, the agency would reach a contrary conclusion.

The pertinent principle that the Commission will not disturb the editorial judgment of the licensee, if reasonable and in good faith, is applicable broadly in fairness doctrine matters. It has distinctive force and vitality when the crucial question is the kind raised in this case, i.e., in defining the scope of the issue raised by the program, for this inquiry typically turns on the kind of communications judgments that are the stuff of the daily decisions of the licensee. There may be mistakes in the licensee's determination. But the review power of the agency is limited to licensee determinations that are not only different from those the agency would have reached in the first instance but are unreasonable.[58]

In *Columbia Broadcasting System v. Democratic National Committee, supra*, the Court stressed the wide latitude entrusted to the broadcaster. See 412 U.S. at 110–111:

"Congress intended to permit private broadcasting to develop with the widest journalistic freedom consistent with its public obligations.

"The broadcaster, therefore, is allowed significant journalistic discretion in deciding how best to fulfill the Fairness Doctrine obligations, although that discretion is bounded by rules designed to assure that the public interest in fairness is furthered."

While the government agency has the responsibility of deciding whether the broadcaster has exceeded the bounds of discretion, the Court makes clear that any approach whereby a government agency would undertake to govern "day-to-day editorial decisions of broadcast licensees" endangers the loss of journalistic discretion and First Amendment values. (412 U.S. at 120–21)

What is perhaps most striking and apt for present purposes is the figure used by Chief Justice Burger wherein the licensee is identified as a "free agent" who has *"initial and primary* responsibility for fairness, balance, and objectivity," with the Commission serving as an "overseer" and "ultimate arbiter and guardian of the public interest."[59] [Emphasis added.]

Our own decision[60] amplifies these basic propositions. Judge Tamm's opinion for the court in *Democratic National Committee v. FCC*, 148 U.S.App.D.C. 383, 460 F.2d 891 (1972) serves as a compendium and a wrap-up. That opinion refers to:

(1) *Mid-Florida Television Corp.*, 40 FCC 2d 620, 621 (1964), that the mechanics of achieving fairness "is within the discretion of each licensee, acting in good faith."

(2) *Applicability of the Fairness Doctrine*, 29 Fed. Reg. 10416, 40 FCC 598, 599 (1964):

"[T]he licensee, in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation—as to whether a controversial issue of public importance is involved, as to what viewpoints have been or should be presented, as to the format and spokesmen to present such viewpoints, and all the other facets of such programming."

(3) The concept that the Commission will "exercise substantial restraint in this area." *Id.*:

"[T]he Commission's role is not to substitute its judgment for that of the licensee as to any of the above programming decisions, but rather to determine whether the licensee can be said to have acted reasonably and in good faith."

(4) This court's other opinions[61] and such references therein as "the permissive 'reasonableness' standard of the fairness doctrine." The court therefore concluded (460 F. 2d at 903):

"Thus, in opinion after opinion, the Commission and the courts have stressed the wide degree of discretion available under the fairness doctrine. . ."

The range of journalistic discretion is not limited to the issue of how to comply with the fairness doctrine in the details of presenting both (or more) sides of an issue when the issue has been subsequently defined by the Commission. This would be narrow, and artificial. In *CBS*, the Court, in discussing the broadcaster's "significant journalistic discretion" under the fairness doctrine pointed out that the licensee must consider "such questions as whether the subject is worth considering" (412 U.S. at 111 & n.9).[62] And the Court cited with approval a passage, as old as the fairness doctrine itself, wherein the Commission stated that the licensee "is called upon to make reasonable judgments in good faith on the facts of each situation—as to whether a controversial issue of public importance is involved."[63]

Where the Commission has relatively specific rules under the fairness doctrine, as in the personal attack and political editorializing rules, it has a more ample role in determining whether the licensee was in compliance with his obligations. But when the claim is put in terms of the general obligation concerning controversial issues of public importance, there is primary reliance on the journalistic discretion of the licensee, subject to supervision by the government agency only in case he exceeds the bounds of his discretion. This yields as a corollary that if the broadcast licensee was reasonable in his premise, and his projection of the subject-matter of the program, he cannot be said by the supervising agency to have abused or exceeded his sound discretion.

The FCC's function becomes that of correcting the licensee for *abuse* of discretion, as our function on judicial review is that of correcting the agency for *abuse* of discretion.

The Commission in this case agreed that there was wide latitude of journalistic discretion in regard to news and news documentary programs. It said (par. 25) that it "cannot uphold a patently unreasonable exercise of that discretion which would deny the right of the public to be informed as to both sides of a controversial issue which in fact has been presented by such programming." The Commission's reference to "patently unreasonable exercise of discretion" by the licensee, as the standard that warrants agency intervention, captures the spirit of the scope of discretion entrusted to the licensee. We need not dwell on abstract issues such as whether a licensee whose exercise of discretion is unreasonable may validly claim it was not "patently" unreasonable; this is more a matter of mood than rule. In this case, we think it plain that the licensee has not been guilty of an unreasonable exercise of discretion. Where the Commission may have started on the wrong path in its approach is the place where the Commission undertook to determine for itself as a fact whether "the program did in fact present viewpoints on one side of the issue of the overall performance and proposed regulation of the private pension system." This is not a sufficient basis for overturning the licensee.

It is not clear from the Commission's opinion that it also appreciated the need for a finding of abuse of discretion by the licensee in concluding that no controversial issue had been presented. In any event, we are clear that the licensee's discretion was not abused in this respect.

On this issue, whether there was an abuse of discretion in NBC's determination concerning the subject matter of the "Pensions" documentary, the staff—which did see that this was the real issue—proceeded to resolve it adversely to the licensee by concluding that NBC was unreasonable in determining that the subject of the program was some problems of private pension plans. The Commission backed away from that staff conclusion.

A substantial burden must be overcome before the FCC can say there has been an unreasonable exercise of journalistic discretion in a licensee's determination as to the scope of issues presented in the program. Where, as here, the underlying problem is the thrust of the program and the nature of its message, whether a controversial issue of public importance is involved presents not a question of simple physical fact, like temperature, but rather a composite editorial and communications judgment concerning the nature of the program and its perception by viewers. In the absence of extrinsic evidence that the licensee's characterization to the Commission was not made in good faith, the burden of demonstrating that the licensee's judgment was unreasonable to the point of abuse of discretion requires a determination that reasonable men viewing the program would not have concluded that its subject was as described by the licensee.[64]

Here the Commission concluded that the program involved a controversial issue, namely the overall performance of the private pension plan system. If the agency had free rein to make the critical finding we might well support this conclusion as a reasonable exercise of agency discretion. But here the primary discretion was not vested in the government agency but in the licensee. And the agency could not premise any order on a conclusion contrary to that of the licensee unless it was willing and able to take the additional step—which it deliberately avoided—of finding the licensee's conclusion to be unreasonable. "A conclusion may be supported by sub-

Footnotes at end of article.

stantial evidence even though a plausible alternative interpretation of the evidence would support a contrary view."[65]

The situation here is unlike the case of an agency's review of a fact finding proposed by its hearing officer. In that situation, it is the agency that has the primary discretion, and it may differ with its hearing officer even though his finding is supported by substantial evidence.[66] Even there, where the agency has primary discretion, its "departures from the Examiner's findings are vulnerable if they fail to reflect attentive consideration to the Examiner's decision."[67] Certainly in a situation where it is the licensee that has primary discretion, and his judgment as to dominant impact is substantially supported by responsible persons skilled in judging these matters, this must be given attentive consideration before determining the licensee's judgment was unreasonable.

B. The function of the reviewing court

When an agency purports to exercise regulatory discretion conferred by Congress, a court reviewing its order generally accords wide latitude to the agency. The court has responsibilities and restraints. Its responsibility is to assure that the agency has not abused or exceeded its authority, that every essential element of the order is supported by substantial evidence, and that the agency has given reasoned consideration to the pertinent factors.[68]

The restraint arises out of the consideration that industry regulation has been entrusted by Congress "to the informed judgment of the Commission, and not to the preferences of reviewing courts."[69] If an agency has "genuinely engaged in reasoned decision-making . . . the court exercises restraint and affirms the agency's action even though the court would on its own account have made different findings or adopted different standards."[70]

In the case of the fairness doctrine, a reviewing court is under the same injunction against injecting its own preferences as the rule of decision. And so when the Commission, in the exercise of its discretion, affirms the licensee's exercise of its discretion, the role of the court is most restricted.[71] But the court has a greater responsibility than is normally the case, when it reviews an agency's fairness rulings that upset the licensee's exercise of journalistic discretion, both because the area is suffused with First Amendment freedoms[72] and because Congress has determined that the interest of the public, and its right to know, is furthered by giving primary discretion not to the government agency but instead to the regulated licensee. Congress has sharply narrowed the scope of agency discretion—which the court must see is not exceeded—to a government intervention permissible only for abuse of the licensee's journalistic judgment. If the Commission can claim wide latitude in and deference for its exercise of prerogative to overrule and discard the journalistic judgments of the broadcast licensees, the very premise of the legislative structure is undermined.

In Judge Tamm's phrase, in another case involving a Commission determination that the licensee violated the fairness doctrine, and aspects of intrusion on the licensee's journalistic freedoms: "Not only must the Commission take a hard look at the case in this light but so must this court."[73]

To restate, even in a fairness doctrine case the court is not given carte blanche or an authority to interpolate its own discretion or judgment as to what should be done by the agency or what should have been done by the licensee. But a court is properly exercising the high judicial function of assuring that agencies respect legislative mandates,[74] when it studies the record to make certain that the Commission has not interpolated its own judgment and wrested the primary discretion Congress placed in the licensee, without making the requisite showing of abuse of the licensee's journalistic discretion.

C. The need for selection latitude of broadcast and investigative journalism

The doctrine that respects licensee determination, if not unreasonable, concerning the issues tendered in a news broadcast, is a matter of concern for the vitality of broadcast journalism generally, and for investigative journalism in particular.

The Commission's opinion in this case reaffirmed—"our recognition of the value of investigative reporting and our steadfast intention to do nothing to interfere with or inhibit it." See *WBBM-TV*, 18 FCC 2d 124, 134 (1969); *Hunger in America*, 20 FCC 2d 143, 150 (1969).

In *Hunger in America, supra*, it not only commended CBS "for undertaking this documentary on one of the tragic problems of today" but it undertook to clarify its policy as to a claim that a licensee deliberately distorted the news, to avoid concern lest its inquiry in that case "may tend to inhibit licensees' freedom or willingness to present programming dealing with the difficult issues facing our society." 20 FCC 2d at 150. It reiterated the ruling of *ABC*, 10 FCC 2d 650 (1969), that it would require extrinsic evidence of *e.g.*, a charge that a licensee staged news events. "Otherwise, the matter would again come down to a judgment as to what was presented, as against what should have been presented—a judgmental area for broadcast journalism which this Commission must eschew." 16 FCC 2d at 657–58.

In the world of news documentaries, there is inherently an area of "judgment as to what was presented." And if its judgment is not unreasonable, the licensee cannot fairly be held faithless to fairness doctrine responsibilities.

Investigative reporting has a distinctive role of uncovering and exposing abuses. It would be undermined if a government agency were free to review the editorial judgments involved in selection of theme and materials, to overrule the licensee's editorial "judgment as to what was presented," though not unreasonable, to conclude that in the agency's view the expose had a broader message in fact than that discerned by the licensee and therefore, under the balancing obligation, required an additional and offsetting program.

The field of investigative exposures, as the Commission has noted, is one in which "[p]rint journalism has long engaged [and] been commended,"[75] and to which broadcast journalism, also part of the press is "no less entitled." Even for print journalism, not subject to the extreme time coverage limitations of broadcasters, a requirement like the Commission's would be considered a "millstone" burdening investigative reporting. We refer to the affidavit supplied to the Commission by J. Edward Murray, associate editor of the Detroit Free Press and immediate past president of the American Society of Newspaper Editors. These are representative excerpts:

"The whole process of investigative reporting is a complex and sensitive equation involving editors with high purpose and intuition, reporters with skill and courage, and publishers willing to incur heavy expense and the risk of offending both public opinion and advertisers. This equation, as I said, is powered by the drive to correct evils in the society.

"If we weight the equation with the requirement that the press look for, and report, good wherever it finds and reports evil, we might as well forget investigative reporting. We will have overwhelmed it with the deadly commonplace of things as they are.

"[I]t would be commonplace newspaper procedure that if an editor decided that some private pensions are flawed or useless, and published a typical expose to this effect, the expose would simply assume that the majority of private pension plans were more or less in acceptable shape. Otherwise, the forces of both law and business would have corrected so obvious a deficiency.

"The investigative reporter's thrust is against presumed evils in society. If he must always give an equivalent weight to the good (which is now presumed) in the situation he is investigating, his thrust would become so dulled as to be boring—and unread. Newspapers, including the Detroit Free Press, investigate and expose policemen who are on the 'take' in the dope rackets. If an equivalent weight or time must be given to policemen who are not on the 'take', the whole campaign becomes so unwieldy and pointless as to be useless.

"The suggestion of a positive non-expose, in the wake of an original negative expose, falls of its own weight. No one would read it. It would thus be a waste of space. And it would add one more millstone to the already considerable burden of legitimate investigative reporting." (JA 140–42.)

To like effect are affidavits in the record from broadcast journalists.[76]

The basic point merits emphasis: A report that evils exist within a group is just not the same thing as a report on the entire group, or even on the majority of the group. An expose that establishes that certain policemen have taken bribes, or smoked pot, or participated in a burglary ring, is not a report on policemen in general. It may be that the depicition of particular abuses will lead to broader inferences. Certainly severe deficiencies within an industry may reflect on the industry as a whole. When one bank fails, others may suffer a run. But the possible inferences and speculations that may be drawn from a factual presentation, are too diverse and manifold—ranging, as they inevitably must, over the entire span of viewer predilections, characteristics and reactions—to serve as a vehicle for overriding the journalistic judgment.

There is residual latitude in the Commission to condemn the journalist's vision as an unreasonable exercise of discretion. But if the Commission is to condemn a journalist's vision as excessively narrow, it must show that its own vision is broadgauged. Yet here we are reviewing a Commission opinion that says: "It is difficult to see why a network would devote its time and effort to a program with no broad impact or value." (Par. 20). But abuses in an industry are of interest to the public, and merit a documentary, if they exist in any significant amount, even though they are not the general rule. Failures on automobiles are an example. Yet this obvious underpinning for an editorial judgment to run a limited expose was not referred to by the Commission.

The Commission simply neglected our caution in *Healey v. FCC, supra*, 460 F.2d at 922:

"Petitioner's basic misapprehension here is a confusion of an issue over newsworthiness with a 'controversial issue of public importance.' Merely because a story is newsworthy does not mean that it contains a controversial issue of public importance."

The point is fundamental. In a case where NBC has made a reasonable judgment that a program relates to, and the public has an interest in knowing about, the "broken promise" abuses that its reporters have identified in various private pension plans, and there is no controversy concerning the existence in fact of such abuses, then the balancing of the fairness doctrine cannot permit the intrusion of a government agency to make its own determination of the subject and thrust of the program as a report that such abuses feature private pensions generally, and with such enlargement to a con-

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troversial status to burden the reporting with the obligation of providing an opposing view of the escalated controversy.

VI. THE PRESENT RECORD SUSTAINS THE LICENSEE'S EDITORIAL JUDGMENT AGAINST A CHARGE OF REQUISITE BAD FAITH OR UNREASONABLENESS

This is the first case in which a broadcaster has been held in violation of the fairness doctrine for the broadcasting of an investigative news documentary that presented a serious social problem. We have already stated that the Commission used an unsound legal standard in reviewing the licensee's exercise of discretion. What result ensues—on the record before us—from application of the sound legal standard?

A. The issues as to the issue

In law, as in philosophy, the task of ascertaining the sound rule or precept often turns significantly on rigor in the statement of the problem. Nowhere is this more the case than in the application of the fairness doctrine, for in regard to the determination that a program raised a "controversial issue of public importance," the first and often most difficult step is "to define the issue." [77]

In holding that "Pensions" presented views advocating only one side of a controversial issue of public importance, the Commission defined that issue in these terms: "that issue being the overall performance of the private pension system and the need for governmental regulation of all private pension plans." (Par. 19).

In so defining the issue, the Commission overruled NBC's judgment. NBC was called to answer AIM's complaint that NBC had given a one-sided view of a controversial issue of public importance—in its "picture of the private pension system of the United States." [78] NBC responded that "Pensions" was primarily designed to expose failures found in some private plans rather than to evaluate the overall performance of the private pension system and that the program did not urge any specific legislative or other remedies. [79]

The controversial "issue" identified by the Commission reflects a compound of issues—one, whether problems exist in private pension plans generally, and two, whether overall legislation should be enacted to remedy those problems. In aid of analysis, these issues will be discussed separately.

In our view, the present record sustains NBC as having exercised discretion, and not abused discretion, in making the editorial judgment that what was presented, in the dominant thrust of the program, was an expose of abuses that appeared in the private pension industry, and not a general report on the state of the industry. If this judgment of NBC may stand, there is no showing of a controversial issue. The staff's ruling that NBC was unreasonable in this judgment was not sustained by the Commission. And in our view, the present record does not establish a basis for the conclusion that the licensee's judgmental conclusion may be set aside as unreasonable and as constituting an abuse rather than a permissible exercise of discretion.

1. The description of the program in TV columnist reviews

NBC offered the Commission an exhibit showing the appraisal of some 25 television critics who reviewed the program, appraisals made contemporaneously, in September, 1972, immediately or shortly after the broadcast. Typically, the critical comments were favorable, reporting that the program was an important and worthwhile public news service, "superlative investigative reporting." Many noted that most viewers were likely glued elsewhere, as was apparently the case, though perhaps one may take heart from Clarence Peterson's observations in the Chicago Tribune: "Most viewers will have watched Marcus Welby instead but it takes only a few hard-nosed skeptics to rattle the cage."

More important for present purposes are the reviewers' descriptions of the program. These appear in Appendix B to this opinion. In general, the reviewers' appraisals of the nature of the program are consistent with NBC's editorial judgment. Examples include the Philadelphia Daily News: "A potent program about pitfalls and failures of some private pension plans of business and unions . . . it was an angry, incisive study that focused on some people who felt cheated by their blind faith in Pensions." More succinct was UPI: "Tough study of the failure of some private pension systems."

The note that the program undercut a "blind faith" in pension programs was struck in a constructive way in reviews like that in the Chicago Tribune: "Pension administrators may face some hard questions from employees when they get to work this morning. If so, NBC Reports will have done its job."

Other comments cut from a different angle. Thus, the review in Business Insurance put it: "The program was by no means objective; it could not have been . . . there was just not enough time to do it thoroughly. [Newman did] point out that there were many good pension plans." The Denver Post said the documentary had "a disorganized approach" and added: "Likewise nothing was said about what makes good pension systems work . . . but NBC should be commended for publicizing a condition of social anarchy." And intervenor AIM brings to our attention that John J. O'Connor in the New York Times has written: "The NBC program strongly implied that 90 per cent were failures. This title was, 'Pensions: The Broken Promise,' not 'Pensions: Broken Promises.'" AIM stresses that reviews in the Boston Globe, Chicago Today and Hollywood Reporter, reflected reactions to the program as commenting on the private pension system as a whole.

The Commission's opinion dismissed the newspaper reviews. It stated its determination of the question must rest with the program itself, and added (fn. 4): "Such brief and general one-line summaries provide no information as to what particular views on the subject of pensions may have been presented in the one-hour documentary, and hence are of little value in determining the applicability of the fairness doctrine. . . ."

Obviously, television reviews cannot be conclusive, for the obligation of licensees and the Commission to determine fairness doctrine questions is not delegable. The opinion of this court does not depend in any critical measure on television reviews. Yet we are here concerned, not with some broad question of fairness doctrine responsibility, but with something that is not only closer to a question of fact—the description of the program—but is a matter on which the reviewer is expected to make an accurate report to the public as his primary task.

Even if the Commission believed the reviewer to be wrong, it should have considered whether the review did not have more than minimal value on the issue of the NBC's reasonableness in saying that the subject of the program was that of abuses discovered, of some problems in some pension plans. If this was the primary thrust of the program, as discerned by persons trained to view such programs attentively and report their description to the public, it is a substantial factor—though, we repeat, not a conclusive one—to an agency exercising its surveillance role under correct standards of review. As for the Commission's comment that the brief format itself undercuts any significance for these newspaper reviews, this is belied by the quite different reactions recorded in the different newspaper reviews.

2. Application of the correct standard

Had the Commission applied the correct standard of review, the consequence clearly would have been an acceptance of NBC's position as a reasonable statement of the subject of the "Pensions" broadcast. There were a few explicit statements of views on the overall performance of private pension plans that are of no consequence in terms of fairness doctrine, as will be presently seen.* Otherwise, the plain heft of the program was the recitation of case histories that identified shortcomings of private pensions, and various interviews that identified the abuses in more general terms. But effective presentation of problems in a system does not necessarily generate either comment on the performance of the system as a whole, or a duty to engage in a full study. This is plain from our discussion of investigative journalism.

The licensee does not incur a balancing obligation solely because the facts he presents jar the viewer and cause him to think and ask questions as to how widespread the abuses may be.

The licensee's judgment on an issue of investigative journalism is not to be overturned unless the agency sustains a heavy burden and makes a clear showing that the licensee has been unreasonable, that there has been an abuse of journalistic discretion rather than an exercise of that discretion. We have been presented no basis for sustaining the view that there is such unreasonableness on the part of a licensee who presents undisputed facts—and no party has contended that the abuses identified by NBC do not exist—because it has failed to treat them as a general indictment of a system.

B. Comments on the "Overall" Performance of the Private Pension Plan

In previous sections of this opinion we have identified the dangers to broadcast journalism, and investigative reporting in particular, if descriptions of abuses in a system are converted inferentially into a broadside commenting adversely on the overall system.

A separate question is presented, however, by the comments in the program that differs from the description of particular evils.

1. Adverse comments on overall performance

We examine, seriatim, those passages of the "Pensions" program that may be taken as adverse comments on overall performance. We need not define whether a fairness doctrine obligation is generated by this kind of comment, either alone or with some kind of FCC determination. For in this case, as we shall see, NBC provided offsetting material on the overall performance of pension plans.

But this discussion will at least identify our concern with some of the problems. As we shall see, some statements are unquestionably to be given a different reading.

(1) The short passage spoken by a MAN (Tr. 1), who begins that the pension system is essentially a consumer fraud, and ends by saying it is "an insurance contract that can't be trusted." *Overall-Adverse.*

(2) Edwin Newman's statement (p. 2) that the availability of annual reports filed in the Labor Department "is a meager protection for the twenty-five million Americans who are in private pension plans."

Neither this nor the next sentence, that "very many of the hopes will prove to be empty" says that all, or even most, of the 25 million Americans will be unprotected. The statement that the mere filing of the reports is meager protection hardly seems controversial, as to the "very many" whose pension hopes will be lost by e.g., inability to meet stringent vesting provisions.

(3) Herbert Dennenberg, at Tr. 4: Paragraph ending "most pension funds are in-

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* In Part V-B.

adequate." This is *Overall-Adverse—Arguable.*

(a) Mr. Dennenberg says that those who retire under the plans typically receive only a thousand dollars a year, which is inadequate even with social security. This is a general comment, but we do not see what has been identified as a controversial issue. AIM's complaint of November 27, 1972, stresses:

"More than 5 million retired employees are receiving benefits from them [the plans] to the tune of about $7 billion a year."

This datum in AIM's complaint palpably confirms rather than contradicts $1,000 as a typical figure.[50] But if there is a controversial issue here which requires reference to AIM's datum, then it should be noted that this very fact was brought out on the "Pensions" program by Mr. Russell Hubbard of the National Association of Manufacturers (see Tr. 18).

(b) Whether a $1,000 annual amount is 'adequate even with social security," is a value question.

The complaint of inadequacy of pensions is also, perhaps, one meaning that might be given to the caption of "broken promise"—if one posits that there was a promise of an "adequate" retirement income. There is plainly no unreasonable abuse of discretion for the licensee to determine that the complaint of "inadequacy," though surfacing in the program, is simply not the main thrust of the program, which basically turns on whether pension plans do pay out the amounts that were held out to the employees when their work was done, and if not, why not. The FCC, disagreeing with its staff, has held the fairness doctrine would be both unworkable, and an intolerably deep involvement in broadcast journalism, if every single statement, inference, or sub-issue, could be built up into a requirement of countering presentation.[51]

(c) Mr. Dennenberg also says that over half the people will have nothing at all from pension plans. See also Tr. 5: "There have been studies that indicate that most people won't collect." Under current plans, pension rights depend on a combination of longevity, endurance in specified employment for a minimum vesting period, and lack of termination of the plan, and Mr. Dennenberg describes this as "an obstacle course."

Again AIM does not contradict the basic fact asserted by Mr. Dennenberg. Its complaint compares 5 million receiving pensions with 30 million workers now covered. But it does not assert that the number who worked under pension plans but have failed to qualify for pensions stands below 5 million. And Mr. Dennenberg's statement is not too different in impact from one in a Washington Post article that AIM lauds as balanced journalism.[52] Obviously a greater burden would have to be met by the FCC in identifying the existence and nature of a controversial issue of importance.

(4) Senator Harrison Williams (Tr. 4–5). Following a statement by Mr. Newman that many plans have restrictions and exclusions buried in fine print, comes Senator Williams' comment that the plans "suggest the certainty of an assured benefit upon retirement" which gives "a sense of false security."

NEWMAN. Senator, the way private pension plans are set up now, are the premises real?

WILLIAMS. The answer is, they are not.

Senator Williams enlarges that he wants descriptions of the realities of plans that are clear and that do not require a lawyer.

Here again we have a general comment on the plans, that the eligibility requirements are not clearly identified. But we do not see wherein this comment has been identified by AIM, the Commission or its staff, as inaccurate, or as presenting a controversial issue.

(5) Victor Gotbaum (Tr. 12).

In these four lines appears: "Pensions in the private area are a mockery." *Overall-Adverse.*

(6) Edward Kramer (Tr. 12–13): Mr. Kramer and Mr. Gotbaum identify the feelings of people who have retired only to find they are living in squalor. These people, says Mr. Kramer, feel "cheated by the pension system, cheated by social security." This is essentially a complaint of the inadequacy of amounts of payments, rather than denial of pensions. See comment as to Mr. Dennenberg under (3).

(7) Mr. Ralph Nader (at Tr. 18): "I think time is running out on the private pension systems. And it [sic] its abuses continue to pile up, and if its enormous popular disappointments begin to be more and more revealed, it might collapse of its own weight, and social security will have to take up the slack." *Overall-Adverse.*

2. Favorable comments on overall performance

Toward the conclusion of the program, comments were made, by Messrs. Hubbard, of the National Association of Manufacturers, and Anderson of the Bank of America, which the Commission recognized as generally favorable to the performance of the private pension plan system:

HUBBARD: Over a good number of years, the track record is excellent. It's unfortunate that every now and then some of the tragic cases make the newspapers and the headlines. But it's a question of perspective and balance. When you consider that there are thirty million people covered by the plans, that there are five million people receiving about seven billion dollars in benefits, I think that's a pretty good record. That's not to say that there aren't a few remaining loopholes that need closing but we ought to make sure that we don't throw out the baby with the wash water. (Tr. at 18.)

ANDERSON. You must remember that the corporation has set this plan up voluntarily. They have not been required by law to set it up. (Tr. at 18.)

ANDERSON. These pension plans are a part of a fringe benefit package. Like hospitalization insurance and so forth, but it's still a voluntary thing on the part of the corportation. (Tr. at 19.)

NEWMAN. This has been a depressing program to work on but we don't want to give the impression that there are no good private pension plans. There are many good ones, and there are many people for whom the promise has become reality. That should be said. (Tr. at 19.)

Moreover, Mr. Newman, earlier in the program, made specific reference to some generally good pension programs operated by Teamsters Unions:

NEWMAN. . . . .[I]n most respects, the pension programs run by the Chicago teamsters union locals are among the best. Benefits are generous and a teamster can retire as early as age fifty-seven. (Tr. at 9–10.)

C. Reasonable Balance

As the foregoing shows, there were a handful of comments on "overall performance" of the private pension plan system. Some were favorable, more were adverse, but there was adequate balance of both sides of that issue and a reasonable opportunity for presentation of both sides of that issue. The fairness doctrine "nowhere requires equality but only reasonableness." *Democratic National Committee v. FCC, supra,* 148 U.S. App. D.C. at 397, 460 F.2d at 905. On this aspect of the program, the FCC did not say, and in our scrutinizing review we do not consider it could rightfully say, that the licensee had failed to provide a reasonable opportunity for the presentation of contrasting approaches.

We repeat that Mr. Hubbard of N.A.M. brought out the fact given primary stress in AIM's complaint—that 5 million retirees were receiving $7 billion under private pension plans. As for AIM's notation that only 1 percent of pension plans have been terminated, while this precise statistic was not mentioned by Mr. Hubbard, he made the basic point that the overall track record is excellent, and the question is one of perspective and balance.

D. The non-controversial nature of the issue whether some reform legislation should be enacted

The FCC concluded that the "Pensions" program "supported proposals to regulate the operation of all private pension plans." NBC does not deny, and it would be patently unreasonable for NBC to deny, that it broadcast its view that there was a need for legislative reform. We refer to Edwin Newman's concluding paragraph, in which he capped his notation that the situation involved various technical problems (portability, funding, insurance, fiduciary relations) by saying (Tr. 20):

"These are matters for Congress to consider and, indeed, the Senate Labor Committee is considering them now. They are also matters for those who are in pension plans. If you're in one, you might find it useful to take a close look at it.

"Our own conclusion about all of this, is that it is almost inconceivable that this enormous thing has been allowed to grow up with so little understanding of it and with so little protection and such uneven results for those involved.

"The situation, as we've seen it, is deplorable."

An entirely different problem is presented by the Commission's conclusion that there was a controversial issue in "the need for governmental regulation of all private pension plans." The Commission stressed (para. 19) that at the time of the program "Congress was engaged in a study of private pension plans and considering proposed legislation for their regulation—legislation which was opposed in whole or in part by various private and public groups and spokesmen."

The fairness doctrine would require that when a controversial bill is pending, if advocates of its passage have access to a licensee's facilities, so must opponents.[53] But the Commission wholly failed to document its premise that there is a controversial issue in the assertion that there is a need for some remedial legislation applicable generally to pension plans. The record does not support the Commission's statements in its opinion (at para. 16, 23):

". . . NBC does not dispute the Bureau's finding that at the time the 'Pensions' program was broadcast the overall performance and proposed regulations of the private pension system constituted a controversial issue of public importance within the meaning of the fairness doctrine.[3]

"[3] The Bureau based this finding on AIM's uncontradicted submissions that proposals for the regulation of all private pension plans were pending before the Congress and that such proposals were opposed in whole or in part by 'various groups and spokesmen including the National Association of Manufacturers, several labor unions, the Chamber of Commerce of the United States, and the Nixon administration.' 40 F.C.C. 2d 958, at 967.

"NBC does not dispute that there are many private and public groups and spokesmen who oppose the view that the overall performance of the private pension system is so 'deplorable' as to require remedial legislation."

There was no occasion for NBC to reply to a claim that was never made. AIM's complaint to the FCC dated November 27, 1972, made no reference whatever to a stand on legislation as a controversial issue; it said criticism of pension plans was such an issue. AIM's letter to NBC dated December 6, 1972, stated that it was struck by a reference in

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Footnotes at end of article.

NBC's letter to the FCC that it had concluded that a program on pensions would be timely in view of Senate Reports 92-1150 and 92-1224. AIM added that this bill was opposed by some labor unions, the Chamber of Commerce and the NAM. AIM added: "While your program did not endorse any specific legislative proposal, it did emphasize the need for new regulatory legislation and it pointed out that the Senate Labor Committee had the matter under consideration." From this circumstance, and the fact that Senator Schweiker had inserted the transcript of the Pensions program in the Congressional Record for October 3, 1972, as dramatically showing the need for pension reform,[84] AIM evolved a contention this was a program "inspired by a contested legislative proposal" and presenting one side of that contest. Neither the staff nor the Commission supported AIM's efforts at such extrapolation or extreme conjecture.[85]

This case does not involve any controversial issue derived from favoring certain specific proposals under consideration by Congress.[86] And AIM did not contend before the FCC that at the time of the broadcast there were any significant groups opposed in principle to the idea of remedial legislation. Since NBC was not called on to dispute what was not asserted, the staff's statement is lacking in support and too lifeless to be a basis for a key Commission premise.

AIM transmitted a Washington Post article on pensions as one "exemplifying good journalism." In certain respects, the Post article, which recites the case of Stephen Duane (A&P) and others, and states these are not simply isolated horror stories (see fn. 82, *supra*) resembles the NBC program. In other respects it is different, for the Post article does undertake to examine and analyze the different specific legislative proposals made, and the arguments for and against, including "strong business and Nixon administration opposition to some of the more stringent reform proposals." But the fact that the Post ran an article on specific legislative proposals, their pros and cons, does not mean NBC was obligated to do so. In NBC's program Edwin Newman said that the question of particular approaches was difficult, beyond the scope of the program and "matters for Congress to consider."

We know as judges, as we knew as lawyers, that there is a profound difference between the kind of materials that can be presented effectively in oral form (on argument) and in written form (in briefs).

NBC specifically pointed out to the Commission on appeal that the Post article esteemed by AIM had stated: "The problem, then, is not whether there will eventually be pension reform legislation, but what kind."[88]

NBC's letter of July 13, 1973, called the Commission's attention to the wide span of sources supporting some form of remedial legislation.[87] And NBC specifically emphasized that there was no indication of any meaningful view opposing the concept of some reform legislation (JA 163, 171–172):

"In the 786-page transcript of the most recently published Congressional hearings with respect to pensions, in which 35 witnesses testified on all sides with respect to pensions, *not one* took the position that some kind of meaningful reform (usually mandated by legislation) of the pension system was unwarranted or should not be instituted. (*Hearings of Subcommittee on Labor of the Senate Comm. on Labor and Public Welfare*, US Senate, 93rd Cong., 1st Sess., 1973.) Nor is that view attributed to anyone in the *Washington Post* article on pensions annexed to Mr. Kalish's letter, the article that has apparently been awarded the AIM *imprimatur* for 'good' journalism (p. 13)." (Emphasis in original.)

In the light of this record, it is plain that while the "Pensions" program recommended that legislation regulating pension plans be passed, it did not address controversial issues, and there is no reasonable basis for invoking the fairness doctrine on this ground.

VII. CONCLUSION

The First Amendment is broadly staked on the view that our country and our people—rich in diversity of strains and viewpoint—is best served by widest latitude to the press, as broadening input and outlook, through a robust and uninhibited debate that is subject only to minimum controls necessary for the vitality of our democratic society.

The Court has sustained the fairness doctrine in broadcasting as an instance of a necessary control in the public interest. The broadcaster cannot assert a right of freedom of press that transcends the public's right to know. But application of the doctrine must still recognize the enduring values of wide latitude of journalistic discretion in the licensee. And when a court is called on to take a "hard look" whether the Commission has gone too far and encroached on journalistic discretion, it must take a hard look to avoid enforcing judicial predilections.

And so it is that a natural judicial tendency to respond to such conditions as conciliation, and recognition of the other's viewpoint in the broad interest of fairness, must yield to a vigilant concern that a government agency is not to intervene or burden or second-guess the journalist given primary discretion and responsibility, unless there is documentation of unreasonableness on the part of the licensee.

The foregoing observations are supported by, and indeed are a distillate of, pertinent decisions—including notably the opinions of the Supreme Court in *CBS v. DNC*, *Tornillo*, and *Red Lion*—all of which have been carefully studied and discussed.

Their application to this case convinces us that the Commission did not guide itself by the appropriate restrictive standards. The Commission has not acted in a rigidly bureaucratic manner, and it has in good faith sought to meet its responsibilities under the Act. There are areas where the Commission's duty of surveillance is considerable, and where there have been abuses on the part of licensees. But we are here concerned with the area of investigative journalism, where there is greatest need for self-restraint on the part of the Commission, and for keen awareness of the inhibitory dimension of impermissible intrusion of a government agency. Investigative journalism is a portrayal of evils, and there may be a natural tendency to suspect that the evils shown are the rule rather than the exception. But the question is not the Commission's view of what was broadcast, and what would have been reasonable if it were the Commission's role to determine what should be broadcast, but whether the licensee, who had this role, had been demonstrated to have maintained an approach that was an abuse rather than an exercise of its discretion.

We find no basis for the Commission's conclusion that the need for reform legislation in the pensions field was a controversial issue. There are controversies as to specific proposals, but they were not the subject of the Pensions broadcast.

The complaint is made that a more balanced presentation was made in a newspaper article that did consider specific proposals and their various pro's and con's. But there are different strengths and weaknesses in printed and oral presentation, as lawyers and judges well know, and it would be an impermissible intrusion on broadcast journalism to insist that it adopt techniques congenial to newspaper journalism. This approach might well undercut the particular values, of intensity of communication through interviews, that make broadcast journalism so effective in enhancing public awareness. The fairness doctrine—which rests, says *Red Lion*, on the distinctive characteristic of broadcasting—cannot be applied by the government to alter broadcasting's distinctive quality.

We have analyzed the various segments of the "Pensions" broadcast, and have not found them to justify the Commission's invocation of the fairness doctrine. We also take account of the Commission's statement that its decision was based upon the "overall impact" of the program. In some fields, the whole may be greater than the sum of its parts—according to the precepts of Gestalt Psychology. In general, however, the evils of communications controlled by a nerve center of Government loom larger than the evils of editorial abuse by multiple licensees who are not only governed by the standards of their profession but aware that their interest lies in long-term confidence. The fairness doctrine requires a demonstrated analysis of imbalance on controversial issues. This cannot be avoided by recourse to a subjective and impressionistic recording of overall impact.

This has not been an easy case to decide. But after sorting out all the strands of decision, we conclude that the Commission has not presented a justification sufficient to sustain its order under review.[88] The case will be remanded to the Commission with instructions to vacate its order adopted November 26, 1973.

So ordered.

FOOTNOTES

[1] In addition to the Peabody Award, the program was awarded a Christopher Award, a National Headliner Award and a Merit Award of the American Bar Association. It was also an Emmy nominee. *See* Schmerler Affidavit 10, JA 121–22.

[2] *See* Letter of FCC to NBC, May 2, 1973, JA 55, 66-67.

[3] *See* Dennenberg Statement, Tr. at 4; Kramer Statement, Tr. at 13–14.

[4] *See* Dennenberg Statement, Tr. at 5; Newman description of Nader position, Tr. at 18; Hubbard Statement at 18; Anderson Statement, Tr. at 18–19; Gotbaum Statement, Tr. at 18; Schweiker Statement, Tr. at 19.

[5] See summary of reviews, Appendix B.

[6] Frank Affidavit, JA 125–26.

[7] Letter of AIM to FCC, July 2, 1973, JA 143.

[8] Letter of AIM to FCC, November 27, 1972, JA 1.

[9] Letter of AIM to FCC, February 20, 1973, JA 48.

[10] Letter of AIM to FCC, April 11, 1973, JA 54.

[11] Letter of NBC to FCC, February 14, 1973, JA 41.

[12] *Id.*, JA 45–46.

[13] *Accuracy in Media, Inc.*, 40 FCC 2d 958 (1973).

[14] *Id.* at 963, 966.

[15] By letter of July 2, 1973, AIM replied to NBC's appeal and appended as an exhibit an article about pensions appearing in the Washington Post of November 26, 1972, written by Mr. Spencer Rich. AIM stated that this article "exemplifies good journalism." JA 155.

[16] 44 FCC 2d 1027 (1973), JA 201.

[17] 44 FCC 2d at 1034–35, JA 210.

[18] This opinion also serves to explain the continuation of the February 14, 1974, stay order during the preparation of the opinion on the merits. *See* note 88 *infra*.

[19] *In the Matter of Editorializing by Broadcast Licensees*, 13 FCC 1246, 1249 (1949).

[20] *Id.* This duty extends to making free time available if those holding responsible conflicting views are unable to purchase air time. *Cullman Broadcasting Co.*, 40 FCC 576, 577 (1963).

[21] 47 U.S.C. § 315(a) reads in part:

Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

[22] *Red Lion v. FCC*, 395 U.S. 367, 379–86 (1969).

[23] 94 S. Ct. 2831 (1974).

[24] *National Broadcasting Company v. United States*, 319 U.S. 190, 210–14 (1943).

[25] *Red Lion Broadcasting Co. v. FCC, supra*, 395 U.S. at 376.

[26] Other responses to the dangers of placing control over the broadcast media into the hands of a relative few include: the obligation of the licensee to operate in the public interest, *see* 47 U.S.C. §§ 307(a), 309(a) and 312(a)(2), the chain broadcasting and multiple ownership rules, *see National Broadcasting Co.* v. *United States*, 319 U.S. 190 (1943) and 47 C.F.R. §§ 73.131, 73.240, and the prime time access rule, 47 C.F.R. § 73.658 (k) (1973). *See also Columbia Broadcasting System* v. *Democratic National Committee*, 412 U.S. 94, 112 n.10 (1973).

[27] *See id.* at 117–18, 122.

[28] *Red Lion v. FCC*, 395 U.S. at 373–75:

"Personal attacks; political editorials.

"(a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than 1 week after the attack, transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a resonable opportunity to respond over the licensee's facilities.

"(b) The provisions of paragraph (a) of this section shall not be applicable (1) to attacks on foreign groups or foreign public figures; (2) to personal attacks which are made by legally qualified candidates, their authorized spokesmen, or those associated with them in the campaign, on other such candidates, their authorized spokesmen, or persons associated with the candidates in the campaign; and (3) to bona fide newscasts, bona fide news interviews, and on-the-spot coverage of a bona fide news event (including commentary or analysis contained in the foregoing programs, but the provisions of paragraph (a) of this section shall be applicable to editorials of the licensee).

"NOTE: The fairness doctrine is applicable to situations coming within [(3)], above, and in a specific factual situation, may be applicable in the general area of political broadcasts [(2)], above. See, section 315(a) of the Act, 47 U.S.C. 315(a); Public Notice: *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 29 F.R. 10415. The categories listed in [(3)] are the same as those specified in section 315 (a) of the Act.

"(c) Where a licensee, in an editorial, (i) endorses or (ii) opposes a legally qualified candidate or candidates, the licensee shall, within 24 hours after the editorial, transmit to respectively (i) the other qualified candidate or candidates for the same office or (ii) the candidate opposed in the editorial (1) notification of the date and the time of the editorial; (2) a script of tape of the editorial; and (3) an offer of a reasonable opportunity for a candidate or a spokesman of the candidate to respond over the licensee's facilities: *Provided, however*, That where such editorials are broadcast within 72 hours prior to the day of the election, the licensee shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion." 47 CFR §§ 73.123, 73.300, 73.598, 73.679 (all identical).

[29] Justice Douglas did not participate, and said in *CBS:* "I did not participate in that decision and, with all respect, would not support it." 412 U.S. at 154.

[30] 395 U.S. at 390.

[31] "Only when the interests of the public are found to outweigh the private journalistic interests of the broadcasters will government power be asserted within the framework of the Act." *CBS, supra*, 412 U.S. at 110.

[32] 395 U.S. at 393.

[33] *Id.* at 396.

[34] 412 U.S. 94 (1973).

[35] *Business Executives' Move for Peace v. FCC*, 146 U.S. App. D.C. 181, 450 F.2d 642 (1971).

[36] 412 U.S. at 124.

[37] *Id.* at 110–11.

[38] *Id.* at 124–25. This same thought appears in the *Tornillo* case, 94 S.Ct. at 2840 and is obviously an abiding constitutional consideration.

[39] *Neckritz v. FCC*, —— U.S. App. D.C. ——, —— F.2d —— (No. 71–1392, June 28, 1974); *Friends of the Earth v. FCC*, 146 U.S. App. D.C. 88, 449 F.2d 1164 (1971); *Banzhaf v. FCC*, 132 U.S. App. D.C. 14, 405 F.2d 1082 (1968, *cert. denied*, 396 U.S. 842 (1969).

[40] 144 U.S. App. D.C. 353, 447 F.2d 323 (1971).

[41] The Commission has said:

The fairness doctrine deals with the broader question of affording reasonable opportunity for the presentation of contrasting viewpoints on controversial issues of public importance. Generally speaking, it does not apply with the precision of the "equal opportunities" requirement. Rather, the licensee, in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation—as to whether a controversial issue of public importance is involved, as to what viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoints, and all the other facets of such programming. See par. 9, *Editorializing Report*. In passing on any complaint in this area, the Commission's role is not to substitute its judgment for that of the licensee as to any of the above programming decisions, but rather to determine whether the licensee can be said to have acted reasonably and in good faith. There is thus room for considerably more discretion on the part of the licensee under the fairness doctrine than under the "equal opportunities" requirement.

In re Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance, 40 FCC 598, 599 (1964).

[42] 144 U.S.App.D.C. at 360, 447 F.2d at 330.

[43] *Id.* at 359, 447 F.2d at 329 (emphasis in original).

[44] 148 U.S. App. D.C. 383, 460 F.2d 891, *cert. denied*, 409 U.S. 843 (1972).

[45] *Id.* at 392, 460 F.2d at 900 (emphasis added).

[46] 148 U.S.App.D.C. 409, 460 F.2d 917 (1972).

[47] *Id.* at 414, 460 F.2d at 922.

[48] *Id.* at 415, 460 F.2d at 923.

[49] *Brandywine-Main Line Radio, Inc. v. FCC*, 153 U.S.App.D.C. 305, 473 F.2d 16 (1972), *cert. denied*, 412 U.S. 922 (1973). Judge Tamm's opinion restated that "[t]he cornerstone of the doctrine is good faith and licensee discretion." That opinion sustained the denial of the application to renew the license only on the ground that the record of the licensee was "bleak in the area of good faith . . . [and] . . . shows an utter disdain for Commission rulings and ignores its own responsibilities as a broadcaster and its representations to the Commission." 153 U.S.App.D.C. at 333, 335–36, 473 F.2d at 44, 46–47 (1972).

[50] 148 U.S.App.D.C. at 395, 460 F.2d at 903.

[51] *See* H. GELLER, THE FAIRNESS DOCTRINE IN BROADCASTING: PROBLEM AND SUGGESTED COURSES OF ACTION, (The Rand Corporation, R-1412-FF, Dec. 1973).

[52] *See* Testimony of Mr. Joseph Nelson, Chief, FCC Renewal and Transfer Division, Hearings before the Senate Freedom of Communications Subcommittee, March 27, 1961, 87th Cong., 1st Sess., Report 994, Pt. 5, p. 21; *see, e.g., Dominican Republic Information Center*, 40 FCC 457, 457–588 (1957).

[53] *See* Section 315(a), 47 U.S.C. § 315(a); *Red Lion Broadcasting Co. v. FCC, supra*, 395 U.S. at pp. 380–385.

[54] *See Tri-State Broadcasting Co., Inc.*, 40 FCC 508, 509 (1962). This change apparently occurred in connection with personal attack cases, and was extended without discussion to all fairness cases. The only FCC treatment is in *Honorable Oren Harris*, 40 FCC 582 (1963). Chairman Harris of the House Interstate and Foreign Commerce Committee criticized this new approach, and urged that fairness ". . . be applied periodically (i.e., at the time of renewal) and upon an overall basis." *Id.* at p. 583. In its response, the Commission gave three reasons for its policy of resolving fairness questions at time of complaint rather than awaiting renewal: (1) It is not fair to the licensee to wait; he should have a chance to contest the fairness ruling by appealing to the courts; (2) awaiting renewal is unfair to the public, which then does not have the opportunity to hear contrasting views, such as in programs dealing with ballot issues; and (3) similarly, it would be unfair to candidates in political campaigns.

[55] Amicus Brief at 3–5. These problems, which are under FCC consideration, may be grouped as follows:

(a) Defining balance or reasonable opportunity to afford contrasting viewpoints on an issue.

(b) The stopwatch problem. Apparently, the FCC has on occasion literally used a stop-watch to time the presentations made on the various sides on an issue. *See* Concurring Statement of Chairman Burch in *Complaint of the Wilderness Society against NBC (ESSO)*, 31 FCC 2d 729, 735–739 (1971). *See also Sunbeam TV Corp.*, 27 FCC 2d 350, 351 (1971).

Even an apparently mechanical stop-watch approach involves sensitive judgments in determining whether particular segments of a program tilt for or against, or are neutral on a particular issue.

(c) The "stop-time" program. During the period of FCC consideration, the licensee may offer additional broadcasts (perhaps, to cover new developments). And these may affect the FCC's judgment on whether reasonable opportunity has been presented. *Complaint of Wilderness Society against NBC (ESSO), supra.*

[56] *Sherwyn M. Heckt*, 40 FCC 2d 1150 (1973). Licensee KREM–TV editorialized in favor of an Expo 74 for Spokane, and a supporting bond issue. There was a disparity in the time offered for anti-bond viewpoints. The station rejected an anti-bond spokesman, and was held to have a reasonable explanation (the spokesman did not appear to represent groups for which he claimed to speak). The station showed it had actively sought to obtain the views of leading spokesmen for the opposition, and did present them.

[57] The specter of renewal jeopardy for failure to comply fully with the fairness doctrine can have a serious inhibiting effect, as the Commission recognized in saying that it would consider refusing renewal only when a most substantial and fundamental issue is presented. *See Hunger in America*, 20 FCC 2d 143, 150 (1969).

[58] Amicus himself recognizes the desirability of particular rulings for the personal

attack and political editorializing rules. *See* Amicus Brief at 14 n.28: "[T]hese are specific rule situations which do not involve any 'stop-time' or 'stop-watch' considerations. There is also a need for prompt rulings as to political broadcasts."

[58a] Subsequent to the preparation of this opinion, a recent notice setting forth the FCC's present views on the fairness doctrine came to our attention. Fairness Doctrine and Public Interest Standards: Fairness Report Regarding Handling of Public Issues, 39 Fed. Reg. 26372 (1974). That order is presently being challenged on appeal in *National Citizens Committee v. FCC*, No. 74-1700 (D.C. Cir., filed July 3, 1974). In paragraphs 32-35, the Commission considers the problems in "the determination of the specific issue or issues raised by a particular program." The Commission states: "This would seem to be a simple task, but in many cases it is not. Frequently, resolution of this problem can be of decisional importance. . . . [A] broadcast may avoid explicit mention of the ultimate matter in controversy and focus instead on assertions or arguments which support one side or the other on that ultimate issue. [The Commission offers a hypothetical instance of a heated community debate over a proposed school bond, with the broadcast referring to conditions stressed by advocates of the bond although the spokesman does not explicitly mention or advocate passage of the bond.] [We] would expect a licensee to exercise his good faith judgment as to whether the spokesman had in an obvious and meaningful fashion presented a position on the ultimate controversial issue [approval of a bond]. . . . If a licensee's determination is reasonable and arrived at in good faith, however, we will not disturb it." *Id.* at 26376.

We find this exposition congruent with—and indeed supportive of—the approach taken in this opinion. The Commission also states, in a preceding section, that on the question whether an issue is "controversial" and of "public importance" it has not been able to develop detailed criteria, and continues (par. 29): "For this very practical reason, and for the reason that our role must and should be limited to one of review, we will continue to rely heavily on the reasonable, good faith judgments of our licensees in this area." *Id.* at 26376.

While the Supreme Court's recent opinions in non-broadcast areas do not undercut a role for the Commission in the fairness doctrine, the underlying principles underscore the appropriateness of confining that role. In addition to *Tornillo*, quoted above, see e.g., *Gertz v. Robert Welch, Inc.*, 94 S.Ct. 2997, 3010 (1974), referring to the "difficulty of forcing state and federal judges to decide on an *ad hoc* basis which publications address issues of 'general or public interest' and which do not."

[59] *See* 412 U.S. at 117:

The regulatory scheme evolved solely, but very early the licensee's role developed in terms of a "public trustee" charged with the duty of fairly and impartially informing the listening and viewing public. In this structure the Commission acts in essence as an "overseer," but the initial and primary responsibility for fairness, balance, and objectivity rests with the licensee. This role of the Government as an "overseer" and ultimate arbiter and guardian of the public interest and the role of the licensee as a journalistic "free agent" call for a delicate balancing of competing interests. The maintenance of this balance for more than 40 years has called on both the regulators and the licensees to walk a "tightrope" to preserve the First Amendment values written into the Radio Act and its successor, the Communications Act.

While this part (III) of the opinion of Chief Justice Burger was written for himself and Justices Stewart and Rehnquist, this particular paragraph is not contrary to the views of the other justices.

[60] See Part III, *supra*.

[61] *E.g.*, in *Green v. FCC*, 144 U.S.App.D.C. 353, 447 F.2d 323, and in *BEM for Vietnam Peace v. FCC*, 146 U.S.App.D.C. at 187, 450 F.2d at 648.

[62] Quoting *Report on Editorializing by Broadcast Licensees*, 13 FCC 1246, 1251-2 (1948). *See also* L. Jaffe, *The Editorial Responsibility of the Broadcaster: Reflections on Fairness and Access*, 85 HARV. L. REV. 768, 772 (1972). "[T]he broadcaster has considerable discretion in operating the doctrine. He is to decide whether a question raises an issue of public importance."

[63] *Applicability of the Fairness Doctrine, supra*, 40 FCC at 599, approved by the courts in *e.g.*, *DNC v. FCC, supra*, 148 U.S.App.D.C. at 392, 460 F.2d at 900.

[64] In this regard, see the discussion of the conclusions of professional reviewers, part VI. A, *infra*.

[65] *Western Airlines v. CAB*, —— U.S.App. D.C. ——, 495 F.2d 145, 152 (1974).

[66] *Id.* at ——; 495 F.2d at 153, *Lorain Journal Co. v. FCC*, 122 U.S.App.D.C. 127, 351 F. 2d 824 (1965), *cert. denied*, 383 U.S. 967 (1966).

[67] *Greater Boston Television Corp. v. FCC*, 143 U.S.App.D.C. 383, 395, 444 F.2d 841, 853 (1970), *cert. denied*, 403 U.S. 923 (1971), and case cited.

[68] *Mobil Oil Co. v. FPC*, 94 S.Ct. 2328 (1974); *see also Permian Basin Area Rate Cases*, 390 U.S. 747, 791-2 (1968).

[69] 390 U.S. at 767.

[70] *Greater Boston TV Corp. v. FCC, supra*, 143 U.S.App.D.C. at 393, 444 F.2d at 851.

[71] *E.g.*, *DNC v. FCC, supra*, 148 U.S.App.D.C. at 404, 460 F.2d at 912; *Neckritz v. FCC*, 446 F.2d 501 (9th Cir. 1971), citing *American Tel. & Tel. v. United States*, 299 U.S. 232 (1936).

[72] *Compare WAIT Radio v. FCC*, 135 U.S. App.D.C. 317, 418 F.2d 1153 (1969).

[73] *Brandywine-Main Line Radio, Inc. v. FCC, supra*, 153 U.S.App.D.C. at 341, 473 F.2d at 52 (1972). Judge Wright did not consider the fairness doctrine ruling. Chief Judge Bazelon, dissenting, stated that the Commission's application of the fairness doctrine violated constitutional safeguards.

The general "hard look" doctrine of the Rule of Administrative Law originated in a case reviewing an FCC action, *see WAIT Radio v. FCC, supra*, though it has been extended to other areas, *see e.g.*, *Natural Resources Defense Council v. Morton*, 148 U.S. App. D.C. 5, 458 F.2d 827 (1972).

[74] *National Automatic Laundry & Cleaning Council v. Shultz*, 143 U.S.App.D.C. 274, 281, 443 F.2d 689, 696 (1971).

[75] *WBBM-TV*, 18 FCC 2d 124, 134 (1969).

[76] An apt example appears in Mr. David Brinkley's affidavit concerning a program he narrated on highway construction: "I did not think at that time that I was obliged to recite (or find someone to recite) that not all highway construction involves corruption, that many highways are built by honorable men, or the like." JA 132-33.

[77] *Green v. FCC*, 144 U.S.App.D.C. 353, 359, 447 F.2d 323, 329 (1971); *Healey v. FCC*, 148 U.S.App.D.C. 409, 412, 460 F.2d 917, 920 (1972).

[78] AIM also said this was a "distorted" picture, but the FCC dropped the "distortion" charge out of the case. *See* text accompanying notes 10-13, *supra*.

[79] Letter of February 14, 1973 to FCC (JA 40), recording NBC's judgment that the program "constituted a broad overview of some of the problems involved in some private pension plans" and "did not attempt to discuss all private pension plans, nor . . . urge the adoption of any specific legislative or other remedies." JA 41.

[80] And AIM later cited with approval a Washington Post article that quoted Mr. Donald Landay of the Bureau of Labor Statistics as saying: "The median benefit being paid is slightly over $100 a month."

[81] *In re NBC* (Fairness ruling re Aircraft Owners and Pilots Assn.), 25 FCC 2d 735, 736 (1970).

[82] After referring to instances of pensions lost by Mr. Duane, and by an employee whose company went out of business, the Post article states:

These are not simply isolated horror stories. Experts say up to half the 30 to 35 million people now in jobs with pension plans may never receive a cent, because of shifts to another job, company shutdowns or employer bankruptcy—a prospect that threatens millions of Americans with economic insecurity in old age.

The Post article is discussed further in fn. 86 and text thereto.

[83] *In the Matter of Editorializing by Broadcast Licensees*, 1-3 F.C.C. 1246, 1250-51 (1949).

[84] 118 CONG. REC., S. 16,599 (daily ed. Oct. 3, 1972). Senator Schweiker stated: "This outstanding television special portrayed vividly the plight of the individual worker who is faced with the loss of expected pensions because of situations totally beyond the worker's control."

[85] AIM's pleading in this court goes so far as to say: "AIM has suggested that NBC produced the documentary in collaboration with the promoters of this legislation with the intention of arousing public opinion in favor of the legislation in question." AIM's Opposition to Motion for Expedited Appeal at 3.

[86] What the Post article indicated were controversial issues in regard to legislative matters related to items as to which no sides were taken in the "Pensions" broadcast—such issues as whether regulation should be by the Labor Department, a new agency, or through the Internal Revenue Code; details of eligibility, vesting formulae, funding, portability, fiduciary duties and disclosure standards.

[87] The letter noted, *inter alia*: "Support for some form of remedial legislation has come, for example, from the American Bankers Association, American Life Insurance Association, American Society for Personnel Administration members, American Society of Pension Actuaries, Chamber of Commerce of the United States, Investment Counsel Association of America and the National Association of Manufacturers.

[88] We conclude our opinion on the merits with a brief comment explaining that it has not been mooted by the passage of the Employment Retirement Income Security Act of 1974 (Public Law 93-406) signed by the President on Labor Day, September 2, 1974, while this opinion was being distributed to our colleagues for information, and readied for publication. First, the passage of the act does not technically moot any aspect of this case because legislation is always subject to reconsideration and modification. Second, we think the principle of *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515-16 (1911) on recurring controversies is properly invoked.

Third, this opinion sets forth the reasons for maintenance of the stay pending appeal (*see* note 18 and text thereto). The case was expedited because the pensions bill was on a current legislative time table. Following oral argument on the merits the panel voted, with one dissent, that it would vacate the Commission's order, and continue the stay pending preparation of the opinion. All votes are subject to reconsideration, and if in the course of preparation of the opinion it had become evident that an opinion for reversal "would not write," the court would have reversed course. But the court continued to adhere to its vote, and this opinion on the merits is also, therefore, an opinion explaining why the court continued its stay in effect.

APPENDIX A

NBC REPORTS—PENSIONS: THE BROKEN PROMISE

ANNOUNCER. Tonight NBC reports on Pensions: The Broken Promise.

MAN. I figure I had twenty-three years seniority filled up, possibly last up until I was in my forty year sometime at least before I retired and then to look back and see it all fallen away. Everything that you planned on. Just seems like a waste of time.

WOMAN. There must be thousands maybe millions of them that's getting the same song and dance that my husband got. When they reach their time for retirement there is no funds to pay them.

MAN. This man, Hoffa, on there, retired with a one point seven million dollar lump sum pension. And I can't get three hundred dollars a month out of them on there for my retirement.

MAN. Where does all this money go that's been paid into these pensions.

MAN. The pension system is essentially a consumer fraud, a shell game and a hoax. As a matter of fact, when you say it's a consumer fraud, you pay it an undue compliment, because typically you think of consumer frauds in terms of short transactions, the purchase of an automobile, the purchase of a pair of pants, but with the pension system you really have a long term contract that may run fifty or a hundred years that's designed to guarantee the security of our population. Essentially, you have an insurance contract that doesn't perform. You have an insurance contract that can't be relied on. You have an insurance contract that can't be trusted. [Tr. 2]

MAN. And I think it's a terrible thing in this country where men who work forty-five years have to eat yesterday's bread. And I don't want to compete on my old age against other old men on old age running down a supermarket aisle to get dented cans and stale breads. I don't want to look forward to it. So I really have nothing to look forward to at sixty-five.

(Dance music.)

EDWIN NEWMAN. This is a story about ordinary people with the modest hope to finish their working careers with enough money to live in dignity. That is a modest hope but it's one that is all too often not realized.

NEWMAN. There is a widely held belief in this country that public disclosure is a good thing, that it inhibits misconduct and helps to keep people honest. That's why these files are full of pension plans, private pension plans. Under the law, all such plans must submit annual reports on their activities to the Department of Labor. And these annual reports wind up here, roughly thirty-four thousand of them in a building in Silver Spring, Maryland, just outside Washington.

The Labor Department has the right to audit them and to a limited extent, where wrongdoing is discovered, the government may prosecute. Also, the reports are available to anybody who asks to see them, but as it works out that is a meager protection for the twenty-five million Americans who are in private pension plans.

There are millions of hopes and dreams in these files. If experience is any guide, very many of the hopes will prove to be empty and dreams will be shattered and the rosy promises of happy and secure retirement and a vine covered cottage will prove to be false.

Understandably, there's a good deal of bewilderment about this and bitterness among those who find nothing where they thought that pension plan payments were going to be. The Labor Department therefore receives in addition to the annual reports of pension plans complaints about them and appeals for help. A lot of these are passed along by members of Congress.

For example:

WOMAN. I understood that I was covered under a very good pension plan to which I did not contribute. It was a hundred [Tr. 3] percent paid by the company. But it did mean a lot to me and I had several other job offers which I refused or didn't even consider because I knew I had security to build up for the future.

MAN. I started when I was nineteen years old.

NEWMAN. Steven Duane (?) used to be a warehouse foreman for the A&P supermarket people in New Jersey. Eighteen months ago the A&P closed the warehouse and discharged the men who worked there. Duane lost all his years of pension credits.

DUANE. . . . in my old age I would be happy and secure in the pension and the benefits that I thought I had with the A&P.

WOMAN. At the end of these fifteen years, the company was bought out and the new owners decided to close down the air (?) division so I had less than a week's notice and I was let go as well as everybody else in the air division with no severance pay, nothing, absolutely out in the street, after fifteen years with nothing.

DUANE. When the time came to talk about the pension, we were (unclear) . . . we did have books but nobody took bother in looking at the book, so you feel you're going to be pensioned and that's it. So when they finally told us that the men had to be fifty-five years and over to collect a pension, I was the big loser. I had a brother the same time as me down there. We were the big losers. Thirty-two years of our life was given up and we had nothing, absolutely nothing to show for it.

NEWMAN. Duane discovered what a lot of other people have, that it's not easy for a man in his fifties to find a new job. He wound up as a laborer in another warehouse, where he has to compete with much younger men. But no matter how hard Duane works, it's almost certainly too late for him to start building pension credits again.

DUANE. It's a terrible experience, an experience I would never like to see anybody else go through. That is why I feel so deep about this pension so that future men won't feel like I do. You wake up in the middle of the night, in a cold sweat, knowing all your work, all your life has gone down the drain. I was just number, number seventy-two was my number. No Steven Duane or a worker. I worked, I remember, I had seventeen years with only four days out. But what does that mean to them? That means nothing. They just turn you out in the street because it's an economy move. [Tr. 4] I personally wrote a letter to the president of the A&P, not yelling at him, I want to discuss some kind of moral obligation. Just me and him, how does he feel, how does he put his head on the pillow knowing that you have men walking the streets. I don't know. It's very—It's a deep emotional thing with me. Sometimes I'm ahead of it. Sometimes I'm not. That's my feelings on the thing.

RALPH NADER. We've come across in our questionnaires and other surveys, some of the most tragic cases imaginable. Where people who worked for twenty-five to thirty years and just because of a tiny quirk in the pension plan's fine print, they don't get anything.

HERBERT DENNENBERG. When you get to be sixty-five, you're out of work and you need a source of money and that's what a pension plan is supposed to do. Unfortunately, it's woefully inadequate. Over half the people have nothing at all from pension plans and those that do typically have only a thousand dollars a year so even if you have social security, most pension funds are inadequate.

SAM ZAGORIA. And there are a lot of people who just believe because something is printed and because they've heard some glowing words about it, that that means it's a lead pipe thing, that they're actually going to have it when they need it. It may not be so.

NEWMAN. Many employees form their ideas about pensions by reading the slick brochures that their company or union gives them. Most of these booklets do make a pension seem a sure thing. The many restrictions and exclusions are buried in fine print or concealed by obscure language.

The Senate Labor Committee has been looking at these brochures as part of its general study of the pension problem. Senator Harrison Williams is chairman of the committee.

SENATOR WILLIAMS. I have all kinds of descriptions of plans here and all of them just suggest the certainty of an assured benefit upon retirement. Here's a man—this was from a brewery, sitting relaxed with a glass of beer and checks coming out of the air; well, you see, this gives a false hope, a sense of false security.

NEWMAN. Senator, the way private pension plans are set up now, are the promises real?

WILLIAMS. The answer is, they are not.

[Tr. 5]

NEWMAN. So you want to get some reality behind the promise, Senator?

WILLIAMS. Exactly. We don't want just these golden general descriptions of what can be expected under the plan; we want clear and precise and understandable descriptions of the reality. The worst example that I've seen is the description that is wholly unintelligible to anybody but an advanced lawyer.

NEWMAN. If any employee makes the election provided for, is that the one?

WILLIAMS. Yes.

NEWMAN. If an employee makes the election provided for in Subparagraph Two of Paragraph B of this Section Six, his monthly pension is determined under either Section Three or Subparagraph One of Paragraph A of Section Four whichever applies, shall be reduced by the percentage set forth in Paragraph C of this Section Six as if the employee has made the election provided for in Subparagraph One of Paragraph B of this Section Six and shall be further reduced actuarially on the basis of the age of the employee and his spouse at the time such election shall become effective. The sex of the employee and the spouse and the level of benefits in the election provided in Subparagraph One of Paragraph B of this Section Six.

Maybe I didn't read it very well.

WILLIAMS. Well, of course, you understood it though.

DENNENBERG. It's almost an obstacle course and the miracle is when someone actually collects with the plan. There have been studies that indicate that most people won't collect. I think we need controls of the same type we apply to insurance companies, your money should be funded so it's going to be there at age sixty-five. Today, it's almost a miracle if it's there at age sixty-five.

You have to go to work for an employer, you have to stay with him, you have to stay in good health, you have to avoid layoffs, you have to take your money, turn it over to the employer, hope that he invests it safely and soundly, you have to hope that when you're age sixty-five the employer is still around and he's likely not to be in terms of the high mortality of business, so there's almost a sequence of miracles which you're counting on.

[Tr. 6]

Senator RICHARD SCHWEIKER. In one study made by our subcommittee of fifty-one pension plans, covering six point nine million workers since 1950, ninety-two percent of the workers in these plans left without any benefits whatsoever.

Workers are losing their pension rights when their companies go bankrupt, merge with other companies or simply go out of business. Workers are losing their pension rights when they are forced to leave one job to find another. We will hear testimony from five retired employees at Horn and Hardart, men and women in their sixties and seventies who have worked an average of forty

years or more for the company. Today they are retired and forced to keep working because the company has hit financial difficulty and has had to give up its pension plan.

MAN. They called me into the office, they say, Grimes you almost about time for you to go ahead. I say, is that so, well, I said, go out for what. I heard of people retiring, I mean, but they say, well, you know, everybody got to retire. And I say, I didn't know that. I say, I'm not ready to retire. I have no money. I say, I owe everybody in Philadelphia which I did. I said,—I told them, I'm not ready to retire.

WOMAN. They made me retire on account of the age. They call me in and Mr. Downey(?) was the man over the place at that time. And he said, (unclear) . . . what I would get and after taking out other compensations, I got fifty dollars and forty-eight cents a month.

MAN. They claim that this plan would make us financially independent along with our social security and whatever income we might have saved. They said that this plan, you will not have to worry about anything. Then all of a sudden, they said, we can't pay you anymore, cause the funds has run out. And we have to sell some properties in order to recuperate and get some more funds into this . . .

SCHWEIKER. And then that was cut off in October of '71 when they went into bankruptcy.

WOMAN. That's right. As Mr. Grimes said, we stop and then we started it again. And they finished it in November 1971 and that was it. I don't get anything at all. Nothing at all. For all those years.

MAN. When I retired in '56, I was getting fifty-five dollars in pension money. I could make it with my social security.

SCHWEIKER. Had you expected to get a full pension for the rest of your life?

MAN. Yes, sir. At the time the pension plan was established, [Tr. 7] we got literature stating what we were going to get and I was satisfied with my share at that time. I was satisfied with social security. I suppose I knew I could sort of make it like that. But when it collapsed, I collapsed with it.

SCHWEICKER. I have here a booklet called Horn & Hardart Retirement Pension Plan. I assume this was something that was passed out to the employee. No doubt you all have one. I'm sure that it spells out what you expected to get in terms of your benefits. I think significant on the inside back cover, it says: Happy Retirement to you when your turn comes.

(Laughter and applause.)

ANNOUNCER. Pension: The Broken Promise will continue after this message.

NEWMAN. This was the Baldwin-Lima-Hamilton Heavy Equipment plant near Philadelphia where thirteen hundred men used to work. They were the sort of people who thought security was important and they had passed up bigger wage increases in favor of a better pension plan.

When the plant closed in April, many of the men discovered their pension rights had disappeared.

MAN. I heard a lot of guys say, the only reason I stayed with it, for my pension. Now there is no pension. So in order to have all this go down the drain, let's face it, it affected every one of us in one way or another.

MAN. What's going to happen to me? Here I am. I'm now fifty-nine year old. When people get up in age and the bottom drops out, like what happened to us, it's a crime. After thirty years and I've got nothing. I mean, it's gone down the drain, thirty years of service. Now I can make up—I can get up into another place and I'll get fifteen years, but that's not going to amount to anything.

MAN. So there goes my future plans. I mean, I figure, well, I'd like to put the boys through college, but what can I do now? I'm afraid to.

MAN. A younger person does have some chance to do it but at my age, you've made that round, there's no more. In other words, I missed the pension here by about four months.

MAN. Everybody was just relying on a pension and if they knew today all the stuff, they would have never stayed there.

MAN. Yeah, but George, you realize that there's so many [Tr. 8] people, working people under the impression that they've got a pension coming they don't even realize that they could be in the same fix . . .

MAN. . . . complacency. They don't realize that this can happen. They think, oh, I'm doing all right, I've got my paycheck and I've got a pension but he didn't read the fine print.

MAN. Well, we felt that way ourselves two years ago.

MAN. This is where I thought I had it. I thought when I reached the age of sixty-five or even sixty-two, I'd have approximately forty-five to forty-seven years with the company. And I could turn around and retire at six dollars a month for every year of service.

(Cross talk.)

MAN. As the years went on, that figure would have increased.

MAN. I lose faith in a government that allows things like this. Not long ago I was in New York and I saw that inscription on the Statue of Liberty. And it sounded wonderful, you know. Give us your tired and so on. But what it actually said was, give us your labor; get these honkies here where we can put them to work for nothing. That's what it amounted to.

NEWMAN. An employee becomes much more expensive to a company once he has been vested, that is guaranteed a pension. This man, Alan Sorenson says he helped to prove that point in a study he did for a large department store chain. After the study was made, so Sorensen says, the company got rid of many long service employees before they could achieve vested pension rights.

Sorenson himself was transferred out of company headquarters winding up in Salt Lake City as a store manager, that is Sorenson was a store manager until he was fired last year after twenty-two years of service. He now works as a check-out clerk in this Salt Lake City store.

Sorenson told us he had been only a few months away from his vested pension rights.

ALAN SORENSON. I definitely feel that I was terminated because I was approaching an age when I would have vesting and they had terminated so many long service employees just prior to terminating me that it all seemed to fall into a very definite pattern.

[Tr. 9]

INTERVIEWER. And the reasons you were given for being let go? How did they seem to you?

SORENSON. They seemed very shallow. Because my past record was such that it was above reproach. I had never had a serious shrinkage in the total time that I had been a store manager. Within the last two or three years before I was terminated they terminated a great many store managers with long service with the company.

INTERVIEWER. People who would be approaching the . . .

SORENSON. Approaching the age of vesting and retirement. See, by terminating these people before they reached age sixty-five, this cuts their pension benefits back drastically.

EARL SCHROEDER. Out in Chicago, I worked for twenty-four years for the Kelly Nut Company. And . . .

NEWMAN. Earl Schroeder was a corporate executive in a company that had been taken over by a large conglomerate. Several other executives had been fired and Schroeder was worried about what promised to be a substantial pension.

He was only six months away from his vested pension rights.

SCHROEDER. . . . a retirement plan at age sixty by having put twenty years service with the company. I had put in my twenty years, in fact twenty-four years with the company, but I did not have the age requirement of sixty. I was called from my office to a lunch with one of the executives of Kelly Nut Company, Corn Products Company, our vice president for finance. And informed that henceforth I would no longer be with the company.

And I said, Walter, what do you mean? He says, well, Earl, I hired you twenty-four years ago, today I'm firing you. Why? Well, we decided you're too good for the company. And we have no other spot for you.

I was at the time assistant secretary of the company. The secretary of the company he was lopped off at thirty years' service. I had a warehouse manager in Albany, George, Howell Free, who was lopped off two months before he would be vested in the plan; he had his time, he had his age, this poor individual became so ill and upset over it that he shot himself, took his own life.

NEWMAN. Driving a truck in Chicago wears a man down fast, so the truckdrivers have always been concerned about pensions. And in most respects, the pension programs run by the Chicago teamsters union locals are among the best. Benefits are generous [Tr. 10] and a teamster can retire as early as age fifty-seven. Many feel that after twenty or thirty years behind the wheel, retirement can't come soon enough.

MAN. When I was young, I was like a bull, I thought I was big and tough. When I started in the taxicab. Driving a cab. You sit. Your kidneys, your back, everything just goes. When you get older, same thing, only worse.

MAN. Every truck driver I think thinks forward to the day that they're going to retire. And if you got the seniority you think you're well established. You're not thinking about somebody cutting, shooting you down or something. About cutting your pension off.

NEWMAN. The trouble is, every teamster local in the Chicago area runs its own pension plan. And it's common practice for a man to be forced to transfer from one local to another, every time he changes his job. From driving to the loading dock, for example. Or from loading to checking waybills. Or from an outside to an inside job.

Sometimes, different groups of teamster members working for the same company or even in the same garage will be in different teamster locals.

A teamster must have twenty years of membership in one local to draw a pension. His pension rights are not portable. He cannot take them with him from one local to another.

A lot of drivers don't know that until it's time for them to retire. And when they do find out, they can't understand why it should be so.

MAN. When they started up this pension plan, I don't think they were strictly honest with the people. I mean, with the people, I mean the truck drivers. They didn't come out in detail and say, you got to have twenty years in this local only that you can get a pension.

MAN. As far as I'm concerned, with the amount of years that I have with the company, I should get a full pension. I've got my twenty years with the company, but you got ten years over here, I got eleven years over here.

MAN. It's the same thing on there as you would put money in one bank and then go

on the west side and put another part of your money in another bank on there and when it comes time to draw it out down there, they tell you, we're sorry out there. You put your money in two banks. We refuse to give it to you. This is the same principle. I have money in two different locals.

MAN. Almost twenty-one years with one outfit and I can't [Tr. 11] see why one local can't get together with the other local which I'm in and there's nothing to it, this one has to give me half, the other one gives me half and they make a whole out of it. We'll take care of it. They don't.

MAN. The union was to me a brother. And that they wouldn't sell me down the river. They wouldn't deprive me of something on there that was paid for that I was looking forward to by a little technicality on there.

MAN. They're taking away by lying to the men, they're taking away by pulling out the fine print in their pension programs. They're taking away by keeping the man ignorant of these pension programs. Of these pension rules.

MAN. You cannot change unions. So what do you do then? If you can't change unions, if you have to get another job and you have to go in another union, what are you going to do then? Do you start all over again? Are you going to go ahead and build up time time time? You can't do it . . .

INTERVIEWER. What are your plans for the future?

MAN. I have no plans. What can I do? I'm just going to have to live out my time and do the best I possibly can with (cross talk) . . . from social security.

WOMAN. And what we have in the bank.

MAN. That's all I can look forward to. Nothing else.

MAN. You've got people driving those trucks that are as high as sixty-eight years old. Sixty-eight years old driving a seventy-two or seventy-three thousand pound unit. With such commodities as explosives, jet fuels, gasolines, oils, plastics, sixty-eight year old man driving this truck. They're not going to last. Somebody's going to get killed. They should have been pensioned about ten or twelve years ago.

MAN. That's the way I figured it was going to be. And that's the way we all figured. All the old timers, we figured that if we put in twenty or twenty-five years, when we retired, we would get a pension. But no, because they got cheated they still have to work. But can you imagine a sixty-eight year old man on an interstate with anywhere from seventy-two to seventy-three thousand pounds coming at you?

ANNOUNCER. Pensions: The Broken Promise will continue after this message.

NEWMAN. The flaws in the private pension system have hurt [Tr. 12] middle class and working class people most. Rich people don't need pensions and the very poor never build up any pension rights they can lose.

People don't get the pensions they expect for many reasons. One is that most plans require you to work in the same place for twenty-five or thirty years or more. A lot of people lose their pensions because the plan runs out of money. At this moment the Coal Miners Fund is operating in the red and Railway Retirement System is running an annual deficit.

It's also common for workers to get smaller pensions than they expect, partly because many plans treat highly paid executives much better than lower and middle level employees.

Women get the worst treatment. They seldom work in one place long enough to qualify. And the wife of a pensioner usually gets nothing after her husband dies.

What's wrong with the system is most evident to the social worker helping the aged and to a few labor leaders who take an interest in retirement problems.

VICTOR GOTBAUM. In the United States we have a magnificent ability to cover up our own diseases especially the disease of big business. Pensions in the private area are a mockery. They're a national disgrace. We know this.

MAN. The place where it gets very difficult is with your fairly average middle income class person. Who arrives somewhere between sixty-two and sixty-five at retirement, finds their income cut sometimes as much as seventy percent. These are the folk that have the most difficult time. They're sometimes our most difficult client because they're bitter. They're resentful. Our society being what it is, they postpone thinking about old age and its problems. And all of a sudden, they find themselves old and poor.

EDWARD KRAMER. These people feel who worked all their lives and let's say they worked thirty-five, forty years, and many of them have worked for one employer for all these years, are, they feel that now that they've retired, they're going to live a better life. They won't have to get up early in the morning. They won't have to work and they'll be able to do all the things that they couldn't do when they were working. And then they find themselves in the position that they have no money, they have no friends. And they live in squalor and they can't do these things. So what—they've really been cheated, cheated by the pension system, cheated by social security, cheated by their employer and they feel very angry at themselves because I think in the back of their mind, they knew this was going to happen. They knew that when the day came that they would retire, they would be [Tr. 13] worse off than when they were working. But they're afraid to admit it.

GOTBAUM. They don't eat meat. It's soup. It's lower economy. When they go into the supermarket, something of a thing you discover is that they're special hunters. Their housing situation is an atrocity. We know this. We've now discovered them so we're trying to build housing for the aged. And there's a thrust in this direction. The aged poor. Well, there's not enough housing, there's not enough housing for the aged poor. So that, you'll find that the ghettos, interestingly enough, fascinating areas, the ghettos are composed mainly of the black and Puerto Rican poor and then you'll find spotted throughout aged whites as well as the black and Puerto Rican. This is integration of the poor, integration based on lower economic status.

KRAMER. They're kind of waiting around. See, what we've done in our country is create God's waiting rooms all over the country. In Miami, New York and Boston, and Los Angeles, and Philadelphia, where old people kind of wait around for the day to come when they're going to die.

MAN. We're living too long. In some area if we could just disappear, it would be very nice to the community at large. But we are not disappearing, we're still here. And we're growing older and older. The aged now are ninety and ninety-five is not too uncommon. Even a hundred is not too uncommon. And the result is this, that we have made no plans to retire.

MAN. You can't make it on social scurity, maybe after that twenty percent increase we can. Far as I'm concerned, if you had just say a hundred and half more a month, we could make it pretty good. But now when a bill comes up, you gotta figure how you're gonna meet it. See, if the car breaks down for a hundred dollars, you gotta start skimping or go to the bank—you got two, three hundred left in there and draw one of them out. And that's like pulling teeth.

WOMAN. We'll get by, we'll just have to get by, we'll have to eat less. If we had any indebtednes at all, we'd never make it. Makes you feel bad and a lot of times you just sit there and think, at my age, what am I going to do, where am I going to go? (Unclear) . . .

MAN. The average person—elderly person who lives on social security, old age assistance and perhaps some money they've been able to save, income runs about a hundred and eighty dollars a month. They've literally got to watch every nickel and penny.

KRAMER. Going to a movie is a big expense, taking a bus to a clinic to visit a doctor is a big expense, buying a new pair of shoes is a big expense, getting ill and having to get medicine [Tr. 14] is a big expense. This is where, if there was an adequate pension system in the United States along with social security, some of these problems could be avoided.

NEWMAN. Retired people like to live in places that are warm and cheap. There are towns in California and Florida where more than half the adult population is retired. Years ago, older people lived with their working age children. Now, in our mobile society, the elderly have taken to living in trailer parks filled with other retired people.

That means retirement is a lot more expensive than it used to be. And the elderly are complaining much more about needing money.

The average retired person depends on society security for most of his income, so the big day is the third of the month, the day the social security checks arrive.

MAN. Everybody's out, they're standing at the door for the mailman, they grab this little check and they haul off to the bank with it. And we get in line up there to get your check. And we try to let it go till the next day because it takes too much of your time standing there. And then you run off to the grocery store. And the grocery stores all run big sales. On the day they're going to have this—you can get yourself a steak, if you're lucky, for a dollar and a half. But retirement's not, unless you can adapt yourself, it's not for the lively person, somebody that's sickly, he can't enjoy it, there's nothing to enjoy about it. But if you can prepare yourself to accept a quiet life, and you and your wife figure what you want to do with yourself during the day, then you can make it.

We have fishing and take an umbrella and a couple of chairs and go down to the beach and sit there for the early part of the day before it gets too hot and then we come back and turn the air conditioner on, spend the afternoon in the house. We have a couple of friends around here we visit with, but it's nothing exciting. And you don't have the money to get exciting, I mean, the wife likes to go and I would love to go too but you can't afford to drop ten or twenty dollars. You go down to these restaurants, none of them have a meal less than three dollars. But they got some beautiful malls and one thing and another, you can loaf around in air conditioning. We went in one yesterday, Ha's I think it was, and . . . pull about four bolts of material there . . . how do you like this and I go through the routine, it's a little loud, or a little conservative and she throws them back in the pile and walks on. And the girls follow around (unclear)

But that keeps them busy, you know, they got something to do. I imagine all these old people do that, I don't know.

[Tr. 15]

NEWMAN. The crux of the matter now is that increasing numbers of Americans are reaching retirement age, they should not be expected to live in poverty or near poverty or a cut or two higher, lead a drab, penny-pinching sort of existence. Nor, obviously, is that anything the rest of us would want to look forward to. The refrain that runs through what we've been hearing is a kind of incomprehension. What emerges over and over again is that these people played the game. They did what Americans are ex-

pected to do; they worked and met their obligations. But at the end of their working lives, they found that they were in trouble. Put simply, they did not have enough money. The pension plans that they thought were going to take care of them didn't. Now, it may be that some of them did not save as much money as they might have. The urge to consume in American life is very strong. Also inflation played its part and maybe they were careless about what the pension plans they were in actually could do.

In any case, at the end of their working lives, they feel cheated and cast aside.

ANNOUNCER. Pensions: The Broken Promise will continue after this message.

FRANKLIN D. ROOSEVELT. This social security measure gives at least protection to fifty millions of our citizens who will . . .

NEWMAN. Most people didn't have any sort of steady retirement income until the first social security law was passed. Social security was to take care of working people when they got old. At least that was the impression given by this government publicity film but no one who ever had to live on social security alone has ever considered the monthly benefit to be enough. It was enough perhaps where people also saved money for their old age, or got help from their children.

The private pension system really got started when wage controls were put into effect during World War II. Fringe benefits were exempt from controls and since labor and management couldn't talk about much else, they began to negotiate pension plans. Companies also started using pension plans as a way to keep skilled employees. The idea was that a man would not be tempted to look for another job if he had a paid retirement to look forward to.

Today labor unions consider pension benefits to be part of the wage package, higher income workers now want more assurance that they'll actually get their pensions. Lower income workers think they have a right to better pensions than they get [Tr. 16] now.

For that matter, major league baseball players struck last spring for improved pensions.

In New York, not long ago, angry municipal workers paralyzed the city by opening drawbridges and blocking highways. They wanted their pensions improved to match the gains made by policemen and firemen. And by some workers in private industry.

If there is a pension crisis, it is, at least in part, a crisis of rising expectations.

Another crisis of sorts involves the vast amounts of pension fund investments. James Hoffa was convicted of criminally mishandling pension fund investments. So was the leader of a Chicago barber union.

Pension funds have outgrown the laws regulating them. No government agency has enough staff or authority to control them. The Justice Department's labor section believes it's common for the pension money to be incompetently or dishonesly invested.

RICHARD BENVINISTI. Well, we've prosecuted cases involving embezzlement of pension funds, misuse of pension funds, for the personal benefit of the labor union officials who are charged with administering these funds. We've also prosecuted cases involving the receipt of kickbacks by pension fund employees and trustees for the granting of loans and for the use of this pension fund money.

BENJAMIN SCHENCK. It could be something as simple as using the money to buy a new vacation home for one of them, it could be the more complex, more subtle situations where the money in the trust fund is for example, loaned to the employer, to build him a new factory or loaned to the union to finance a new recruitment campaign.

CHARLES RUFF. We have no real idea of how much fraud there may be in the pension plan area. But you're talking about institutions, the pension plan area, generally, that deals in hundreds of billions of dollars. And when you have that much money involved, the federal government ought to take a more active role than it does.

DENENBERG. We regulate insurance completely. We regulate the agent, the contract, reserve, the policies, the sales technique, the investment, we regulate insurance companies from birth to death. And yet we have a gigantic pension system, almost the size of the insurance industry, a hundred and fifty billion dollar business that's essentially unregulated.

Can you imagine what would happen if we would let insurance [Tr. 17] companies do whatever they wanted to? We can't even protect the public with full regulation in insurance, but essentially we have a pension system which is precisely an insurance plan and which is almost unregulated.

NEWMAN. This is where most of the pension money now goes. To Wall Street. To be invested.

It's estimated that private pension fund assets now amount to something like a hundred fifty-three billion dollars. The way they're growing, they very likely will amount to two hundred fifty billion dollars by the end of this decade.

Pension funds are now the largest institutional investors in the country; they've passed the mutual funds and there is no end in sight.

Typically, the management of pension fund money is handed over to banks, mostly very big banks. Banks for the piling up of pension fund money. A few banks may administer significant and even controlling amounts of the common stock of very big corporations.

An example:

More than ten percent of such companies as IBM, Ford, IT&T, J.C. Penney, Westinghouse, and Boise-Cascade is held by three banks. Fifteen percent of Trans-World Airlines is held by two banks, Morgan Guaranty Trust and Chase Manhattan.

MAN. We remain confident beyond 1973 on a . . .

NEWMAN. There is so much pension fund money to invest, that just finding productive uses for it can be a problem.

This is something few outsiders see, an investment meeting at Bankers Trust Company in New York.

MAN. One of our major concerns is to protect our accounts against risk, risk being defined as underperforming the market in a down market which it is true we do not forecast. My question is, how do you think the chemical stocks would fare in the event we do have a weak market over the next six months?

MAN. Jerry, I was just talking this morning . . .

NEWMAN. Critics of the big banks claim that they stick too much to safe investments in a big corporation. The bankers insist that their industry is competitive and that all banks seek the highest return with the least risk.

Bankers and critics agree that the trust fund investing industry has grown tremendously. The institutions managing trust [Tr. 18] funds have become so big that they often prefer to trade large blocks of stocks among themselves by computer, rather than using the stock exchange.

Pension fund money has become so important to the economy that nobody knows what would happen if the system were to be drasticaly changed. Incorporated in social security, for example.

Ralph Nader opposes that. Nader wants to take pension funds away from the banks and have the government set up a new set of institutions, responsible only to the pensioners.

Other critics would concentrate on insuring pension benefits and making it possible to take pension rights from one job to another. But almost everybody agrees that some changes are needed.

RALPH NADER. I think time is running out on the private pension system. And if its abuses continue to pile up, and if its enormous popular disappointments begin to be more and more revealed, it might collapse of its own weight, and social security will have to take up the slack.

RUSSELL HUBBARD. Over a good number of years, the track record is excellent. It's unfortunate that every now and then some of the tragic cases make the newspapers and the headlines. But it's a question of perspective and balance. When you consider that there are thirty million people covered by the plans, that there are five million people receiving about seven billion dollars in benefits, I think that's a pretty good record. That's not to say that there aren't a few remaining loopholes that need closing but we ought to make sure that we don't throw out the baby with the wash water.

VICTOR GOTBAUM. The solution in the wealthiest country in the world is not do what they've been doing in terms of pensions. You fund a pension. You fund it on the basis of man's ability to live. You tie it into cost of living. The wealthiest country in the world ought to be able to do it.

KENNETH ANDERSON. You must remember that the corporation has set this plan up voluntarily. They have not been required by law to set it up.

INTERVIEWER. So that it gets from the employer to the employee?

ANDERSON. That's what it amounts to.

DENENBERG. I say it's the employee's money and I think that is the economic fact of life and I think in terms of the morals [Tr. 19] of the problem and in terms of the economics of the problem, that anyone would conclude that it does belong to the employee and yet it's not being used for his benefit.

ANDERSON. These pension plans are a part of a fringe benefit package. Like hospitalization insurance and so forth, but it's still a voluntary thing on the part of the corporation.

GOTBAUM. So, all I can say is my God how can you hold to that view? Do you mean, people are supposed to starve, that people are supposed to live on a subsistence money because they are not unique, and that, by the way, is the same attitude. That gives top management stock options, gives them retirement after a small serving period whereas the middle worker, the lower economic worker takes a terrible beating.

Senator SCHWEIKER. What we're proposing to do a little bit what was done with the bank failure problem. We didn't go in and take over the banks but we did, by means of insurance and Federal Deposit Insurance Corporation come in and guarantee that no depositor would lose his savings under a certain point. And I think that's what we're saying here, that once a worker has put in eight years time, once he's reached a certain age, once his company's reached a certain point, then he doesn't lose it, regardless of what happens to his company or the country.

MAN. What are they waiting for? What the hell are they waiting for? Do they have to give us a certain quota, a certain number of people that have to be victims? Do they have to give us a certain amount of money? How many billions must it take before they do something about this? How many people have to starve? How many people have to lay on the sidelines and just hope and pray. How much misery do they want before they actually act upon it?

NEWMAN. This has been a depressing program to work on but we don't want to give the impression that there are no good private pension plans. There are many good ones, and there are many people for whom

the promise has become reality. That should be said.

There are certain technical questions that we've dealt with only glancingly, portability, which means, being able to take your pension rights with you when you go from one job to another, vesting, the point at which your rights in the pension plan become established and irrevocable.

Then there's funding, the way the plan is financed so that it can meet its obligations. And insurance, making sure that if plans go under, their obligations can still be met.

Finally, there's what is called the fiduciary relationship, [Tr. 20] meaning, who can be a pension plan trustee? And requiring that those who run pension funds adhere to a code of conduct so that they cannot enrich themselves or make improper loans or engage in funny business with the company management or the union leadership.

These are matters for Congress to consider and, indeed, the Senate Labor Committee is considering them now. They are also matters for those who are in pension plans. If you're in one, you might find it useful to take a close look at it.

Our own conclusion about all of this, is that it is almost inconceivable that this enormous thing has been allowed to grow up with so little understanding of it and with so little protection and such uneven results for those involved.

The situation, as we've seen it, is deplorable.

Edwin Newman, NBC News.

APPENDIX B: SUMMARY OF DESCRIPTION OF "PENSIONS" PROGRAM APPEARING IN REVIEWS IN NEWSPAPER TV COLUMNS SHORTLY AFTER BROADCAST

Name of newspaper, Date of article, and Description of program:

The Boston Globe, September 18, 1972: "[T]he private pension industry . . . is an unholy mess and last week some of the details were bared in a television documentary. . . . It was about time."

Business Insurance, September 25, 1972, Chicago (by Patrick Thomas): ". . . was by necessity, sketchy but revealed nothing new to anyone who spends any of his [time] in the pension area. . . . The program was by no means objective; it could not have been . . . there was just not enough time to do it thoroughly. [Newman did] point out that there were many good pension plans."

Chicago Sun-Times, September 13, 1972 (by Ron Powers): ". . . a hard look at failures in the pension system in the United States."

Chicago Today, September 13, 1972 (by Bruce Vilanch): " . . . dealt with the terrifying pension plan racket . . . As with all news documentaries, the accent was on hardship and sadness."

Chicago Tribune, September 13, 1972 (by Clarence Peterson): "Pension administrators may face some hard questions from employees when they get to work this morning. If so, NBC Reports will have done its job."

The Christian Science Monitor, September 22, 1972 (by Richard L. Strout): ". . . concentration of funds provides a pension system that is often imperfect, some times tragic, and almost wholly uncoordinated. . . . An hour long documentary . . . presented this situation vividly."

Daily News, Undated, but probably September 20, 1972 (by Kay Gardella): ". . . it did a hard-hitting job of examining a system that doesn't always pay back long-time workers."

Daily Variety Television Review, September 14, 1972: "was a penetrating, albeit depressing probe of pension plans, or, to be more specific, the victims of such plans. . . . It was a superior bit of investigative reporting."

"No one was knocking pension plans; the knock was over the fact that supposed recipients were often deprived of them."

The Denver Post, September 14, 1972, On the Air (by Barbara Haddan Ryan): "The presenting of tragic case histories, experts' opinions and Newman's clarifications seemed a disorganized approach to a critical issue that's widely misunderstood or ignored. Likewise nothing was said about what makes good pension systems work . . . but NBC should be commended for publicizing a condition of social anarchy. . . ."

The Evening Sun, Baltimore, September 13, 1972: "NBC Reports opened its season . . . with a long needed look at the many faults of private pension plans. . . . It heard a brief defense of the way private pension systems are run and examined possible remedies and alterations to correct the more glaring flaws in the system."

Hollywood Reporter, September 14, 1972, Television Review (by Glenn Lovell): "NBC reports into the world of old-age security was, as commentator Edwin Newman summed up 'a depressing program' which revealed a shockingly fraudulent American pension program. The report deals with its subject completely and sounds out many startling revelations."

"But . . . the investigation is most effective when it is least objective. While this makes for touching and sincere glimpses into the shattered dream of the retired without benefits, it makes one wonder if we are seeing the entire truth."

Houston Chronicle, September 13, 1972: "Edwin Newman said in summation and in all fairness he should have said it sooner—'I don't want to leave the impression that there are no good pension plans. Indeed there are many.' "

". . . an informative and provocative show."

The Indianapolis Star, September 12, 1972: "What [NBC Reports] attempts to do is pinpoint the existing problems in our private pension systems. . . ."

Kansas City Star, September 12, 1972: "Victims of the private pension systems will describe its failures through their own bitter experiences in an investigative report that will initiate NBC Reports. . . ."

Morgantown, N.C., News-Herald (Ed. F. Reading) September 19, 1972: ". . . there was a blockbuster of a documentary on NBC Reports last week treating with the abuse of pension funds."

The Newark Star Ledger, September 13, 1972: "The program pulled no punches. . . ."

N.Y. Post (by Bob Williams), September 13, 1972: "NBC Reports lived up to its promise last night in warning all contributors to pension plans to check the fine print in the contracts."

Philadelphia Daily News, The New Season . . . in review (By Rick DuBrow), September 13, 1972: "A potent program about pitfalls and failures of some private pension plans for business and unions . . . it was an angry, incisive study that focused on some people who felt cheated by their blind faith in Pensions."

The Pittsburgh Press, September 13, 1972: ". . . premiered with a probing look at retirement pensions."

Portland Oregonian (by Francis Murphy) Undated: ". . . Edwin Newman examined how millions of Americans are cheated out of pensions which they expected to receive upon retirement."

The Star-Ledger, September 12, 1972: "What it attempts to do is pinpoint the existing problems in our private pension systems by talking to middle class and working people . . . and then offering explanations about such flaws in those pension plans by . . . experts. . . ."

Toledo Blade, September 13, 1972: " 'NBC Reports' made an auspicious debut with a harrowing and moving inquiry into 'Pensions: The Broken Promise.' "

Variety, September 20, 1972: "No one can fault NBC News for exposing the national scandal of private pension frauds and the inhuman practices of big business and reckless practices of unions as regards pensions but even reporter Ed Newman, summing it up said this had been a depressing show to work on and one wonders why the network chose it to premiere the new telementary series when it is a sure bet that sales will be screaming about those nothing numbers soon enough."

Rick DuBrow—UPI Correspondent, September 13, 1972: "Tough study of the failures of some private pension systems."

Fahy, *Senior Circuit Judge:* I concur in the well reasoned and comprehensive opinion of Judge Leventhal for the court. The opinion upholds the wide latitude to be accorded the press as essential to the mandate of the First Amendment, notwithstanding the limitation upon complete freedom imposed by the Fairness Doctrine which is applicable to broadcasting licensed under the standards of the Communications Act. One may hope that this latitude will not encourage in a different context abuses which, even though protected by the First Amendment, should be discouraged,[1] or lead to claims of such protection which could not be sustained.

The television industry has consistently argued that its standards for the portrayal of violence and its machinery for enforcement of these standards are adequate to protect the public interest. We do not agree. . . .

We believe that the television networks, network affiliates, independent stations, and other members of the broadcasting industry should recognize the strong probability that a high incidence of violence in entertainment programs is contributing to undesirable attitudes and even to violence in American society. It is time for them to stop asserting "not proved" to charges of adverse effects from pervasive violence in television programming when they should instead be accepting the burden of proof that such programs are not harmful to the public interest. Much remains to be learned about media violence and its effects, but enough is known to require that constructive action be taken at once to reduce the amount and alter the kind of violent programs which have pervaded television. pp. 199–202.

The matter of course is aggravated by the lack of adequate control of firearms.

Leventhal, *Circuit Judge, supplemental concurring statement:*

I append a concurring statement in which I speak for myself, even though I have authored the opinion for the court, because I find that this device, which I have used in

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[1] An example of abuses in an important area of national concern is documented in the well-balanced treatment of the relation of television broadcasting to the violence afflicting the nation contained in the Report of the President's National Commission on the Causes and Prevention of Violence (1969). This Commission was composed of an exceptional group of men and women under the Chairmanship of Dr. Milton Eisenhower, distinguished brother of the late President. The Report states in part:

"We do not suggest that television is a principal cause of violence in society. We do suggest that it is a contributing factor. Television, of course, operates in a complex social setting and its effects are undoubtedly mitigated by other social influences. But it is a matter for grave concern that at a time when the values and the influence of traditional institutions such as family, church, and school are in question, television is emphasizing violent, anti-social styles of life."

other cases,[1] gives reasonable latitude to offer comments that occurred to me in the course of my research and reflections on the subject under consideration, but which for one reason or another are not appropriate for the opinion of the court.

A judge confronted with a problem like this one has a natural tendency, born of his years of lawyering and judging, to try to strike a middle ground between the antagonists—here, between NBC and AIM.

The Commission's recognition of latitude to NBC as to how to give access to an opposing viewpoint tempts a judge to be swayed by the submission of Commission counsel that the "cost of presenting an opposition spokesman should be minimal."[2]

It is doubtless tempting not only to the judge but to counsel for a licensee—particularly if the problem should arise not for a network but as to a station owner—to say: "See if you can't run something that will satisfy the government officials."

What is overlooked is the stultifying burden on journalism. Even the monetary burden is not inconsequential, as the record indicates, and it is no answer to say that the license is profitable, because the problem is that the incremental burden will lead a licensee to acquiesce in the Government's instruction as to what he should broadcast. More important, however, is the unquantified burden, the bureaucrat peeking over the journalist's shoulder.

In the context of the fairness doctrine, the twin principles of latitude for the licensee and narrow review for the Federal Communications Commission merit special vigilance when the question is whether the "issue" in a program of investigative reporting is one of evils described or a broad subject canvassed, because government latitude to redefine the issue enfleshes the specter of a subtle and self-serving government censorship impeding the ventilation of abuses.

While journalists on the public airwaves are subject to fairness doctrine responsibilities, the risks of government interference are so oppressive as to require a plain showing of journalistic abuse before a government official can issue a direction that the journalist's report must be supplemented with a codicil. The danger of intrusion on journalistic discretion is no less real and profound because it rests, at base, in the spirit, in the way men carry on their functions. Journalism in America has had its evils and abuses, but in the large they are outweighed by its achievements in liberating the questioning mind and spirit. The public interest pulses in the investigative reporting that depicts whatever evils are seen wherever they are seen, and asks provocative questions.

Journalists may be stifled if they are steered from the way in which their profession looks at things, and channeled to another way, which however congenial to men of the law, dampens the investigative spirit.

"The major item in the diet of the press is controversy and confrontation. Lawyers are usually working to compose and accommodate differences. The press must try to make simple that which in fact is complex and to suppress factual detail in favor of the emotional jugular. The lawyers pull exactly the other way."[3]

The First Amendment freedoms established in the interest of an informed citizenry "are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference." *Bates v. Little Rock*, 361 U.S. 516, 523 (1960).

Tamm, *Circuit Judge* dissenting: This case presents us squarely with questions arising from the head on collision of First Amendment rights of freedom of the media and the right of the people to know. It requires again "an expression of the pervasive precept of fairness between government and governed that runs thru American jurisprudence. . . ." *Trailways of New England, Inc. v. C.A.B.*, 412 F.2d 926, 931 (1st Cir. 1969). Involved is not the so called "on the spot reporting" which makes up a substantial portion of television newscasts but a documentary type of presentation referred to in these proceedings as investigative reporting. The editorial supervision and selectivity frequently approved in judicial decisions was not herein discharged under the pressure of time considerations essential to the preservation of news values, but permitted, according to representations made to us, the digesting of eighty thousand feet of film into a two thousand foot final product. Most importantly we are not dealing with a printed publication utilizing its private property to disseminate its news and views in the exercise of that freedom of the press which is the central freedom of the whole democratic process. Our petitioner, the National Broadcasting Company, Inc. is the temporary licensee of a right to utilize the public's airways in the public interest and for the public welfare. To me this is the dominant element in distinguishing the rights and obligations of a telecaster from those of the press, which under controlling Supreme Court opinions has an unlimited freedom to report events in the public domain.

No right is absolute. It is elementary that each right carries with it an obligation. In accepting the right to use the public airways our petitioner, willingly or reluctantly, assumed the obligation of utilizing those airways in the public interest. The public interest in television programing expressed in fundamentals is to know the facts.

Petitioner argues that investigative reporting is somehow a special species to which the application of a fairness requirement is constitutionally repugnant. The majority opinion supports in substance this position and capsulized into its basic and ultimate holding concludes that fairness, meaning a presentation of both sides of a question of public interest, is not a practically enforceable obligation of a licensee of the public airways. This position means that a telecaster's presentation under the label of investigative reporting of a few factual bones covered with the corpulent flesh of opinion and comment fulfills the obligation of the network to give a fair picture to the public and to assist the public in knowing the facts essential to a determination of basic policies. The majority opinion fails to recognize that as a practical matter there is no real distinction between this type of so called investigative reporting and propaganda. The investigative reporter, regardless of his initial motivation, too often reaches a point where objectivity disappears and he becomes an ardent advocate for a particular position or viewpoint. Developing a feeling for what might or should be, rather than awareness of what is, he produces a manipulated and selective presentation which ignores all viewpoints and positions other than his own. There is no doubt but that embellishment, color and opinion often prove to be more interesting than objective presentation of both sides of an issue of public interest but is such a production a discharge of the responsibility of the telecaster to give a fair picture and a presentation of all points of view?

The history of democracy is a record of the fear and distrust by the people of unrestrained power. This is the womb in which was gestated the constitutional amendments which we identify as the Bill of Rights. First Amendment guarantees were and are designed to afford the people an effective weapon against the existence or use of destructive and abusive power. Does anyone doubt that a tremendous reservoir of power exists today in the radio and television industry? Are not television and radio newscasters and commentators dominant in the shaping of the public's viewpoints and opinions? Does not their ability to capture the public attention arm them with a weapon of such magnitude that public officials are too often completely subject to their influence? Is it an exaggeration to say that the telecasting industry constitutes a power system comparable if not superior to government itself but basically free of the restraints imposed on government power? We proudly proclaim that in our democracy all power is in the people, but is this power impartially exercised today upon a full knowledge of all facts which affect the public order? The answer is obviously dependent upon the public's ability to learn the facts and again we are face to face with the use which is made of the public airways by the licensees.

I recognize and will readily defend the constitutionally mandated right of the licensed media to exercise its choice of what to report and what not to report. Beyond this the right to editorialize with properly descriptive identification is judicially recognized, but confining my position to the record before us, in the presentation of a so-called investigative or documentary report I believe that there is a legally enforceable obligation on broadcasters to present a report in which all conflicting positions and viewpoints are fairly portrayed. To require less in my view is to permit an abuse of the public's right to know, and a desecration of the license to use the public airways in the public interest.

"Freedom of the Press" as a generic term has long been prominent in the lexicon of judicial opinions. It will never be fully defined because it is not a static phrase with final and permanent meaning. It defines a continuously evolving phenomenon with changing, disappearing, materializing and sometimes almost mystifying significance. Rapid development of the utilization of the public airways as a means of informing the public has placed tremendous power in these media. The fairness doctrine, as the Federal Communications Commission has exercised it in this case, is not a censorship, is not a prior (or subsequent) restraint, is not a usurpation of what the majority describes as "Journalistic Discretion" but is merely a policy that requires in the public interest all viewpoints be presented in factual matters of public interest. The doctrine, as it has been utilized here, is the yeast of fairness in the dough of the telecaster's right to exercise his journalistic freedom. The resulting problem of the Commission is then the securing of responsibility in the exercise of the freedom which the broadcasting industry enjoys. We are asked to rule that on the traditional scales of justice the right of the people to know is outweighed by the claimed right of the telecasters to exercise a constitutional infallibility in determining what the public is entitled to know. I cannot so hold. I would affirm the Commission's action.

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[1] *United States v. Poole*, 495 F.2d 115 (1974); *United States v. Ammidown*, 497 F.2d 615 (1973); *Bellei v. Rusk*, 296 F. Supp. 1247 (D.D.C. 1969) (3-judge court), *reversed*, 401 U.S. 815 (1971).

[2] Opposition to Motion for Stay, at 16.

[3] B. Manning, *If Lawyers Were Angels: A Sermon in One Canon*, 60 ABAJ 821, 822 (July, 1974). Mr. Manning is focusing on the lawyer advising the client as distinguished from the litigating lawyer.

TOO MANY DOLLARS: FOR TOO FEW GOODS

Mr. BROCK. Mr. President, I have presented my analysis of domestic inflation before. Today, I would like to expand on that to incorporate the worldwide inflation which we have been experiencing.

It has been pointed out by enough

economists and on enough occasions that when the rate of increase in the money supply, whether the result of fiscal or monetary policy, significantly exceeds the rate of increase in production, inflation is the inevitable consequence. Inflation is too many dollars chasing too few goods and services.

So far, three ways have been noted through which new money is created. Today we will expand on that. To review briefly, then, money is created: First, when Federal Government expenditures exceed receipts; second, when the open market operation of the Federal Reserve System injects money by its purchase of Federal Government securities; and third, when the Federal Reserve lowers its reserve requirements, thus allowing more dollars to be lent to the public. Perhaps we pay too little attention to the latter two factors.

In any case, as the rate of increase in the money supply exceeds the rate of increase in real production, the prices of goods and services must be bid up. To attempt to hold them down by legislation is analogous to turning up the pressure in a water hose and then covering the nozzle. The water must come out somehow and in the process the hose is damaged.

Holding prices down artificially by legislation in the face of excess dollars creates a tension—where do the excess dollars go? The answer is that in part, in some industries, the prices are held down. This has the effect of reducing profits and thus the incentive to invest and increase production. With less production the dollar to production ratio is increased and the inflationary pressure increased.

The huge built up excess of dollars, the initial excess caused by fiscal and monetary policy, plus the additional excess created in the industries in which price controls have held dollar expenditures down, all these dollars flow into those industries in which price controls are not or cannot be enforced. The result is a runaway inflation in those sectors.

But the sources of inflation are complex and it is to two additional aspects that I now turn.

Inflation takes on a life of its own. As people begin to expect further inflation, they prepare for future transactions accordingly. Because they expect higher prices, they insure them. Even if the money supply fails to increase at the expected inflationary rate, the effective money supply can be increased if people spend money more readily. The velocity of the turnover of money is as important as the physical supply. A dollar turned over twice during a year has the same inflationary effect as 2 dollars turned over once each. To bring inflation under control, therefore, people must believe that it is going to come under control.

The other important aspect of inflation is the international one.

As we know, since the end of World War II there has been a net outflow of dollars from the United States abroad. Since 1958, the U.S. balance of payments has been in deficit by billions of dollars each year. Through 1970, the United States had a regular surplus on its trade balance which was, however, more than offset by various unilateral payments and overseas investments. Since the trade deficits of 1971 and 1972, the total payments deficit rose markedly.

These developments took place under the Bretton Woods agreements which set fixed exchange rates among the leading nations' currencies. The large U.S. deficit plus the recurring balance-of-payments difficulties of England and other nations led to the breakdown of the fixed exchange system.

What had finally become clear was that different nations cannot be expected to grow at the same rate. Consequently, their currencies cannot be expected to maintain their absolute relative values. Inevitably, some must devalue or revalue relative to others. It is unrealistic to expect a nation to keep its economy depressed attempting to maintain its international position. And it is far better to have these devaluations and revaluations occur slowly and steadily, not periodically and by large jumps.

Fixed exchange rates, by holding currencies of diverging real values on a par, created a tension in which balance-of-payments deficits grew until a sharp devaluation allowed the imbalance to diminish.

If the dollar grows in value relative to the pound sterling because the American economy grows faster than the English, and if the dollar is not allowed to trade for an increased number of pounds, both currencies will flow into the United States. The U.S. economy, being more efficient, will sell goods at lower prices and all concerned will purchase goods from the United States instead of from England.

This flow of currencies into the United States will cause an English balance-of-payments deficit.

Eventually, the pound will have to be devalued so that each dollar will be traded for an increased number of pounds. With more pounds available per dollar, U.S. citizens get pounds more cheaply and begin to buy goods from England. This restores the English balance of payments. But, of course, since U.S. goods become more expensive to the English, and as goods leave England for the United States, the standard of living in England could drop. If, however, England was running at less than full employment, the stimulus could actually lead to increased employment and greater prosperity.

Yet another effect of having these currencies, dollars and pounds, enter the U.S. domestic economy is to aggravate inflation in the United States; that is, more dollars are chasing goods.

The abandonment of fixed exchange rates for floating rates has several advantages. First, the relative value of the various currencies adjusts regularly and smoothly without creating vast payments imbalances which eventually have to be corrected. Moreover, if one nation inflates its currency, other nations need not follow as readily. If the number of pounds sterling increases too rapidly to maintain their value, a second currency, that is the dollar, need not continue to trade for the pound at a fixed rate and thereby itself lose its own value. The exchange rate can float so that a dollar trades for an increased number of pounds.

The example is entirely hypothetical. The English economy after World War II did grow more slowly than other economies in the industrialized world. And under fixed exchange rates, the pound was not allowed to devalue relative to other currencies. Finally, of course, the English balance of payments deteriorated to the point where a massive devaluation was necessitated. After two such occasions, as well as other distortions in other currency valuations, the Bretton Woods system broke down until now we are on a virutally floating system.

The consequence for the United States has been profound. Prior to the breakdown, the United States had run deficits in its balance of payments and dollars were pouring out of the Nation. The dollar had been overvalued. With the end of fixed exchange rates, the dollar was devalued on world markets. This made U.S. exports a better bargain and, as hoped, the balance of trade improved considerably, attaining a surplus in 1973. The dollar outflow resulting from the trade balance reversed direction and dollars began to flow back into the United States.

This basically healthy development was accompanied by a continued increase in the money supply engineered by the Federal Reserve System and the Federal budget deficit. The dollars returning from abroad in addition to the domestic increase in the money supply coincided with the oil crisis which halted economic growth. The result: Too many dollars chasing too few goods and an unprecedented inflation.

The outlook for the future is questionable. In the face of increasing prices of raw materials, the positive trade balance may vanish. At the same time, the devaluation should have had its major effect; the dollar is now reasonably valued on world markets. The external impetus to our domestic inflation may have been reduced.

On the other hand, European nations have begun to pursue a more restrictive monetary policy which, if continued, will reduce their inflationary spiral. Since under floating exchange rates, inflation cannot so easily be exported—if a currency is inflated domestically, it will be devalued in international markets—we must take extreme care not to continue an inflationary policy here. The strength of the dollar is essential to world economic stability and growth.

WORLD FOOD CONFERENCE

Mr. JAVITS. Mr. President, I am most concerned that our entire foreign aid program is being damaged irretrievably at the very time that the world's developing countries face their most critical situation in decades. Nothing illustrates this better than our inaction in the face of a potentially catastrophic world food shortage. We have seen the food for peace program so distorted by political considerations that over half of it goes to Vietnam, where there is no starvation, leaving the rest for the entire

world where millions may starve. No wonder people have reacted so strenuously to these distortions in our aid program.

Nevertheless, it is clearly wrong to think that we can avert our eyes from the tragedies now being played out on the global stage and fail to help adequately to meet the needs of mankind. It is astounding that even at this time we have developed no national food policy, we have no export licensing system for agricultural products in short supply, and we have no reserve program to prevent our stocks from being dangerously depleted. In fact, even my amendment to the Export Administration Act, to require the Secretary of Agriculture to develop a plan to cope with agricultural shortages, was deleted in conference.

Our Secretary of Agriculture insists that everything will be okay if we just trust him. But we have seen the weather play an unending series of tricks on his estimates, so that even the Secretary is forced to admit that food prices are likely to increase by 10 percent in the next year. Indeed, if food prices increase by no more than 10 percent while we continue to follow our present policies, it will be little short of a miracle.

In 1 month the World Food Conference, called at the initiative of Secretary Kissinger, will open in Rome. This meeting is a unique attempt to focus attention on world food problems, and comes at a time when action is urgent. Will the United States be prepared to meet the challenges of this conference, which we called for, by a willingness to participate in a world food reserve system and by joining in the far-reaching proposals necessary to meet the crisis? I am not encouraged by the preparations for the conference thus far, and I hope my colleagues will treat this issue with the seriousness the issue merits. I think all of us will have to pay a great deal more attention to this issue in the future.

I commend to my colleagues two articles that appeared in today's newspapers: An editorial by Jonathan Power in the New York Times and an article by Mary Bralove in the Wall Street Journal.

I ask unanimous consent that they be printed in the RECORD.

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

[From the New York Times, Oct. 3, 1974]

STARVATION IN LIVING COLOR

(By Jonathan Power)

LONDON.—Six years ago, the distinguished scientist and novelist C. P. Snow, warned us in a speech at Fulton, Mo., that we were approaching the time when "many millions of people in the poor countries are going to starve to death before our eyes" and that "we will see them doing so on our television sets."

In the next few months it is going to become very clear that Mr. Snow was right; in recent weeks grim report has followed grim report on the state of the 1974 harvest.

In North America there has been drought and the crop is way below what was so confidently forecast early in the year. In Asia the monsoons have been bad—in some countries there has been dought, in others floods. In the Soviet Union there is certainty that the crop will be below last year's harvest.

For only the second time since World War II, the total world crop has fallen. Meanwhile, in the last year, the world population has grown by 70 million—half of this in Asia.

The years 1971 and 1972 brought a sudden end to the euphoria surrounding the Green Revolution—the use of so-called miracle seeds that doubled yields all over Asia and in parts of Latin America.

Bad weather was the principal cause of the setback. But a number of other coincidental developments compounded the problem. In particular there was the simultaneous boom in economic activity in the developed countries that led to increased demand for food.

From 1972 on, the situation rapidly deteriorated. The Russians, after their disastrous 1972 harvest, bought 20 million tons of wheat and 10 million tons of coarse grains, most of it American.

Under the impact of all these developments, American stocks began to decline to dangerously low levels. It was an act of criminal folly that will long be remembered that the United States did not take advantage of 1973 to bring all its idle farm land back into cultivation and rebuild its stocks.

The result of all this was that the world entered 1974 facing its most precarious food situation ever. By February, United States wheat for export cost almost four times as much as in June, 1972.

Millions of poor people in the Third World rapidly began to find that food was being priced out of reach.

In Bangladesh, between January and August, 1974, cereal prices doubled—they have risen fivefold in five years. In Thailand, the price of rice has doubled since August, 1973. One kilo of tunafish has gone from six to 22 bahts, yet the average factory worker is paid only 16 bahts a day.

For people who are spending 70 to 80 per cent, or more, of their incomes on food, these price rises mean less food, increased malnutrition and, over a period of time, a steady increase in the death rate.

It is against this background that this year's bad harvest must be viewed. The situation now can only get rapidly worse.

The Food and Agriculture Organization of the United Nations estimates that the deficit in developing countries' cereal production this year will be about 50 million tons—that is, if everyone were to be fed as well as they were in 1970.

Yet United States stocks are down to about 25 million tons. And it is on America that the Third World has principally depended when things have gone wrong before.

But this time around, unlike the nineteen-sixties, there will be no point in running to the American silos for food. It is just not there. More cannot be grown until next year. And it cannot, like manna, come down from heaven.

Some experts argue, however, that the Soviet Union is still sitting on a large part of the American grain it bought in 1972–73. But no one really knows. The Russians could have five million tons, or 50 million. In fact, it is probably nearer the lower end of that scale. Anyway, chances of the Russians bailing out more than a few special friends are slim indeed.

The fact of the matter is that the food that in coming months will be so desperately needed in the Third World is only likely to come from the West—from renunciation of the power of the purse by people who have the money to buy food.

There are two options to us. Either we can voluntarily decide to cut down our purchases of food—meat in particular, for meat is Western man's most inefficient and expensive way of consuming protein—liberating food at a reasonable price for governments to buy, or rich governments can intervene in the market and buy up grains that otherwise would be fed to livestock. This they can then sell on concessional terms to countries deficient in food.

Certainly it is not unrealistic to consider the first option: American families lowered their thermostats during the oil crisis. It can be done given the right kind of political leadership.

The second option is more difficult to carry out. It assumes the failure of the first option, so that a government would be taking on an unsympathetic, undereducated, even hostile public. It also means that government intervention would force up the price of grains even higher, exacerbating the severe inflation existing in most affluent countries.

The real danger is that these political and personal decisions may not be made until it is too late—until the television pictures of dying millions come into the living rooms of the rich countries. These decisions need to be made now, within the next three months, while there is still time to distribute the food where it will be needed.

[From the Wall Street Journal, Oct. 3, 1974]

THE FOOD CRISIS—WIDESPREAD SHORTAGES MAY PIT "HAVE NOTS" AGAINST THE "HAVES"

(By Mary Bralove)

If Gerry Connolly and friends request the pleasure of your company for lunch some time soon, you might think twice before accepting. The affair could well turn nasty before it's over.

An associate executive director of the American Freedom from Hunger Foundation, Mr. Connolly with his colleagues frequently give banquets that dramatize the current world food crisis. At such affairs, they wait for the ripe moment when stomachs are growling and heads ache from hunger before serving any food. Then one-third of the guests sit down to juicy prime ribs, steaming baked potatoes and all the trimmings. The other guests are served a mound of rice and tea.

"The hostility of those two-thirds eating rice and drinking tea is really something," Mr. Connolly says. "For some people it ceases to be a game."

That's his intention, of course. For a few hours, at least, those people invited to Mr. Connolly's "Hunger Banquet" acquire a visceral bond with the undernourished two-thirds of the world and a glimmer of understanding of what it might be like to be one of the tens of millions whose existence is threatened by food shortages.

To most Americans, hunger is an occasional pang of a delayed meal or a skipped breakfast. But for an estimated 700 million people, hunger is commonplace and the prospect of an agonizing death by starvation a grim fact of life. They live in India, Bangladesh, Pakistan and parts of Latin and Central America. Many live in the drought-stricken regions of Africa. Others live in the overpopulated small countries of Asia. Half of them are children.

THE ANGER OF THE HUNGRY

These people are angry that they must eat scraps of cereals and grains left over after the affluent nations of the world feed their cattle and poultry. They're angry at rich countries that gladly give away food when grainaries are overflowing but in times of shrinking supplies are tightfisted.

Such anger fuels revolutions and forges new political alliances. Increasingly, observers of the world food situation fear that those nations with plenty will someday be confronted in a fight by those with little and that the kind of hostilities that emerge at Mr. Connolly's Hunger Banquet could be enlarged to global proportions.

"The rich world is on a direct collision course with the poor of the world," says Georg Borgstrom, professor of food science and nutrition at Michigan State University. "The world at large (could be faced with) riots, famines and pestilence. We don't live

in a protected oasis. We can't survive behind our Maginot Line of missiles and bombs."

To those who have heard all their lives that people in China or Armenia or some place else were starving, such dire predictions may seem overdrawn and unnecessarily alarmist. Throughout history there have been famines, such as the Irish potato blight of 1846, and accompanying doomsday prophets; each time, the world recovered somehow. Today, however, agricultural, nutritional and economic experts agree that the current world food situation is substantially more ominous than ever before.

"History records more acute shortages in individual countries, but it is doubtful whether such a critical food situation has ever been so world-wide," a recent U.S. State Department report asserts.

THE CAUSE OF THE PROBLEM

Several individually important factors have combined to create this critical problem, which will be thrashed out at the United Nations World Food Conference Nov. 5–16 in Rome. Foremost among them is the world's staggering population growth. Each week, the number of additional people to be fed burgeons by 1.4 million. This growth generates an unprecedented demand for food, which in turn increases demand for fertilizer, fuel and other agricultural inputs. Developing countries are hampered in producing more food by poor irrigation and backward agricultural methods and are constrained in importing more food by the lack of adequate capital. As if that weren't enough, recent agricultural gains in many countries have been wiped out by floods, droughts and typhoons.

In the past 40 years of plenty, North American food reserves have acted as a buffer against local famines. There was always food available in the U.S. and Canada to be purchased by or given away to those in need. In the last two years, those reserves have been depleted as world-wide demand for food has increased. In 1961, the world stockpile of grain amounted to a 95-day supply. Currently, it is less than 26 days.

In the U.S., the problem of feeding the world's hungry while keeping food prices at home low has touched off a heated controversy. Some, such as Sen. Hubert Humphrey, argue for increased food aid and establishing a program of food reserves. Others, such as Secretary of Agriculture Earl Butz, argue against increased foreign food aid and urge the transfer of technology and American know-how to underdeveloped countries, along with appropriate capital incentives. Still others argue for a redistribution of food that would require a radical change in the diets of people living in affluent nations.

"We are going to have to come to terms with this common interdependence," says Lester Brown, senior fellow of the Overseas Development Council, a think tank based in Washington, D.C. "We're now in the situation that if some of us (in the world) eat more, others are going to eat less."

Mr. Brown and others note that the U.S. and growing number of other nations, notably Japan and Northern European countries, are heavy eaters of grain-fed beef and poultry. As a result of this taste for meat, grain surpluses that once were diverted to poor nations now are sold to rich countries to feed their livestock. Prof. Borgstrom estimates that the livestock population of the U.S., for example, consumes enough food material to feed 1.3 billion people. If Americans were to switch to a diet resembling that of present-day China, the U.S. could feed some 800 million to a billion people, he figures. The average North American currently uses up to five times as much agricultural resources as the average resident of India, Nigeria or Cambodia.

A TRADITION OF EATING MEAT

Nonetheless, Americans accustomed to steaks and hamburgers aren't likely to throw it all over for rice and corn. Nutritionists and sociologists point out that diet is a matter of habit, custom and prestige. These aren't easily changed.

"America's massive consumption of dairy produce and meat is really a gesture rather than a natural taste preference," explains Alexander Comfort, an associate of the Center for the Study of Democratic Institutions in Santa Barbara, Calif. "We had a pioneer society based on a hearty reward for a hearty effort. Society has changed. We aren't all cowboys now, but eating meat is still part of our self-image and tradition."

On the other hand, tradition may give way under economic pressure. Meat may become too expensive for all but the very rich of the world to afford. "We will not (cut down on our meat consumption) by shaming people into it," asserts Lowell Hardin, program officer of the international division of the Ford Foundation. "We'll change because of economics. We're likely to ration food by prices. Grains will be too high-priced for animals to consume them."

If that happens and Americans are forced to eat grains directly, what happens to the people of, say, Zaire, who already lunch on fried patties of mashed beans and corn meal? The appalling truth, experts say, is that unless drastic and immediate steps are taken to increase food supplies, the world will face massive international starvation.

This is difficult to comprehend, and some food experts such as Lester Brown believe that even now agricultural economists haven't come to grips with it. "In 1970, not one in 100 economists anticipated that by 1974 the U.S. would plant all its farmland and having done so, we'd still be hanging on by our fingernails," says Mr. Brown, who admirers have called a one-man early-warning system and who critics dismiss as an alarmist. "Those of us who are food economists have failed to anticipate every major trend and direction."

MANY FAST CHANGES

Looking back, though, it's difficult to imagine how anyone could have foreseen the rapidity with which the world food situation changed. In August 1971, the U.S. in effect devalued the dollar, making U.S. agricultural products attractively priced in the world market. A year later, demand for American food intensified still further as world food production suffered climatic setbacks in a number of countries. Drought and typhoons slashed rice and corn crops in the Philippines while a severe drought continued over parts of West Africa. India's monsoon dropped below normal, cutting its cereal crop and eroding hopes of near-term self-sufficiency. In the U.S., corn and soybean harvests were stalled by wet weather in the fall of 1972. Finally, inadequate rains cut the grain crops in the Soviet Union, Argentina and Australia.

Traditionally, when the Russians came up short on production they steeled themselves to getting along on less by killing their livestock and eating their grains directly. But in 1972, instead of tightening their belts they made massive grain purchases on the world market.

The Soviet purchase of nearly one-fifth the total U.S. wheat supply in the face of world grain shortages sent commodity prices soaring. The result was that "the poor nations pay more for less and the rich eat what they will," wrote Quentin West, administrator of the U.S. Agriculture Department's economic-research service.

Although weather conditions in 1973 generally improved, demand for food for the world's swelling population continued to mount. To most Americans, high commodity costs meant higher supermarket prices. But for those people in the cities of South Asia who already spend 80% of their income for food, the global bidding for American food brought the specter of massive hunger.

EFFECT OF ARAB OIL POLICY

By the fall of 1973, the problem of feeding the world's hungry reached crisis proportions. Arab nations intent on influencing foreign policy of industrialized nations decreed an oil embargo. By restricting petroleum supplies they dashed hopes for any immediate increase in world food production. Farmers need gasoline to run their tractors, and they need diesel fuel to operate their irrigation pumps. Most important of all to farmers in such nations as India and the Philippines that grow nutrient-hungry, high-yield wheat and rice, they need fertilizer. And petroleum is the basic element in manufacturing fertilizer.

Today, fuel and fertilizer supplies are still tight. Fertilizer prices are double and triple what they were two years ago, and developing countries' food production is backsliding. In India, fertilizer shortages are expected to reduce grain production by some 10 million tons. This is a staggering setback in a country that requires an annual increase of 2.5 million tons of grain just to keep pace with its population growth.

"Asia is probably much more dependent on the Middle East now than it ever was on North America for its food supply," Ralph W. Cummings Jr., agricultural economist with the Rockefeller Foundation, wrote in a recent report.

At the same time, developing countries are blocked from importing vitally needed agricultural products by their precarious economic positions. "Most countries with the severest food problems have the severest balance-of-payments problems," notes Sol Chafkin, officer in charge of social development for the Ford Foundation. "They are under constant pressure to hold down imports or to increase exports."

CUTTING BACK ON AID

Industrialized nations also have balance-of-payments problems. They need most of their food surpluses to pay for their oil imports. Last year, for example, U.S. agricultural exports increased to $18 billion, nearly double the amount exported in 1972. But the quantities of cereal allocated to its Food for Peace program dropped to the lowest level since the start of the aid plan in 1954.

"It is possible to conclude that people who are on the brink (of famine) may die or be damaged as a result of what is happening to financial positions of their countries as surely as a natural calamity or a war," Mr. Chafkin says.

While economic and food experts are able to pinpoint the causes of the current crisis, no one can see any clear solutions. One proposed scheme set forth by the UN's Food and Agriculture Organization urges a "food security program" in which all nations contribute to a global grain reserve. Such a scheme not only assumes that the present depletion of stocks can be overcome—which, because of the complex array of causes, is uncertain—but also would depend on a nearly unprecedented degree of international cooperation.

"The answers aren't easy—they're going to be long-term and tortuous," says Mr. Connolly of the American Freedom from Hunger Foundation. He, like many other nongovernmental people, favors an immediate increase of American food aid.

Of course, it would be very helpful to curb population growth—a growth that adds the equivalent of the U.S. population to the world every 30 months. But birth-control efforts are stymied by political, moral and economic considerations, not to mention the psychological and emotional difficulties caused by malnourished youngsters dying prolifically.

EXPORTING KNOW-HOW

"It's awfully hard to persuade people to have fewer children when they're afraid the ones they have will die," says Bernard Berelson, president of the Population Council.

Along with efforts to curb population, experts say that developed countries should transfer their know-how and technology to underdeveloped nations. But efforts in this direction have had mixed results. American agricultural methods are highly mechanized and use a great deal of fuel and other energy. Exporting Western technology often carries with it higher unemployment and a deeper reliance on high-priced fuel and fertilizer. Some observers fear that modern technology may also wreak ecological havoc. In Egypt, for instance, the Aswan Dam prevents the annual flooding of the Nile and the replenishment of soil deposits. As a result, Egyptian soil is rapidly losing its fertility.

Yet some experts, such as John Hannah, deputy secretary-general for the World Food Conference, are hopeful that nations can solve some of these problems by acting together. Mr. Hannah notes for example, that natural gas burned and discharged into the atmosphere in the Middle East oil fields could, if harnessed, produce much-needed fertilizer. Still other experts, such as the Ford Foundation's Mr. Hardin, think that the techniques required to increase production are already within reach.

"Technically, the world could produce the calories for a reasonably adequate diet for 20 to 30 years into the future," he says. "Whether we do it depends on how big a priority governments give the agricultural sectors."

If the experts are right, the world's hungry won't be patient much longer.

SOCIAL SERVICES PROGRAMS

Mr. PACKWOOD. Mr. President, for the last 2 years, our social services programs have faced uncertain futures. Today, for the first time in many, many months it appears that disagreements over the goals and operations of these programs have been resolved to the satisfaction of both interested Senators and the Department of Health, Education, and Welfare, which must administer the program. I now have confidence that these vital programs will be able to continue in ways which will best serve those intended to receive assistance.

The new bill has much in common with legislation Senator MONDALE and I submitted last year, but has several modifications as well. As you know, our bill was passed last year here in the Senate, but never received the approval in the House. In the absence of such joint approval, social services programs have been operating tentatively under old rules and regulations, knowing that major changes would be made, but not knowing what those would be. Needless to say, such uncertainty is undesirable for both the providers of services and, more importantly, for those who receive the benefits of these programs.

Mr. President, the bill we are proposing will have significant favorable impact on the social services program which provides for the delivery by the States of a wide range of services to the poor and near-poor, including child care, family planning, employment services, special help for the elderly, protective services for children, counseling, alcoholism and drug treatment, and special services for the handicapped.

Our bill will strengthen the Federal-State partnership on social services and give the States greater flexibility in designing service programs aimed at the following goals: self-support; self-sufficiency; protection of children—also adults unable to protect themselves—including services which prevent neglect, abuse, or exploitation; prevention of reduction of inappropriate institutionality based, home-based care or other forms of less intensive care; and referral or admission for institution care when other forms of care are not appropriate, or provision of services to individuals in institutions.

Our bill will increase the access of citizens to the social service decisionmaking process, and will restrict intervention by HEW into ongoing services programs. It will focus programs clearly on low-income families and individuals while allowing others to participate on a fee-paying basis. Under the bill, States would be authorized to offer free services to persons with incomes up to 80 percent of the State's median income—up to the national income median. Services could be offered on a fee basis to persons with incomes up to 115 percent of the State's median income level.

The existing 3-to-1 Federal-State matching requirement would continue, as well as the current $2.5 billion ceiling on Federal spending—providing combined total Federal-State spending of $3.3 billion if all States participate fully. Privately donated funds could continue to be included in the State share.

Mr. President, let me take this final opportunity to commend the fine spirit of cooperation and sincere effort on the part of officials of the Department of HEW, Members of Congress, the Governors' Conference, and the hundreds of dedicated individuals who have labored long and hard on this proposal. Their interest, concern, and plain old hard work have made this agreement possible, and have given us a new sense of optimism after 2 years of frustration and delay.

Senator MONDALE and I, as members of the Senate Finance Committee, will exert every effort in the upcoming weeks to encourage committee action and final passage before adjournment. That failing, a further temporary suspension will be necessary. Although such a suspension would protect ongoing programs, it would continue them in the current state of uncertainty in which they now exist, and I believe, Mr. President, that responsibility demands we do more.

ECONOMIC ANALYSIS

Mr. BROCK. Only a few weeks ago, Mr. President, we were worried that the energy crisis was part of a larger materials crisis. Today we see commodity prices falling. Copper, the world's most traded commodity is down by over one-third. And in general, we see surpluses appearing.

Only a few weeks ago, we feared an outflow of currency from the United States because of the high prices paid for oil. Today we see that most Arab investment dollars will be coming into the United States and, to a lesser extent, West Germany.

Mr. President, the point of these two selected economic trend reversals is that markets adjust rapidly, some may say too rapidly. But the common accusation that markets cannot adjust to complex and difficult problems fails to account for the facts.

Mr. President, an article by Joseph Alsop in the July 8 Washington Post, discusses the monetary phenomenon and some new problems which may lie ahead. 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 the Washington Post, July 8, 1974]

MONETARY PHENOMENON

(By Joseph Alsop)

The oil-producing countries are just gathering in another quarter's payments from the rest of the world. So the world's financial system is about to experience another money flood even bigger than the last one. Yet the last one proved almost unmanageable in a period of only three months from early spring.

The figures are remarkable. The first quarter's high-level payments for oil left the oil producers with about $13 billion that they had to store somewhere. The figure for the second quarter will be between $15 billion and $20 billion. By the end of the year, it is now clear that the cumulative total will be above $60 billion. In the U.S. financial community, a good many people are licking their chops because they hope that much of the second wave of the money flood will find its way to these shores. For several reasons, there is hardly anywhere else for the money to go, except to West Germany in lesser measure.

If the United States then becomes the semipermanent place of storage for the money flood, it will naturally have many dramatic results. Interest rates will be depressed. Stock market trends will be favorably altered if much of the flood goes into U.S. securities. The U.S. trade deficit will also be concealed by the balance of payments produced by huge inflows of oil money. Thus, the dollar will grow much stronger—at least for a while.

Yet the sums involved in the money flood are so enormous that there is no past experience with the right way to handle them. There is still a grave question whether the financial system of the world can stand all the resulting strains. It did not take much time, for instance, for the more obvious ways of storing the money flows from the higher oil prices to be completely used up; and this is the main reason the second wave of the money flood is expected to end in this country.

Making a short-term deposit in the bank is the most obvious way of storing money, after all. That is precisely what the oil-producing countries did with most of their first wave of $13 billion. The banks chosen were chiefly the great international banks working within the Eurodollar market. Before too long, all these banks consequently found themselves in the classically dangerous situation of borowing short and lending long, and on a vast scale, too.

In other words, they were accepting Arab and other oil producers' deposits that were instantly removable; and, in many cases, they were being forced to lend their money to governments, like that of Italy, which had begun to be miserably bad credit risks. Because of the high oil price and governmental weakness, Italy came near to open bankruptcy a few weeks ago.

The British situation is not much prettier than the Italian situation, and it has caused a local abnormality. Very quietly, some of the British banks are accepting Arab deposits with value guaranteed in dollars instead of British pounds. Apparently, the Bank of England has approved this because the Arab deposits in British banks have helped to paper over Britain's huge trade deficit.

More generally, the first wave of the money

flood literally used up the storage capacities of the great international banks chosen to receive it. Thus the banks have begun either to refuse the oil producers' deposits outright or, more often, they have begun to accept the deposits only at rates of interest that are pitifully low compared, for instance, to the high U.S. prime rate. All these mysterious movements of the great underground river of gold have a new and vivid interest for everyone of us, moreover. If the world financial system really cannot stand the strain of the money flood, to begin with, there will be a loud crackup somewhere; and that will be the signal for a world depression.

If the money flood mainly pours into this country and West Germany, everybody else will be left with vast payments deficits and no funds to pay for the expensive oil they need.

So the United States will then be pressed to lend the British, Italians, French, Japanese and many others a lot of the money the United States will be, in effect, borrowing from the Arabs and other oil producers. The alternative, once again, will be a fatal crack of the world financial situation.

TRUTH IN SAVINGS—II

Mr. HARTKE. Mr. President, I have proposed the Consumer Savings Disclosure Act—S. 1052—in order to provide consumers with the information they need to do comparison shopping among competing savings institutions and to enable them to verify the amount of earnings which savings institutions credit to their accounts. It may come as somewhat of a surprise to my colleagues that the earnings calculated by the savings institutions on 85 percent of the savings accounts covered in a recent survey, differed from the consumers' understanding of their own accounts. The results of that study are a tragic indictment of the inability of savings institutions to explain their practices to consumer-depositors.

Mr. President, Dr. Richard L. D. Morse of the Department of Family Economics at Kansas State University and Mr. William R. Fasse of the Department of Family Economics at the University of Missouri have written an article on "Truth in Savings" which was printed in the winter 1973 issue of the Journal of Consumer Affairs, published by the University of Wisconsin Press. 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:

TRUTH IN SAVINGS [1]

Until recently consumer savings accounts have been relatively simple. Consumers put small amounts into a savings institution and several times a year the institution paid earnings. Over the years, consumers believed they understood the system and savings institutions also believed consumers understood the system. Such faith in comprehension is reflected by the typical contract statement which discloses only that the account will comply with the law.

Government-imposed maximum rates on savings and the advent of the computer have brought about a revolution in savings systems. New terms, such as "day in to day out", "compounded daily, paid quarterly," "compounded continuously" have brought the need for more explicit formal disclosures. This paper deals with this need in the context of the right of the consumer to be *supplied the information needed to make informed* choices and to function responsibly.

It is appropriate to ask:

1. Does the American consumer have sufficient information to make informed choices among savings institutions and their various savings plans? Consumers are busy people and have a multitude of decisions to make on a wide range of subjects. Do they have ready access to reliable and meaningful information? Standardized terminology for communicating about the various opportunities is essential for their efficient comparative shopping.

2. Are savings terms standardized so that they have clear, precise and universally comparable meanings? Consumers should always fulfill their responsibilities. This is of particular importance in the areas of savings and credit because a legal contract is involved. Do both parties know the terms of the contract and whether those terms are being met? Both parties have the responsibility of holding the other party to the terms of the contract, but is the consumer able to fulfill this responsibility?

3. Are the terms of the savings contract sufficiently described so that the two parties can check the performance of each other?

WHAT IS THE SITUATION TODAY, HOW DO PRESENT PRACTICES MEASURE UP? [2]

Savings terms are not standardized

Even the time period of a year is not precisely defined, so that tables currently in use by institutions for figuring interest may be on a 360 day, 365 day or 366 day basis for specified annual rates. Quarterly compounding in some situations may mean compounding at the rate of one-fourth the nominal annual rate, but in other situations at a rate which reflects the actual number of days in a quarter. So the quarterly rate varies. Furthermore, two savings institutions using the same annual rate and compounding on a 365 day basis may quote different interest factors for a specific number of days. For example, the published factor table of one bank gives 1.0441059518 as the factor for 274 days while another quotes 1.0440919 for the same period (274 days)—and both are based on daily compounding 5.75 percent and a 365 day year. This may sound like "nit-picking". However, small fractional differences are very significant for a multi-billion dollar industry.

The prevailing lack of standardization is not surprising in view of the disposition of the regulatory authorities not to define the significant terms. Cited below are excepts from two letters from the Office of the General Counsel of the Federal Deposit Insurance Corporation:

"You are advised that this Corporation's regulations permit banks subject to its regulatory jurisdiction to compound interest on any basis they desire. The regulations do not attempt to define terms such as "compounded daily" or "credit quarterly", etc. However, they do prohibit advertisements which are inaccurate or misleading, or which misrepresent a bank's deposit contracts." (April 16, 1971 letter) ". . . However, this Corporation has not attempted to define by regulation the myriad terms which may be employed in bank advertising. Such an effort would only serve to further complicate what has already become a complex area of regulation." (April 30, 1971 letter)

Information level is uneven

The *amount* of information supplied consumers, albeit not necessarily in a standardized terminology, varies from fairly complete to minimal. It is not *uncommon* for the passbook to state merely that the account is subject to the provisions of existing laws and regulations. Others give some detail, but usually no more than annual percentage rate and maturity date.

Vital information is lacking

One researcher undertook an extensive survey of savings plans; she discovered that the officers at savings institutions frequently were unable to fully describe their own plans in a manner which would permit comparison of one plan with another (4). Furthermore, it was possible for two institutions which would appear to be comparable (that is, pay the same annual rate and use the same compound period) to vary as much as 171 percent in the amount of earnings paid on a six-months savings program which she had developed (5). This is because of variations in methods used in computing the balance to which the rate was applied. Such information is not routinely fully disclosed.

Lack of this information can cost the consumer. For example, a consumer wondered whether he should withdraw savings or increase the amount of the car loan. In the absence of written information on his savings contract, he inquired at the savings and loan office. He was informed that the interest earned to date would be paid on the account if a $5 balance were left in the account. At the end of the year he did receive interest, a grand sum total of 12¢ which is interest for ½ year at 5 percent on the $5 balance. The cost of this misunderstanding was $22.65 lost by withdrawing these funds. He does not believe the institution deliberately misinformed him, but the clerk was merely ignorant of company procedures. No printed information was available to help him.

Advertisements could be more informative

Another researcher surveyed advertisements of savings institutions across the nation and concluded that the quality and amount of information supplied did not vary directly with the size of the advertisment (6). By her standard, 12 percent of the small ads were completely informative and 22 percent of the super ads (one-half to two full pages) gave almost no facts.

The accuracy of accounts is seldom checked

Consumers are not routinely supplied the information that would be needed to check the accuracy of their accounts so that no matter how mathematically skilled they are, it is impossible to check the accounts, particularly active accounts.

A statewide survey was made by 82 graduate students in 1971. Respondents were asked to verify, to their satisfaction, the earnings paid on their savings accounts; only 39 percent could verify and most of those had accounts with no activity. Furthermore, 85 percent reported insufficient information was supplied to enable them to verify their earnings. One consumer discovered the value of checking the accuracy of earnings. He had opened with the same institution two identical $500 accounts, each paying the same rate of interest, etc. At the end of the year one paid $18.96 and the other $22.04. The error was acknowledged by the saving- institution and both accounts were subsequently credited with $22.04. This error of over 16 percent would not have been noticed had the ac-

[1] The Truth in Savings Act was introduced in the 92nd Congress by Senator Hartke (S. 1848) and Rep. Dr. Bill Roy (H.R. 8365) (1). It was introduced in the 93rd Congress as the Consumer Savings Disclosure Act (S. 1052 & H.R. 4985). (2) Use of the word Truth in the title does not imply the prevalence of untruths, but follows in the precedent of the Truth in Securities Act of 1933. Truth in Lending and Truth in Packaging. (3)

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[2] The cases cited are illustrative of problems and practices known to exist; the degree of their prevalence is unknown.

counts not been identical, nor if the consumer had not been thinking in terms of the need for savings information disclosure in order to check the accuracy of accounts.

The responsibility of the consumer to check the accuracy of his accounts became all the more important in light of subsequent correspondence with the Federal Deposit Insurance Corporation. The Chief of the Regulations and Opinions Unit wrote:

"Since limitations on personnel preclude us from doing more than making a spot check on individual accounts from time to time, we must rely heavily on a bank's customers to call irregularities in their accounts to our attention," (August 18, 1971 letter).

A POSITIVE PLAN

There is a demonstrated need for full disclosure of savings terms. A positive plan for a standardized form of disclosure is offered considering: (1) When the consumer needs such information, (2) What information is needed at those points in time, and (3). How full disclosure might be implemented.

When to disclose savings information

There are three critical points in the savings transaction when the consumer must have information in order to act intelligently and responsibly:

1. At the time the consumer is shopping for a savings institution in which to place his funds so he can select the one which meets his needs and thereby fulfill his responsibility of rewarding that savings institution.

2. During the life of the contract so he can exercise his responsibility to take advantage of opportunities in the market as they arrive.

3. When earnings are paid, to fulfill his responsibility to verify his account.

What needs to be disclosed

Basically five items need to be regularly disclosed in standardized terms to savings consumers.

1. *Time Period* is the "t" term in the simple interest equation I=Prt which is: Interest earnings are the product of the principle balance, the rate per time period and the number of time periods. This time unit is the basis for compounding, and may be a quarter of a year, a month, day, hour, second, or an infinitely small time. The latter is mathematically possible and is called "continuous compounding".

2. *Periodic Percentage Rate* (PPR) is the "r" term in the above equation and is the rate which is *actually applied* in figuring earnings for each time period. (From the PPR are derived an APR and APY).

3. *Annual Percentage Rate* (APR) is the "periodic percentage rate" in an "annual" form. APR=PPR × number of periods in a year.

4. *Annual Percentage Yield* (APY) is a percentage expression of the dollars of earnings over a year's time per $100 of initial deposit resulting from applying the PPR at the end of each period to the initial deposit plus previous earnings, and assumes no other activity in the account.

5. *Balance* is the "P" term in the above simple interest equation. This is the amount to which the PPR is applied to figure earnings for the period. Since the principal balance of active accounts varies, the method of determining which balance will be used in figuring earnings needs to be disclosed.

The periodic percentage rate, probably the most misunderstood concept, deserves further discussion. It is not a new concept; it has been disclosed in open-end credit plans voluntarily for many years and by law since 1969 under the Truth in Lending Act. Both open-end savings and open-end credit plans characteristically apply periodic percentage rate to the balance for that period. As the balances from period to period within a year typically cannot be predicted, it is logical to use the periodic (not annual) percentage rate. The annual percentage rate remains the standard for consumers to use in comparing savings plans. The periodic percentage rate, the rate actually used, is appropriately referred to as the "applied" or "working" rate and, therefore, should be disclosed.

As Chairman of the Consumer Credit Committee of the first Consumer Advisory Council under President Kennedy, the senior author first recommended this concept in 1963 as a basic element in the full disclosure of consumer credit (7). Later, as Consultant to the U.S. Treasury on Truth in Lending, he succeeded in having the concept incorporated both in the Department of Defense Directive 1344.7 issued May 2, 1966 (8) and in the Truth in Lending bill (S. 5) introduced by Senator Proxmire in the 90th Congress First Session (9). Thus, the concept has been officially recognized for ten years.

The above are basic, but do not comprise all the information needed by savings consumers. Grace days, minimum periods, minimum balances, maturity dates, penalties and restrictions, dates when earnings are payable, insurance coverage are among the very necessary facts for the consumer to have available when decisions are being made and when the consumer is validating accounts.

How to implement full disclosure

Basically, there are three avenues for implementing full disclosure: (1) industry self-discipline, (2) regulation, and (3) legislation.

Industry Self-discipline

Historically, industry self-discipline rarely works. Either the industry lacks the clout needed to police the mavericks within the industry, or an industry which does have power to control its members is in violation of the prerequisites of free enterprise. Furthermore, peculiar to this industry is the added pressure resulting from the national policy of placing ceilings on the nominal rate of earnings. Since savings institutions are prohibited from competing on rates, they compete with gifts, gimmicks, services, and deceptive disclosures. Semi-annual and quarterly compounding have been replaced by daily, hourly or even continuous compounding with yield rates so over advertised that Regulation Q was introduced to bring order out of this chaotic competitive battle of semantics (10). Although many would wish that reform could be accomplished by voluntary action, those who view this as a realistic approach to reform overlook the history of self-regulation.

Regulation

Most, if not all, savings institutions are under the supervision of a Federal regulatory authority and a lesser number under State regulatory authorities. The Federal regulatory agencies can and often do synchronize and coordinate the issuance of regulations. For example, when the Federal Reserve Board issued Regulation Q to limit the prominence of the yield rate to that of the nominal rate, it was simultaneously issued by the FDIC, FSLI, and FHLB. State institutions were not necessarily covered (11). Thus the regulatory route for implementing an industry-wide plan depends on the full cooperation of all Federal and State agencies.

There is no evidence that any regulatory agency other than the FDIC has considered the adoption of regulations in this area. Failure of any one regulatory agency to cooperate may place the regulated institutions at a relative competitive disadvantage.

Chairman Frank Willie of the FDIC, on September 15, 1971, wrote Senator Sparkman that the FDIC ". . . favors the full and accurate disclosure to depositors of the applicable rates of interest and of the other terms and conditions governing their deposits." Furthermore, he expressed his belief ". . . that the Corporation's Board of Directors, the Board of Governors of the Federal Reserve System, and the Federal Home Loan Bank Board presently have statutory authority sufficiently broad to enable them to adopt any regulations necessary to accomplish the bill's (S. 1848) objectives with respect to insured banks and savings and loan associations."

Since no action has been taken by the regulators, either the FDIC found it could not draft adequate regulations, or it could not gain the cooperation of the other Federal agencies, notwithstanding that of the many state agencies. Thus the regulatory approach would seem to have gone by default.

Legislation

The legislation before the 93rd Congress incorporates the definitions and concepts developed by the authors who acknowledge assistance in the form of helpful criticism and suggested amendments from the Kansas Bankers Association. The Consumer Credit subcommittee, U.S. Senate, held hearings in June, 1973 on S. 1052 (12). It recommended study by the Federal Reserve Board of the effect of this bill on small banks. Thus, the legislative journey, after two years of waiting, has begun.

SUMMARY AND OBSERVATIONS

Truth in Savings is an effort to provide full disclosure of savings terms and practices. This would enable consumers to exercise their responsibilities more effectively and efficiently; namely, to police the market, to make informed choices, and to validate the accuracy of their accounts. This is a conservative measure. It is within the tradition of free enterprise economics which requires that consumers be fully informed.

It should be observed, however, that the supplying of all the information needed for consumers to be sufficiently informed to cope with today's finances may be so revealing of the baffling complexity that consumers may demand simplification. The problem, then, is not with the concept of full disclosure but with what it will reveal. This observation is based on what has happened under the full disclosure provisions of Truth in Lending. It has revealed such complexity in the various open-end credit plans that the public is demanding simplification.

What form simplification should take with respect to savings would be the subject of another paper. But an example of simplification might be to specify a method of figuring the balance to which the periodic rate is applied. A case can be made for limiting the method to the use of daily balances. Computer technology has made this entirely feasible for most businesses, and even those using pencil and paper methods of computation would find the daily rate and balance method feasible. Financial institutions would undoubtedly print tables of daily factors for the appropriate annual rate, with which consumers could recalculate the earnings for each day-interval of activity. Furthermore, if these daily rates and balances were also used in credit transactions, school teachers, creditors and others would have a common terminology, common methodology and common approach to money contracts. There would be a direct and logical relationship between the amount of principal involved, and either the earnings paid on savings or the finance charges for credit.

This suggestion of daily rates and balances is offered neither as a threat to obtain full disclosure nor as a promise of what lies ahead after full disclosure. However, it is worthy of serious consideration by those persons who wish to simplify life, education and business routines—and yet not curb unduly the freedom of choice in matters which are truly more significant than hassling over FIFO, LIFO, days of grace and other details.

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FOREIGN AID

Mr. DOMENICI. Mr. President, I voted against the foreign aid bill yesterday even though in the past I have supported with my vote the concept that the United States has a responsibility to share its bounty with the rest of the world. I am fully aware that the bill before us had substantially less money than last year.

I wish to compliment the distinguished Senator from Minnesota, Senator HUBERT HUMPHREY, for his excellent work in support of this bill and for his foresight during the past many years in urging this Nation's foreign aid assistance program.

I am aware of our relationship to poorer and developing countries but while the United States faces economic stress at home it seems totally unrealistic to spend billions overseas when we have not yet decided what we are going to do to buttress and rebuild our own economy. For it is our economy that will be the force that saves the free world and without which the free world would soon succumb.

We now have no game plan from either the President or from the Congress for our economy. We do not know how much we will need to help Americans with their housing problems, nor how much we will need for the unemployed, which grows daily in number and need, nor how much may be needed for public works projects.

More importantly in the long term, we have not yet developed a concerted effort for energy independence. I believe that we still have a need for such an energy independence plan, and that one is not yet available, although some might disagree with me. I do not want to be in the position of voting against needed domestic projects at home on the basis that we have already spent too much, especially for a foreign aid bill. I regreted not being able to support this bill in this instance, but I believe that we have more demanding needs at home. This bill properly was deferred until we evaluate our own needs and develop a plan to meet them.

EFFICIENCY IMPROVEMENT IN TRANSPORTATION

Mr. HARTKE. Mr. President, I ask unanimous consent that the remarks of John A. Creedy, president of the Water Transport Association, as delivered to the New York Chapter of the ICC Practitioners Association on September 16, 1974, be printed in the RECORD following my remarks, to afford my colleagues the opportunity to study Mr. Creedy's thoughts concerning transportation efficiency and intermodal competition.

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

THE BUILT-IN BIAS AGAINST EFFICIENCY IMPROVEMENT IN TRANSPORTATION: WHAT TO DO ABOUT IT

(By John A. Creedy)

It is a pleasure to be speaking to you today on the eve of President Ford's mini-summit in Los Angeles on what the transportation industry recommends be done about inflation. The subject of inflation is on the front burner at long last. The water carriers have been urging that it deserved front burner attention for several years.

The President has challenged the business community—and of course labor and professional economists—to suggest the most appropriate government policies for the control of inflation.

I think the most important statement may have already been made by the President. He has said that he is committed to ending inflation by July 4th, 1976.

If he means that, he will try all the remedies until he find a working solution. Commitment to solve the problem is at least half of the battle. There is some reason for optimism. If one is committed to success, it follows that prior affection for particular theories or ideologies will take second place.

On the center of the stage are monetary and fiscal restraints, particularly proposals to cut the Federal budget. After that come incentives for increasing the supply of goods to produce surpluses which will exert a downward pressure on prices. Then, properly so, great emphasis is placed on improving productivity and efficiency throughout the economy.

It is the purpose of this paper to discuss the way in which government policies are biased against efficiency improvement in transportation and what might be done about stimulating rather than frustrating the kind of cost-cutting investments which can improve the stability of transportation prices.

The transportation industry isn't going to have much to say about how government deals with monopoly pricing by the oil-producinug countries except that we hope the government gives this matter the highest priority. We are told that Federal budget cuts are going to come hard in the short run. We can hope that some of the shortages and bottlenecks in supply can be eased and the prices moderated. We need good luck in the weather for food supplies. We would support a sound program of tax incentives for investment in expanded capacity. Tax incentives work.

We are told that wage and price controls are not to be used. The virtual unanimity on this score and the rhetoric denouncing controls are reminiscent of the disclaimers just before controls were imposed the last time.

We can be reasonably sure, however, that everything else will be tried before wage and price controls. But controls are on everybody's mind and cannot be counted out. After all, drastic, temporary measures are used to bring a runaway horse back to a trot and something temporary but drastic may be required for the economy.

The rhetoric against controls strikes an odd note with the regulated industries. We detect no groundswell for removing the regulatory lid on freight rates and letting the market place decide the freight rate level. Prices are severely regulated in transportation, the utilities and communications, but their costs are totally unregulated.

We read the solemn pronouncements that controls don't work with some amusement. They work all right. Transport freight rates, by any measure, lag far behind the wholesale and consumer price indexes. The goods and services the industry buys have gone up far more than the freight rates.

To deal with the surge of cost increases in transportation there is a somewhat cumbersome regulatory process by which rate increases are cost-justified. It is this process that is seriouslyy biased against improvement in efficiency.

There has been a great deal of constructive discussion of this problem in the past two years. The consensus of it all is that it is useless to expect decontrol of freight rate increases—the shippers simply won't stand for it.

If that is the reality, then we urgently need to improve the regulatory process for rate level changes. Almost by definition, the present process by which the rates are raised to catch up with massive cost increases inherently works so that rates never *do* catch up. There is always a sizeable gap. From the public point of view and from the point of view of combatting inflation, what's in the gap is the money needed for investment in cost-saving equipment and facilities. The transport industry is locked into a cost/rate spiral with no opportunity to break out.

The ICC has been dealing with cost increases with ever-improving dispatch in the past two years, but it cannot be expected to overcome the built-in bias of the process against improved efficiency.

I suppose one of the first things that would be constructive would be to improve the visibility of possibilities for cost-cutting improvements in transportation. In the present detailed rate process, which is firmly oriented to the past, there is no room for consideration of the potentials of future improvement in efficiency. And some observers are quick to say there never can be.

I happen to think that shippers would be delighted, as part of the rate change process, to see laid out on the table a showing as to how increased revenues are to be used, a prospectus for future investment in both expanded capacity to meet their service requirements and the investments needed to install cost-saving efficiency. In an unregulated environment, such investments would follow automatically from the forces of the market place. The present regulatory process deprives the carriers and the public of resources for investment in at least three fundamental ways.

In the first place there is inevitable regulatory lag. The massive upsurge of cost increases cannot be promptly matched by rate increases simply because the cost increases are coming too fast even for the fastest bureaucratic action. Time has to be allowed for objections and answers to objections and this inevitably takes weeks and months. In the course of the process hundreds of millions in fully justifiable revenues are foregone. Modifying the process to include some

form of retroactivity might be useful to overcome this so far unavoidable problem.

Second is the problem of under-depreciation. This has lately begun to get the national visibility it deserves. We often read now of misleading inventory profits resulting from rapid price level change and equally misleading profits resulting from the reliance placed on depreciation based on using the historic cost of an asset. To the extent that the price of a commodity or service is related to depreciation of the original or historic cost, the price does not cover the true cost of production. This is now too well recognized to be debatable.

Almost all the analysis comes back to one 15-year-old very dubious study of trucking of frozen chickens which is regurgitated and extrapolated endlessly. This ancient so-called "research," is not questioned, it is simply quoted. The result is a monstrosity and a scandal. One of the first efforts of the mini-summit should be to clear the decks of this nonsense, possibly through a new subcommittee to examine the facts. The monster cannot stand the light of the day.

As often as not the ICC is attacked for things it has not done. The celebrated "Big John" grain rate case so often cited as an example of years of obstruction by the ICC of a rate innovation was nothing of the kind. The proposed rates went into effect after seven months and the railroads enjoyed the traffic all through the litigation, which incidentally the railroads in the end won. What would the critics propose: denial of due process to those shippers and competitors who objected to the rate?

In alleging the billions to be saved in freight rates if the ICC powers are curtailed, there is a review in the "studies" of the no-mixing rule issue involving the diseconomies of breaking up mixed tows of regulated and unregulated commodities by barge. The authors of the study seems not to know that the ICC decision was never enforced; that the ICC formally withheld enforcement at the request of the Congress until a quirk in the law was corrected which it finally was last year.

Blaming the ICC for an out-moded statute is hardly fair.

Finally, I will suggest to the mini-summit that we get into the question of improving the quality of competition in the transportation industry. Competition is the best hope of assuring maximum efficiency.

This is always a serious and important subject. We need proposals which are even-handed, which improve the competitive climate generally not just for one mode. The proprosals originating with the DOT this year have not been even-handed because they have given no recognition to the need to reform railroad practices which artificially frustrate water carrier competition.

The water carriers think that substantial progress could be made by adapting to transportation the principles of sound competition which have been found successful in the unregulated economy. There is much to be said for applying to transportation, the competitive policies which stimulate healthy competition in the manufacturing segment of the economy.

The water carriers, for example, have made a proposal for dealing with the rigidities stemming from railroad monopoly of service to and from river, Great Lakes and ocean ports.

For heavy movements of commodities such as coal, grain, iron ore and the like there is often no practical alternative to a rail connection.

For 30 years, the railroad has successfully wiggled out of the express desire of the Congress that services of different modes be coordinated so that the best efficiencies of the different modes in combination can be made available to the public. The water carriers believe that freight rate savings ranging from 10 to 50 percent can often be achieved when the best efficiencies of railroading and water carriers are joined together. Water carrier costs are normally half or one third of raiload costs. Perhaps the pressures of inflation will be added to other pressures to win for the public at long last the cost benefits of effective rail-water coordination which Congress mandated long ago.

The water carrier suggestion has simplicity on its side. They propose legislation to provide that rail rates to a water carrier port, where water-rail coordination is possible, should be comparable, costs and service considered, with the all-rail alternative to the water-rail service. The present situation under which railroads can hold their rates to the port high in order to protect the traffic on the all-rail route and so deprive the public of lower-cost water-rail service would be made clearly unlawful.

The suggestion has this advantage. If the rail rate and service to the port is comparable, the traffic will move water-rail only if the water-rail is more efficient; the market place will decide the question of efficiency. No elaborate ICC proceeding will be required.

Some of my colleagues in the transportation industry are skeptical as to the value of Mr. Brinegar's mini-summit. But I disagree. Chaotic as it may be, it is part of the process of developing sound policy. Everyone will have his say and perhaps most of it will be disregarded. But new ideas are needed and one hopes the ground will be fertile for them.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

FULL PUBLIC ACCESS TO CERTAIN PAPERS, TAPES, AND TRANSCRIPTS

The PRESIDING OFFICER (Mr. McINTYRE). Under the previous order, the Senate will now proceed to the consideration of Senate Resolution 399, which the clerk will state.

The legislative clerk read as follows:

A resolution (S. Res. 399) urging full public access to all facts and the fruits of all investigations relating to Watergate and full public access to all papers, documents, memoranda, tapes, and transcripts during the period January 20, 1969, through August 9, 1974.

The Senate proceeded to consider the resolution.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ERVIN. 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. ERVIN. Mr. President, I ask unanimous consent that the following staff members of the Government Operations Committee be allowed to remain on the floor during consideration of Senate Resolution 399 and S. 4016: Robert Bland Smith, Jr., Eli E. Nobleman, W. P. Goodwin, Jr., W. Thomas Foxwell, and Elizabeth Preast.

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

Mr. NELSON. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. ERVIN. Yes.

Mr. NELSON. Mr. President, I ask unanimous consent that Mr. Lew Paper of my staff be allowed the privilege of the floor during the consideration of S. 4016 and Senate Resolution 399.

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

Mr. ERVIN. Mr. President, with the consent of the original introducer of the bill, the distinguished majority leader, I ask unanimous consent to modify Senate Resolution 399 by inserting the following words between the word "Ford" and the word "take" on line 1, "is urged to", so that the provision of the resolution will read:

Resolved, That President Ford is urged to take all steps necessary to assure full public access to all facts connected with and relating to Watergate matters and the fruits of all investigations conducted pursuant thereto;

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered.

Mr. ERVIN. Mr. President, I further ask unanimous consent that Senate Resolution 399 be modified on page 2, line 2, by inserting the words "is urged to" between word "Ford" and the word "afford" so that this provision, the second part of the resolution, will read as follows:

Resolved, That except in cases clearly vital to the national security interests of the United States, President Ford is urged to afford the American public full access to all such papers, documents, memoranda, tapes, and transcripts originating at any time during the period January 20, 1969, through August 9, 1974, at the earliest practicable time and in an adequate and effective manner.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The resolution, as modified, is as follows:

S. RES. 399

Whereas it is paramount to the national interest that the American public be made fully aware of all facts connected with and relating to Watergate matters and the fruits of all investigations conducted pursuant thereto; and

Whereas it is uncertain that there is now assured public access to all such facts as they are contained in papers, documents; memoranda, tapes, and transcripts; be it therefore

Resolved, That President Ford is urged to take all steps necessary to assure full public access to all facts connected with and relating to Watergate matters and the fruits of all investigations conducted pursuant thereto; be it further

Resolved, That except in cases clearly vital to the national security interests of the United States, President Ford is urged to afford the American public full access to all such papers, documents, memoranda, tapes, and transcripts originating at anytime during the period January 20, 1969, through August 9, 1974, at the earliest practicable time and in an adequate and effective manner.

Mr. ERVIN. With these modifications, Senate Resolution 399 is a sense of the Senate resolution that President Ford should undertake to do the things enu-

merated. It does not have the force of law and it does not compel him to do so, but it is an expression of the Senate that, in the opinion of the Senate, the American people are entitled to have full access to all facts connected with and relating to Watergate matters and the fruits of all investigations conducted pursuant thereto; and that unless vital national security interests of the United States require otherwise, that President Ford is urged to take such action as is necessary to consummate that purpose in respect to all documents and memoranda, tapes, and transcripts originating any time during the period January 20, 1969, through August 9, 1974, at the earliest practicable time and in an adequate and effective manner, leaving to President Ford to determine what is an adequate manner and what is a reasonable period of time.

It seems to me that this sense of the Senate resolution requires no explanation, because it explains itself and is based upon the proposition fundamentally that the American people are entitled to know what officials entrusted with great governmental and political power have done, and that they are entitled to know it from the original records of such actions.

That statement I think, is all of the debate that is needed on this resolution, I will yield the floor to anyone who wishes to speak.

I might say, before I do, however, that this resolution is to be followed by S. 4016, which, if adopted by both Houses of Congress and signed into law by the President, will deal with this matter on a legal basis.

S. 4016 recognizes that there is a controversy of substance as to whether or not the papers, tapes, transcripts, and other materials are the private property of former President Nixon or belong to the taxpayers.

The bill does not attempt to settle that matter, although I personally entertain the opinion that when an elected official, while receiving a salary from the taxpayers and while occupying buildings furnished to him by the taxpayers, makes records at the expense of the taxpayers, that in equity and good conscience those records belong to the public and not to the official individually. This is particularly true with reference to the President of the United States.

But the bill recognizes that in times past some Presidents have taken possession of their records, even though they were official in nature and even though they were made while they were being paid by the taxpayers for making them, and even though they were made entirely at the expense of the taxpayers, and treated them as their private property. But it leaves that matter to be determined by the courts.

The bill provides that former President Nixon can litigate this matter, and that if he elects to claim these as his personal property and the court decides that they are his personal property, that they will be condemned by the Government under the power of eminent domain, and that he will be given reasonable and just compensation for their value.

It also provides for access to these documents and tapes by the Special Prosecutor, or by anyone else pursuant to a subpena.

It also provides that former President Nixon can have access to them and copy them for any purpose he desires. It provides that these documents and tapes are to be in the custody of the United States under the conditions I have stated, and that they be maintained for the ultimate use and information of the public by the General Services Administration.

With that, I will yield the floor at the present time.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, I rise in support of the sense of the Senate resolution (S. Res. 399) which is now before this body for consideration.

Mr. President, article IV, section 3 of the Constitution contains the following statement:

> The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

What is the United States? It is the people who live within its confines.

What is the Government of the United States? It is the people who comprise the structure on which that Government rests and, therefore, those of us who are fortunate enough to be elected, and that includes the President as well as Members of the Congress to whom we have to answer, because in the final analysis the Government of the United States is not the Senate, not the Presidency, not the House—it is the people.

This resolution speaks for itself. It calls upon President Ford to assure the American people that in the national interest they will be provided all of the facts of Watergate and all of the facts relating to matters connected therewith.

That the American people are entitled to these facts is unquestioned in my judgment; that they are not now assured of that opportunity is equally clear, however, and they will not and cannot be assured of that opportunity unless this amendment, and others, pass.

Watergate and all of its ramifications are not now behind us. They will not be behind us until the record is complete. To accomplish that objective in our free and open society will require full access by the American people to all relevant data and information. To justify this action I would refer to the words of Mr. Justice Story in a case cited by Attorney General Saxbe in his opinion issued by the White House on September 6:

> From the nature of the public service, or the character of the documents, embracing historical, military, or diplomatic information, it may be the right, and even the duty, of the government to give them publicity, even against the will of the writers. (Folsom v. Marsh, 2 Story 100, 1841)

Such a duty and such a right have been clearly and amply demonstrated with respect to the nature of Watergate and to the character of all information relating thereto.

In my opinion, the public papers of the Presidency used in the transaction of the people's business belong not to any one person, but to the Government and through the Government, to the people. There is no law which states that these papers become the property of a retiring or resigned President. I am somewhat surprised that Mr. Richard Q. Vawter of the General Services Administration, said recently that:

> We consider every piece of paper accumulated in the White House during the Nixon Administration to be Mr. Nixon's personal property.

It is interesting to note that our first President, George Washington, was of the opinion that his official papers belonged to the Government. To quote President Washington, he stated that his papers were "a species of public property, sacred in my hands."

In order to face up to what has become a custom based on precedents, but not on law, Senate Resolution 399 was introduced by a number of Senators from both sides of the aisle. It is, I think, an important resolution. I think it is a resolution which will meet with the approval of the majority of the Members of this body, Republican and Democrat, and I know it will meet with the approval of the American people as a whole.

Too many Presidents have stripped the White House of their official papers, some to preserve them in libraries, others to use them as a basis for books and interviews, and all of them being considered the private property of a President who was elected and who used public funds to be able to amass documents, papers, memoranda, tapes and transcripts, or whatever.

May I say that I am delighted that, insofar as I am aware, the Government Operations Committee to which this resolution was referred reported it out unanimously.

I am delighted, also, that both the House and Senate Subcommittees on Appropriations have seen fit to eliminate the $100,000 for the building of a vault in California to store these historic documents.

I would hope, Mr. President, in view of the times in which we live and the need for clarification and also for a better understanding of what has been happening in the country for all too many years, that this Senate today would vote in favor of this resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 399), as modified, was agreed to.

The preamble was agreed to.

The resolution, as modified, with its preamble, reads as follows:

S. RES. 399

Whereas it is paramount to the national interest that the American public be made fully aware of all facts connected with and relating to Watergate matters and the fruits of all investigations and conducted pursuant thereto; and

Whereas it is uncertain that there is now assured public access to all such facts as they are contained in papers, documents, memoranda, tapes, and transcripts; be it therefore

Resolved, That President Ford is urged to take all steps necessary to assure full public access to all facts connected with and relating to Watergate matters and the fruits of all investigations conducted pursuant thereto; and be it further

Resolved, That except in cases clearly vital to the national security interests of the United States, President Ford is urged to afford the American public full access to all such papers, documents, memoranda, tapes, and transcripts originating at anytime during the period January 20, 1969, through August 9, 1974, at the earliest practicable time and in an adequate and effective manner.

Mr. NELSON. Mr. President——

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. HRUSKA. Mr. President, I had not anticipated that the Chair would act that summarily. He knows I have an outstanding interest in this matter.

I move that the action just taken by the Senate be reconsidered.

Mr. MANSFIELD. I move to lay that motion on the table.

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

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

Mr. MANSFIELD. Does the Senator want to vote on the motion to table and then put in a quorum call?

The motion to reconsider has been made and the motion to table has been made.

Mr. President, I suggest the absence of a quorum, and, to bring this matter to a head, it will be a live quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

[No. 448 Leg.]

Allen	Helms	Percy
Bible	Hruska	Roth
Brooke	Kennedy	Talmadge
Byrd, Harry F., Jr.	Mansfield	Weicker
Ervin	McIntyre	
	Nelson	

The PRESIDING OFFICER. A quorum is not present.

Mr. MANSFIELD. Mr. President, I move that the Sergeant at Arms be directed to request the presence of absent Senators.

The PRESIDING OFFICER. The question is agreeing to the motion of the Senator from Montana.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Abourezk	Gurney	Moss
Aiken	Hansen	Muskie
Baker	Hart	Nunn
Bartlett	Hartke	Pastore
Beall	Haskell	Pearson
Bennett	Hatfield	Pell
Bentsen	Hollings	Proxmire
Brock	Huddleston	Randolph
Buckley	Hughes	Ribicoff
Burdick	Humphrey	Schweiker
Byrd, Robert C.	Inouye	Scott, Hugh
Cannon	Jackson	Scott, William L.
Case	Long	Stafford
Chiles	Magnuson	Stennis
Clark	Mathias	Stevens
Cotton	McClellan	Stevenson
Cranston	McClure	Symington
Domenici	McGee	Thurmond
Eagleton	McGovern	Tower
Eastland	Metcalf	Williams
Fannin	Metzenbaum	Young
Fong	Mondale	
Griffin	Montoya	

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Delaware (Mr. BIDEN), the Senator from Alaska (Mr. GRAVEL), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Alabama (Mr. SPARKMAN), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I also announce that the Senator from Maine (Mr. HATHAWAY) is absent to attend a funeral of a former Congressman of Maine.

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Kentucky (Mr. COOK), the Senator from Kansas (Mr. DOLE), the Senator from Colorada (Mr. DOMINICK), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Ohio (Mr. TAFT) are necessarily absent.

I further announce that the Senator from Nebraska (Mr. CURTIS) is absent to attend a funeral.

The PRESIDING OFFICER (Mr. BURDICK). A quorum is present.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the motion to lay on the table.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. PELL). The question is on agreeing to the motion to lay on the table the motion to reconsider the vote by which the resolution (S. Res. 399) was agreed to. 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 Indiana (Mr. BAYH), the Senator from Delaware (Mr. BIDEN), the Senator from Idaho (Mr. CHURCH), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Alabama (Mr. SPARKMAN), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I also announce that the Senator from Maine (Mr. HATHAWAY) is absent to attend a funeral of a former Congressman of Maine.

I further announce that, if present and voting, the Senator from Maine (Mr. HATHAWAY) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Kentucky (Mr. COOK), the Senator from Kansas (Mr. DOLE), the Senator from Colorado (Mr. DOMINICK), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Ohio (Mr. TAFT) are necessarily absent.

I also announce that the Senator from Illinois (Mr. PERCY) is absent on official business.

I further announce that the Senator from Nebraska (Mr. CURTIS) is absent to attend a funeral.

I further announce that, if present and voting, the Senator from New York (Mr. JAVITS) and the Senator from Illinois (Mr. PERCY) would each vote "yea."

The result was announced—yeas 58, nays 23, as follows:

[No. 449 Leg.]

YEAS—58

Abourezk	Hatfield	Muskie
Allen	Hollings	Nelson
Bentsen	Huddleston	Nunn
Bible	Hughes	Pastore
Brooke	Humphrey	Pell
Burdick	Inouye	Proxmire
Byrd, Harry F., Jr.	Jackson	Randolph
Byrd, Robert C.	Kennedy	Ribicoff
Cannon	Long	Roth
Case	Magnuson	Schweiker
Chiles	Mansfield	Stafford
Clark	Mathias	Stennis
Cranston	McClellan	Stevens
Eagleton	McGee	Stevenson
Eastland	McGovern	Symington
Ervin	McIntyre	Talmadge
Hart	Metzenbaum	Weicker
Hartke	Mondale	Williams
Haskell	Montoya	Young
	Moss	

NAYS—23

Aiken	Domenici	McClure
Baker	Fannin	Metcalf
Bartlett	Fong	Pearson
Beall	Griffin	Scott, Hugh
Bennett	Gurney	Scott, William L.
Brock	Hansen	Thurmond
Buckley	Helms	Tower
Cotton	Hruska	

NOT VOTING—19

Bayh	Dominick	Packwood
Bellmon	Fulbright	Percy
Biden	Goldwater	Sparkman
Church	Gravel	Taft
Cook	Hathaway	Tunney
Curtis	Javits	
Dole	Johnston	

So the motion to lay on the table was agreed to.

Mr. NELSON. Mr. President.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. MANSFIELD. Will the Senator yield?

Mr. NELSON. I yield without losing my right to the floor.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, there is a nomination for the new Chief of Staff of the U.S. Army, Gen. Frederick Carlton Weyand. I ask unanimous consent that the Senate go into executive session to consider the nomination.

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

The PRESIDING OFFICER. The nomination will be stated.

U.S. ARMY

The legislative clerk read the nomination of Gen. Frederick Carlton Weyand to be Chief of Staff, U.S. Army.

Mr. JACKSON. Mr. President, today we consider the nomination of Gen. Fred C. Weyand as Chief of Staff, U.S. Army. This is a critical time for the Army. The path laid out by General Abrams is a difficult and challenging one, and one which will place extraordinary demands on the Army's leaders.

We have an opportunity now to contribute to the strength of the Army's leadership by confirming General Weyand as Chief of Staff. Many of us know General Weyand, and are aware of his fundamental integrity and sound character, his depth, and the grasp he has not only of the Army's business but of the proper and essential relationship between the Army and the Congress. I remember well the excellence which characterized his service as the Army's Chief of Legislative Liaison. He is a man of honor.

His combat record in Burma, in Korea, in Vietnam speaks for itself. He holds the Distinguished Service Cross, a decoration second only to the Medal of Honor, in recognition of exceptional valor. His record of achievement in sensitive positions is equally strong. He served in Berlin as a senior intelligence officer in the wake of what has become known as the U-2 incident. He was the senior military adviser to the U.S. delegation at the Paris peace talks. And of course, as the last Commander of all U.S. forces in Vietnam, he directed the return of the final major increment of troops from that war-torn country.

Mr. President, I believe our country's security will be well served by the prompt confirmation of General Weyand as Chief of Staff, U.S. Army.

Mr. THURMOND. Mr. President, we are fortunate today to have the opportunity to confirm Gen. Fred C. Weyand as Chief of Staff of the U.S. Army. I respectfully submit that he is the right man to lead the Army today.

General Weyand has been a vital spark in the Army's program to deliver more real punch from the resources available and to bring the Army's readiness and professionalism to the peak necessary for our country's safety and security. He has also been instrumental in making the volunteer force concept a reality for the Army.

A native of California and a graduate of the Reserve Officer Training program, General Weyand exemplifies the best of American leadership. His courage has been repeatedly and successfully tested in battle. He is a consummate staff officer, as those of us who know him from previous appearances and associations with the Congress are well aware. He is an able and respected leader of men and women, in war and in peace.

Mr. President, the prompt confirmation of General Weyand as Chief of Staff, U.S. Army is one added way in which we can serve the country. We should seize that opportunity now.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. STENNIS. I thank the Chair and, Mr. President, I ask unanimous consent that the President be notified immediately.

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

LEGISLATIVE SESSION

Mr. STENNIS. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

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

FULL PUBLIC ACCESS TO CERTAIN PAPERS, TAPES, AND TRANSCRIPTS

Mr. MANSFIELD. I thank the Senator from Wisconsin for yielding to me.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. HRUSKA. Will the Senator yield briefly?

Mr. NELSON. I yield to the distinguished Senator from Nebraska without losing my right to the floor.

Mr. HRUSKA. Mr. President, I rise to give an explanation of what happened by calling for the rollcall vote on the motion to table my motion to reconsider the passage of resolution 399.

There had been a brief debate on the resolution. It was participated in by two, and possibly three Senators.

This Senator, it is well known in the Chamber and has been for some time, is opposed to both the resolution and the bill.

I intend to offer a substitute for the bill in due time.

In what I thought was a little precipitous action on the part of the Presiding Officer, the resolution was declared approved inasmuch as no opposition was heard and inasmuch as no one appeared to get up in timely fashion to ask for recognition and ask for further debate.

I had anticipated that the ranking member of the Government Operations Committee would speak on the resolution. I apparently did not get up in time in order that the Presiding Officer would be able to recognize me.

Now, when he did declare the resolution approved I wanted to suggest, and did suggest, that these three measures should be considered together, not individually, because technically we would have one taken up after the other, but it was for that purpose I rose to make a motion to reconsider so that we could have the three of them considered in that light.

It was to that motion that the majority leader asserted a motion to table. He told me later, however, that it was his thought that I was making the motion to reconsider as a routine thing so we could get on to the next piece of business, and I want to respect that assumption. It was made in good faith, but I just did not think it was quite in order that the matter should have been placed on that basis in view of the fact that this is a matter of considerable importance, as I will explain as the day goes on.

I just wanted to explain to my colleagues why there was resistance to an apparently routine motion to table a motion to reconsider.

Mr. MANSFIELD. Will the Senator yield without losing his right to the floor?

Mr. NELSON. Yes.

Mr. MANSFIELD. Mr. President, I would have to state for the RECORD that when the distinguished Senator from New Hampshire (Mr. MCINTYRE) was in the chair, in my opinion he took an inordinately long time to put the question. He stated it twice. The bill was passed. Nobody said anything.

The distinguished Senator from Nebraska got up and moved to reconsider the bill that was passed. I thought he was being his usual courteous self.

I moved to table expecting him to join me and the rest of the Senate in a voice vote on approval to table. I find out later, that was not in his mind.

He has stated the RECORD correctly and I am glad that it has been done because just as I think the tapes and memorabilia and all matters connected with the subjects under discussion today should be made public, should be open to inspection, so do I think the moves made in this body should likewise be open to inspection.

I thank the distinguished Senator from Wisconsin.

Mr. HRUSKA. I am astonished, Mr. President, with the promptness with which the Chair declared the motion moved.

I would respectfully take exception on the element of time to the statement by the majority leader. It is a judgment of degree, but I did not think it was a sufficient length of time for a known opponent of the resolution to be given a chance to get up, and assert his right to the floor as promptly before the action was taken.

Mr. MANSFIELD. Now, the Senator from Nebraska is no neophyte in this body. He knows how the Senate functions.

I would like to ask that the reporter who took down those remarks state for the RECORD, on the basis of the remarks taken down, whether or not the Senator from New Hampshire (Mr. MCINTYRE) then presiding did not put the question twice and put it slowly.

The PRESIDING OFFICER. The Chair is sending for those remarks and they will be read out as soon as available.

Mr. MANSFIELD. I thank the Senator and at an appropriate time if he would yield.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. NELSON. Mr. President, I really think the distinguished Senator from Nebraska was in deep thought because immediately when the issue was raised, I said to my staff member that I thought he took a very long time.

I think the Senator was thinking and did not realize that Senator MCINTYRE was pausing and waiting.

I was surprised myself that the distinguished Senator did not address himself to the fact because I thought he was going to object.

PRESIDENTIAL RECORDINGS AND MATERIALS PRESERVATION ACT

Mr. NELSON. Mr. President, 2 weeks ago, I introduced S. 4016 with the cosponsorship of Senator ERVIN and Senator JAVITS. As originally written, the bill concerned only the tape recordings made during Richard M. Nixon's tenure as President. The Senate Government Operations Committee, with my support and the cooperation of my staff, has revised the bill to include other Presidential materials from Mr. Nixon's tenure.

This legislation is an emergency measure. It will insure that the tape recordings and papers relating to Mr. Nixon's Presidency will remain available for use as evidence in pending or forthcoming criminal trials. This bill will also guarantee that, at some point in the near future, the American people will learn the full story behind the Watergate scandals.

The need for this legislation is clear. Last month, the White House negotiated an agreement with Mr. Nixon concerning the disposition of papers and materials relating to his tenure as President. Two aspects of that agreement are of particular concern here.

First, Mr. Nixon agreed to donate the tapes to the Federal Government by 1979. However, the agreement provides that after that date Mr. Nixon can order the destruction of any tapes he chooses. The agreement also provides "that such tapes shall be destroyed at the time of Mr. Nixon's death or on September 1, 1984, whichever event shall first occur." Therefore, if Mr. Nixon should die tomorrow, all the tapes would have to be destroyed.

Second, the agreement allows the Federal Government to retain custody over the Presidential papers of Mr. Nixon's tenure. But the agreement allows Mr. Nixon to have complete control over access to those papers. Moreover, after 1977 Mr. Nixon can withdraw any papers he chooses for any purpose. This seems to imply that Mr. Nixon can, if he so chooses, destroy any paper which he withdraws.

Mr. ERVIN. Mr. President——

Mr. NELSON. The bill S. 4016 is before us, is it not?

Mr. ERVIN. If the Senator will yield, I will ask the bill be made the pending business. That has not been done yet.

Mr. NELSON. It is not yet the pending business?

The PRESIDING OFFICER. It is not the pending business.

Mr. NELSON. I thought I had asked unanimous consent in my opening remarks.

The PRESIDING OFFICER. It has not yet been called up.

PRESIDENTIAL RECORDINGS AND MATERIALS PRESERVATION ACT

Mr. ERVIN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1125, S. 4016.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 4016) to protect and preserve tape recordings of conversations involving former President Richard M. Nixon and made during his tenure as President, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Government Operations with an amendment to strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Presidential Recordings and Materials Preservation Act".

SEC. 2. (a) Notwithstanding any other agreement or understanding made pursuant to section 2107 of title 44, United States Code, or any other law, the Administrator of General Services shall obtain, or, as the case may be, retain, complete possession and control of all tape recordings of conversations which were recorded or caused to be recorded by any officer or employee of the Federal Government and which—

(1) involve former President Richard M. Nixon and/or other individuals who, at the time of the conversation, were employed by the Federal Government;

(2) were recorded in the White House or the Executive Office Building located in Washington, District of Columbia; Camp David, Maryland; Key Biscayne, Florida; San Clemente, California; or any other place; and

(3) were recorded between January 20, 1969, and August 9, 1974, inclusive.

(b) Notwithstanding any other agreement or understanding made pursuant to section 2107 of title 44, United States Code, or any other law, the Administrator of General Services shall obtain, or, as the case may be, retain, complete possession and control of all papers, documents, memorandums, and transcripts which constitute the Presidential historical materials of Richard M. Nixon as defined in section 2101 of title 44, United States Code, covering the period between January 20, 1969, and August 9, 1974, inclusive.

SEC. 3. (a) None of the tape recordings, or other materials, referred to in section 2 above shall be destroyed except as may be provided by Congress.

(b) Notwithstanding any other provision of this Act, or any other law, or any agreement or understanding made pursuant to section 2107 of title 44, United States Code, the tape recordings and materials referred to in section 2 of this Act shall, immediately upon the date of enactment of this Act, be made available for use in any judicial proceeding or otherwise subject to court subpena or other legal process; *Provided*, That any request by the Office of Watergate Special Prosecution Force, whether by court subpena, or other lawful process, for access to the tape recordings and materials, referred to in section 2 of this Act, shall at all times have priority over any other request for such tapes or materials.

SEC. 4. If a Federal court of competent jurisdiction should decide that the provisions of this Act have deprived any individual of private property without just compensation, then the Administrator is authorized to provide such compensation, from funds in the Federal Treasury, as may be adjudged just by a Federal court of competent jurisdiction.

SEC. 5. The Administrator shall issue such reasonable regulations as may be necessary to assure the protection of the tape recordings, and other materials, referred to in section 2 above, from loss, destruction, or access to by unauthorized persons. Custody of such tape recordings and other materials shall be maintained in Washington, District of Columbia, except as may otherwise be necessary to carry out the provisions of this Act.

SEC. 6. The Administrator shall issue reasonable regulations governing access to the tape recordings referred to in section 2 above. In issuing these regulations, the Administrator shall—

(1) provide that information relating to the Nation's security shall not be disclosed, except pursuant to paragraph (2) below;

(2) provide that all tape recordings, and other materials, shall be made available for use in any judicial proceeding or otherwise subject to court subpena or other legal process;

(3) provide that there shall be access to the tape recordings, in addition to that provided for in paragraph (2) of this section, unless either (A) the Office of Watergate Special Prosecution Force certifies in writing that such disclosure or access is likely to impair or prejudice an individual's right to a fair and impartial trial; or (B) if a court of competent jurisdiction determines that such disclosure or access is likely to impair an individual's right to a fair and impartial trial; and

(4) provide that Richard M. Nixon, or any person whom he may designate in writing, shall at all times have access to the tape recordings, and other materials for copying or any other purpose: *Provided*, That such access shall be consistent with such regulations as the Administrator may issue pursuant to section 5 above.

SEC. 7. (a) The Federal District Court for the District of Columbia shall have exclusive jurisdiction to hear challenges to the legal or constitutional validity of any provision of this Act or of any regulation issued under the authority granted by this Act. Such challenge shall be heard by a three-judge court constituted under the procedures delineated in section 2284, title 28 of the United States Code, with the right of direct appeal to the United States Supreme Court. Any such challenge shall be treated by the three-judge court and the Supreme Court as a priority matter requiring immediate consideration and resolution.

(b) If, under the procedures delineated in subsection (a) above, a judicial decision is rendered that a particular provision of this Act, or a particular regulation issued under the authority granted by this Act, is unconstitutional or otherwise invalid, such decision shall not affect in any way the validity or enforcement of any other provision or regulation.

SEC. 8. There are authorized to be appropriated such sums as may be necessary to carry out the provision of this Act.

Mr. ERVIN. Mr. President, I ask unanimous consent that the committee amendment in the nature of a substitute be agreed to and that the bill as thus amended be regarded for purposes of further amendment as original text.

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

Mr. ERVIN. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. ERVIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

Mr. ERVIN's amendment is as follows:

On page 4, line 1, after the word "law", insert "any Federal employee in possession shall deliver, and".

On page 4, line 2, after the word "shall" insert "receive" and strike out the words "as the case may be,".

On page 4, line 3, before the word "tape" insert "original".

On page 4, line 9, after the word "or" insert "in the office of the President in".

On page 4, line 12, strike out the words "or any other place;".

On page 4, line 19, after the word "shall", strike out the words "obtain, or, as the case may be, retain," and insert in lieu thereof the following: "receive, retain, or make reasonable efforts to obtain,".

On page 5, line 8, insert a comma after the word "available" and insert the following: "subject to any rights or privileges which any party may invoke,".

On page 5, line 21, after the word "issue", insert the words "at the earliest possible date".

On page 5, between lines 14 and 15, add a new subsection, as follows:

"(c) Richard M. Nixon, or any party whom he may designate in writing, shall at all times have access to the tape recordings and other materials referred to in section 2 of this Act for any purpose, subject to the regulations which the Administrator shall issue pursuant to section 5 of this Act."

On page 5, line 18, after the word "then", strike out all through and including the word "Treasury," on line 19 and insert in lieu thereof: "there shall be paid out of the general fund of the Treasury such amount or amounts".

On page 6, beginning with line 4, strike out all through line 4 on page 7, and insert the following:

"SEC. 6. (a) the Administrator shall, within 90 days after the enactment of this Act, submit to the Congress a report proposing and explaining regulations governing access to the tape recordings and other materials referred to in section 2 of this Act. Such regulations shall take into account the following factors:

"(1) the need to provide the public with the full truth, at the earliest reasonable date, of the abuses of governmental power, popularly identified under the generic term, "Watergate";

"(2) the need to make the tape recordings and other materials available for use in judicial proceedings;

"(3) the need to prevent general access, except for use in judicial proceedings, to information relating to the Nation's security;

"(4) the need to protect every individual's right to a fair and impartial trial;

"(5) the need to protect any party's opportunity to assert any legally or constitutionally based right which would prevent or otherwise limit access to the tape recordings and other materials;

"(6) the need to prevent unrestricted access to tape recordings and other materials unrelated to the need identified in paragraph (1); and

"(7) the need to give to Richard M. Nixon, or his heirs, for his sole custody and use, tape recordings and other materials which are unrelated to the need identified in paragraph (1) above and are not otherwise of historical significance.

"(b) The regulations proposed by the Administrator in the report referred to in subsection (a) above shall take effect upon the expiration of 90 days after the submission of that report to the Congress."

Mr. ERVIN. Mr. President, this is an amendment which was drafted after the committee had made its report, to clarify certain matters in the bill, and largely at the instance of the General Services Administration, which pointed out that the original bill authorized it to adopt regulations and authorized it to control access to the materials mentioned. But GSA pointed out we gave them no time to formulate such regulations. They asked for some time.

This amendment, in addition to clarifying certain matters which do not affect the substance of the bill, gives the General Services Administration 90 days to adopt the regulations and report them to the Congress.

Now I understand the Senator from Wisconsin wants to continue speaking.

The pending business is the amendment I have just offered.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. NELSON. I have no objection to the amendment at all. Is the question on the amendment?

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. HRUSKA. Mr. President, this is the second time that this has happened to me today. I hope it will not become a habit.

I asked for recognition and the Chair goes on with getting approval of these amendments.

I shall not oppose these amendments, but I do think I can have a word or two to say about them before we act on them.

Mr. NELSON. I do, too.

Mr. HRUSKA. I do, too.

Mr. President, I have no objection to these amendments. They are offered in routine fashion to accomplish technical changes in the bill along administrative lines, as I understand it, of the GSA. I would like to ask the Senator from North Carolina if that is not the fact.

Mr. ERVIN. With some minor variations. We probably would never have offered the amendment had not the GSA pointed out that they were required to make regulations and were given no time to make regulations. This does not affect the substance of the bill, except to the extent that it gives the GSA time to make regulations.

Mr. HRUSKA. Mr. President, I do want it understood that in not raising objection to it I do not want it to be taken that the bill is rendered any more desirable from its merits nor from the procedures by which it was adopted.

Mr. ERVIN. I would like to make it clear to the Senator that there were some changes made by us that were not asked by GSA, but they were designed to make the bill clearer in certain aspects and did not materially affect the substance of it.

Mr. HRUSKA. I am glad for that explanation. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. NELSON. The destruction of the Nixon tapes and papers would deprive the courts of criminal evidence. The destruction of those materials would also conceal forever the full truth about the Watergate scandals. Our generation and future generations would then be unable to learn exactly what happened and why. This, in turn, might inhibit efforts to correct the institutional and legal weaknesses which made Watergate possible.

The proposed legislation deals with this specific situation. It contains seven principal provisions.

First, since the Nixon tapes and papers are already in the custody of the Federal Government, the legislation would require the Federal Government to retain complete control and possession of the tapes and papers. The legislation would thus abrogate the agreement negotiated by the White House with Mr. Nixon. This inevitably raises questions about the ownership of these materials.

In the past, it has been generally accepted that a President's papers and materials are his private property. Because of this prior practice, the White House regarded Mr. Nixon's tapes and papers as his private property. I believe this view to be wrong. Certainly there is no judicial decision or congressional statute which expressly provides that a President's papers are his private property. Moreover, it does not make sense to treat Presidential papers and materials as the private property of the President which he can use for his personal profit. The Nixon tapes, for example, were made on machines purchased with public funds and operated by individuals on the public payroll. They involve conversations of individuals—including a former President—who were on the public payroll and presumably discussing public business. Because of the clear public investment in and public character of these tapes, they should be regarded as the property of the U.S. Government as a trustee for the public.

Fortunately, the purposes of this legislation do not require a resolution of the ownership question.

If the materials are public property then Congress enactment of this legislation is merely an exercise of its powers under article IV of the Constitution to control public property.

If the materials are Mr. Nixon's private property, then this legislation simply enables the Federal Government to take "protective custody" of them. Even the Attorney General recognizes the legitimacy of such a measure. In his opinion to President Ford, the Attorney General said that the Government may take "protective custody" of Presidential materials for important public purposes.

The Attorney General stated:

Historically, there has been consistent acknowledgment that Presidential materials are peculiarly affected by a public interest which may justify subjecting the absolute ownertionship rights of the ex-President to certain limitations directly related to the character of the documents as records of government activity. . . . Upon the death of Franklin D. Roosevelt during the closing months of World War II, with full acceptance of the traditional view that all White House papers belonged to the President and devolved to his estate, some of the papers dealing with the prosecution of the War (the so-called "Map Room Papers") were retained by President Truman under a theory of "protective custody" until December 1946. Thus, regardless of whether this is the best way to approach the problem, precedent demonstrates that the governmental interests arising because of the peculiar nature of these materials (notably, any need to protect national security information and any need for continued use of certain documents in the process of government) can be protected in full conformity with the theory

of ownership on the part of the ex-President.—(Op. of the Att'y Gen., September 6, 1974, pp. 9–10).

"Protective custody" of the Nixon tapes and papers can be easily justified under the Attorney General's opinion. These materials probably contain additional evidence relating to the commission of statutory crimes. The materials contain extensive information which will enable the American people to learn the full truth of the Watergate scandals.

We cannot overestimate the importance of these materials. For the first time in our Nation's history, a President resigned because of clear and overwhelming evidence that he had committed impeachable offenses. More than three dozen individuals employed by the Federal Government or associated with Mr. Nixon's Presidency have been indicted for having committed statutory crimes. These crimes involved wiretapping, buggings, break-ins, and other violations of the freedoms guaranteed to every individual under our Constitution. Watergate, in short, represented a wholesale assault on those rights and liberties which are the glory of our political system.

The materials being preserved by this legislation are therefore clothed with an overwhelming public interest. The American people have a right to know to what extent their representatives in government abused the public trust. The American people are entitled to an accounting of the actions of those who were elected or asked to serve in their name. Unless we understand exactly what happened and why, our constitutional system will remain under the cloud of future Watergates, of future Presidents and Government officials who will strip the people of their basic freedoms.

If the people and Congress are to rectify the weaknesses in our system that made these dangerous abuses possible, we must have all the facts.

It is of course possible that a court will decide that this legislation does infringe upon Mr. Nixon's property rights. The second principal provision of the legislation anticipates this possibility. The legislation states that Mr. Nixon will receive just compensation from the Federal Treasury if a court should ultimately decide that these tapes and papers are really his private property.

The third principal provision of the legislation provides that the tapes and papers can never be destroyed. The reasons for this provision are obvious. These tapes and papers probably contain evidence relating to the commission of serious crimes. They probably also contain much information which can answer many questions as to how and why the Watergate scandals occurred. Without access to these tapes and papers, the interests of justice and history would be unduly compromised.

The fourth principal provision allows for the use of the Nixon materials in judicial proceedings. Any requests by the Watergate Special Prosecutor will receive priority. This provision would become operative immediately upon enactment of the legislation. This will insure that the legislation does not cause any delay in any judicial proceeding. This legislation, however, will not in any way change the relative positions of the parties to any lawsuit. Mr. Jaworski will still be able to get access to any materials he is entitled to under the law. Other parties will still be able to interpose any defenses, rights or privileges they may have to prevent or otherwise limit access to the materials.

The fifth principal provision states explicitly that Mr. Nixon will have access to the materials at all times. This access will be subject only to GSA regulations to protect against the loss or destruction of the materials.

The sixth principal provision concerns public access to the materials. A primary purpose here is to inform the American people of the full truth concerning the Watergate scandals. However, this purpose should not override all regard for the rights of the individual to privacy and a fair trial.

It is difficult within a short time to draft regulations governing public access which will accommodate these competing interests. Therefore, the legislation requires the Administrator of General Services to submit to Congress within 90 days a report which proposes and explains regulations governing public access to the Watergate materials. The report will also recommend which materials of historical significance should be retained. Such materials would include tapes and papers bearing on important policy decisions, departmental actions, diplomatic negotiations, records of gifts received from foreign powers, and the like. Materials which need not be retained would be purely personal items, such as birthday cards and thank-you notes. The legislation then affords Congress 90 days to take action on the Administrator's recommendations before they take effect.

This legislation, of course, may be subject to legal or constitutional challenges. In light of this possibility, the final principal provision states that all such challenges will be heard on an expedited basis by a three-judge court, with direct appeal to the Supreme Court. In this way, all legal and constitutional issues can be resolved quickly.

I understand, of course, that the problem concerning Presidential papers is a far-reaching one which deserves close examination and probably corrective legislation. The proposed bill does not deal with that larger problem. It deals instead with the specific situation involving the Nixon tapes and papers. This narrow and emergency treatment can be justified on two basic grounds.

On the one hand, the public's interest in his tapes and papers is particularly acute. The Watergate scandals represented an unprecented, dangerous and illegal assault on our political system's most precious commodity—individual freedom. It is therefore important that these tapes and papers be preserved for their possible use in criminal trials. It is equally important to preserve these materials in order to insure that, at some point in the near future, there be a complete understanding of how and why the Watergate tragedies occurred. The tapes and papers no doubt provide the information necessary to achieve or help to achieve the most possible complete understanding of that event.

On the other hand, the Nixon tapes and papers—unlike other Presidential papers—are in imminent danger of destruction. This makes immediate congressional action necessary.

Because this proposed legislation does deal with matters of critical national importance, it is my hope that Congress will act quickly on it.

Mr. President, I ask unanimous consent to have printed in the RECORD a Washington Post editorial, an article by Prof. Arthur Miller which discusses the need and legal justification for legislation such as this; an article from the New York Times; an editorial from the Washington Post of September 30, 1974; and an analysis of S. 4016 by the Congressional Research Service, which I think clearly demonstrates that this legislation does not violate any constitutional provisions.

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

[From the Washington Post, Sept. 21, 1974]

WHO OWNS THE NIXON TAPES AND PAPERS?

(By Arthur S. Miller)

The question of who owns documents accumulated in the White House during a Presidents tenure has been thrown into sharp controversy by the "agreement" concluded between Richard Nixon and General Services Administrator Arthur Sampson. Two days before President Ford pardoned him, Mr. Nixon sent a letter to Mr. Sampson indicating that he desired "to donate to the United States, at a future date, a substantial portion of my Presidential materials . . ."

In the letter Mr. Nixon flatly stated the materials, including tape recordings, were his: "I retain all legal and equitable title to the Materials, including all literary property rights." Mr. Sampson agreed to the entire letter on Sept. 7, ceding to Nixon the power to destroy the tapes after Sept. 1, 1979. The letter purports to be a legal document, which binds both Mr. Nixon and Mr. Sampson (speaking for the government).

Presumably, Mr. Sampson relied on an Attorney General's opinion sent to President Ford on Sept. 6, in which William Saxbe concluded Mr. Nixon was the owner of the "papers and other historical materials retained by the White House Office" during the Nixon administration. As is the custom with the "President's lawyers' lawyer," Mr. Saxbe found that a practice traceable to George Washington meant that the materials are "the property of former President Nixon."

That conclusion seems more the result of reaching a desired decision than of a process of reasoning that could get by any middling competent law student. There are no Supreme Court decisions on this point. Nor is there any statute that expressly states that Presidents have legal title to White House documents. Mr. Saxbe relied on the Presidential Libraries Act of 1955 as a congressional "acknowledgement" of ownership by Presidents. But Congress did not say so; nor did it define what "presidential papers" are. The question of title to White House documents has never been examined by Congress.

One federal court decision of modern vintage (*Nichols v. United States*, decided by the 10th Circuit Court of Appeals in 1972) holds that President Kennedy's executor could validly restrict access to X-rays and other materials of the Warren Commission, even though the materials were not owned by the Kennedy family. That case, not mentioned

by Mr. Saxbe, does not recognize a property interest of Presidents in White House materials. It thus could not be used to justify the Saxbe conclusion.

A proper analysis should begin with the Nixon-Sampson "agreement" itself. While Mr. Sampson had stautory authority to accept "papers and other historical materials" of a former President, nowhere is he given authority to agree to their destruction. Rather, 44 U.S. Code Sec. 2108 states in part that the GSA administrator, "in negotiating for the deposit of presidential historical materials, shall take steps to secure to the Government, as far as possible, the right to have continuous and permanent possession of the materials."

The agreement about destruction thus is a legal nullity, for any public administrator has only the authority delegated to him by Congress. The extent of Mr. Sampson's power was to agree to restrictions as to the "use" of presidential materials. "Use" can hardly mean destruction. Anything that goes beyond the statutory language is, in legal parlance, *ultra vires*—and that is so whether or not Mr. Nixon has title to the materials.

Despite the Saxbe opinion, the question of legal title for Mr. Nixon is still very much an open question. Under the Constitution, Congress has express power to "make all needful rules and regulations respecting the . . . property belonging to the United States." The materials—files, papers, tapes, etc.—were produced by public money on public property by people paid with public funds and now rest in publicly owned files. To rely, as did the Attorney General, on past practice to justify ownership by Richard Nixon is to put forth an untenable theory of law.

Under that theory, whatever occurs for a period of time becomes part of American law simply by custom and usage. But can that be so, particularly with respect to presidential powers? The answer must be negative if one examines some analogous claims by Presidents about other powers. Several may be mentioned.

President Nixon, both personally and through his minions in the Justice Department, maintained in 1973 that he had an unrestricted power to "impound" appropriated funds. Other than some flimsy statutory arguments, which do not hold up under scrutiny, the principal basis for the claim was past practice—said to go back to President Jefferson. Federal judges disagree: Of the more than three dozen judicial opinions in impoundment cases in the last two years, the vast majority emphatically rejected the broad claim of presidential power.

Presidents since at least the Hoover administration have engaged in wiretapping—with Nixon asserting an "inherent" power to do so without prior judicial approval. That claim was repudiated 8–0 by the Supreme Court in 1972.

In like manner, extravagant claims about executive privilege have been made, again by Mr. Nixon or his cohorts and again based on a reading of history. The Supreme Court knocked back that claim of "absolute power" unanimously in July of this year.

Both Presidents Johnson and Nixon asserted complete power to commit American troops to combat, under the "commander-in-chief" clause of the Constitution. Although the Supreme Court has consistently ducked that question, there can be little doubt that past practice would be rigidly examined and probably even rejected, should the Court ever rule on the merits.

In 1952, President Truman seized the nation's steel mills during a strike. Among other arguments to justify the seizure, government lawyers cited a series of other seizures, including one in 1941 upheld by then Attorney General Robert Jackson. Jackson, as Associate Justice, saw the matter differently 11 years later, saying: "I do not regard it [the 1941 seizure] as a precedent for this, but even if I did *I should not bind present judicial judgment with earlier partisan advocacy.*" (Italics added.)

That, if nothing else, should put an effective quietus on the Saxbe opinion. Government lawyers, it should be remembered, are legal apparatchiks—paid to take orders. As President Andrew Jackson reportedly said when faced with an Attorney General who had doubts about Jackson's actions concerning deposits of U.S. funds: "Sir, you must find a law authorizing the act or I will appoint an Attorney General who will." Or, as Senator Sam Ervin often reminded executive branch lawyers, "We have had thievery and homicide for thousands of years, but that does not make murder meritorious nor larceny legal."

The Saxbe opinion and the Nixon-Sampson "agreement" as to ownership are at most interesting historical oddities without legal validity. But even so, that still does not definitely settle the question of legal title to "presidential" or "White House" materials. That could, and should, best be done by congressional action under its Article IV power over the property of the United States.

Needed are two statutes. One, which should be enacted without delay, would vitiate the Nixon-Sampson "agreement" and place title where it belongs—in the government. If the former President contested that, a judicial ruling could then determine the question of legal title. Even if the courts ruled for Nixon, the papers and tapes could still be taken by eminent domain—provided of course, that the constitutional requirement of "just compensation" was paid. It is highly doubtful that the courts would rule against an express congressional decision. Further, there need be no worry that it be held to be an *ex post facto* law and thus invalid. Since *Calder* v. *Bull* (1798), it has been settled that the *ex post facto* prohibitions applies only to penal and criminal statutes.

The second statute should be long-range. The Presidential Libraries Act should be amended to provide that all documents officially produced by or for a President or Vice President are the property of the United States. Custody could, as now, remain with the National Archivist. Perhaps more presidential libraries could be built, although a valid reason for them is hard to find—other than the quest for symbolic immortality by chief executives. Just before he left office, Lyndon Johnson "raided" the executive branch, gathered millions of documents—some say as many as 75 million—for deposit in the Johnson Library in Austin, Tex. How most of those documents can be called "presidential" is completely mysterious. It is time to halt such a practice, and the imbroglio over the Nixon tapes and files provides an unparalleled opportunity to do so.

[From the New York Times, Oct. 3, 1974]

THE NIXON RECORDS

Clearing away the debris of the Nixon Administration is proving more difficult than cleaning up the Santa Barbara oil spill. A variety of questions relating to the former President's transgressions, records and upkeep are now making their tortured way through the Congress. A vote on the most important of these—the preservation of the Nixon records—is to come on the floor of the Senate today.

The measure up for Senate consideration is a commendable effort by the Government Operations Committee to modify the improvident agreement President Ford made with Mr. Nixon about White House tapes and papers. That agreement recognized Mr. Nixon's questionable claim of ownership of the materials and made access to them subject to his wishes, desires and assertions of legal right.

The principal aim of the proposed Senate bill is to give the United States immediate custody and control of the papers. It does not attempt to resolve questions of ownership or restitution, but it does provide for speedy judicial disposition of those questions.

The bill has two chief virtues. First, it forestalls transfer of custody of these records to Mr. Nixon. Second, it negates the provision of the Ford agreement permitting destruction of the White House tapes at the time of Mr. Nixon's death. Watergate questions that are left unanswered will haunt Americans through history. Preserving the records of the Nixon Administration is the first step toward answering those questions. The negotiations currently being carried on by Special Prosecutor Jaworski for access to the documents, are no adequate substitute for the Senate proposal. It should pass without delay.

[From the Washington Post, Sept. 30, 1974]

THE DISPOSITION OF THE TAPES

The Senate Government Operations Committee, acting with appropriate dispatch, has cleared a bill to override the arrangement allowing former President Nixon to determine the uses to which the tapes and other records of his presidency may be put and also to authorize their destruction. In so doing the committee has recognized the valid public interest in preserving this mass of documentation for prospective legal proceedings and for historical purposes. The Senate bill would put the tapes and other records in the possession and under the control of the government. Under the bill, the General Services Administration would keep and protect the materials and would be required to make them available to the Special Prosecutor and other litigants in accord with legal processes. Nothing could be destroyed without congressional permission.

In spelling out these elementary safeguards, the committee wisely sidestepped the thorny question of ownership of the materials. As Attorney General William Saxbe and others have argued, the papers of past Presidents have generally been regarded as their private property to be disposed of as they chose. However, the law is not explicit on this point, and the issue is now before a federal court in connection with two Watergate-related civil suits. Rather than trying to anticipate a judicial ruling, the Senate committee has proposed to place the tapes and other records in a form of official protective custody which would be consistent with either public or private ownership. As a precautionary step, the bill also provides for compensation to Mr. Nixon if a court should decide that this custodial arrangement deprived him of his property.

In these central respects, the bill would meet the potential needs of the Special Prosecutor and the system of justice. The committee went beyond that however, in an effort to respond to the widespread desire for a prompt public accounting of the full story of Watergate. Thus the panel approved two resolutions, sponsored by Senate Majority Leader Mike Mansfield, urging President Ford to provide full public access to all Watergate-related facts and the fruits of all pertinent investigations. The major bill, reaching even further, would require GSA to provide public access under reasonable rules to *all* the tapes and documents of the Nixon presidency, except where national security could be affected or individual's right to a fair trial might be impaired.

This is disclosure carried to a fault. It is one thing to believe, as we most assuredly do, that the rest of the discussions and documents relating to misconduct in the White House should be made public as soon as possible. There is a legitimate national interest in the airing of these facts. But it is something else to let the public rummage

through the confidential files of any presidency before partisan tempers have cooled and the passage of time has lessened the danger of reckless assaults on individuals' reputations. The records of the Nixon years, like those of other presidencies, should eventually become fully accessible—but in accord with traditional archival practices, not in a hectic, disorderly response to an unprecedented situation such as the one we are now in.

The Senate committee has not resolved every question about the future of the Nixon tapes and documents. The pending legislation would, however, insure that those decisions would be made by public agencies more detached than Mr. Nixon himself and better able than the White House staff to manage all of the details involved. Most important, the bill would solve the immediate problem of protecting potentially crucial evidence. Once the needs of justice have been served, Congress will have time to consider general legislation making the records of future presidencies public property from the start.

CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., October 3, 1974.

To: Honorable GAYLORD NELSON.
From: American Law Division.
Subject: Analysis of S. 4016, Presidential Recordings and Materials Preservations Act.

At the request of your staff, we are sending the enclosed report analyzing the provisions of S. 4016.

VINCENT E. TREACY,
Legislative Attorney.

CONSTITUTIONAL QUESTIONS RAISED BY S. 4016, A BILL TO PROTECT AND PRESERVE TAPE RECORDINGS OF CONVERSATIONS OF FORMER PRESIDENT NIXON

"Presidential Recordings and Materials Preservation Act", S. 4016, 93d Congress, 2d Session, introduced on September 18, 1974, is designed to protect and preserve the tape recordings of conversations of former President Richard M. Nixon made during his tenure as President. To summarize briefly, the bill would direct the Administrator of General Services to obtain, or, as the case may be, retain, all of the tapes which meet the description set forth in the bill, and all the historical materials associated with the Nixon Presidency. Destruction of the tapes and historical materials would be prohibited, except as provided by Congress. The Administrator is to issue regulations governing access to the tape recordings and historical materials, including national security safeguards and curbs on pre-trial publicity.

The bill recognizes the possibility that the tapes and materials affected may be personal property and therefore authorizes just compensation to be paid in an amount adjudged by a Federal court of competent jurisdiction. The bill also establishes Federal court jurisdiction for challenges to the legal or constitutional validity of its provisions.

Numerous objections can be raised against the bill: 1) that it operates retroactively in possible violation of the *ex post facto* Clause of the Constitution; 2) that it applies to one named individual in violation of the Bill of Attainder Clause; 3) that it supersedes the Nixon-Sampson Agreement of September 6, 1974, in violation of the Obligation of Contracts Clause; 4) that it takes private property for a public use without due process or just compensation in violation of the Fifth Amendment.

Dealing with these issues in turn, we turn first to the problem of retroactivity. The Constitution provides, in Article I, Section 9, Clause 3, that no *ex post facto* law shall be passed by Congress. The Supreme Court held in an early case that this clause is applicable only to criminal or penal statutes, and is inapplicable to other kinds of retroactive legislation. *Calder* v. *Ball*, 3 Dall. (3 U.S.) 386, 393 (1798). This clause prohibits statutes which render criminal an act which was innocent at the time it occurred, or which increase the punishment for an act. The proposed bill does not provide criminal penalties, nor attach punishment to any past acts. It therefore does not appear to violate the *ex post facto* clause.

The second objection is to the specification of former President Nixon by name. Article I, Section 9, Clause 3, also provides that no Bill of Attainder may be enacted by Congress. This clause prohibits Congress from inflicting punishment on any person or upon an easily ascertainable group or classified persons. Under this clause, the Supreme Court has struck down statutes which barred Communists from holding office or employment with labor unions, *United States* v. *Brown*, 381 U.S. 437 (1965); which forbade use of appropriated funds to pay three allegedly subversive Government employees, *United States* v. *Lovett*, 328 U.S. 303 (1946); or which required attorneys, as a condition to the practice of law, to take an oath that they did not take part in the rebellion of the Confederacy during the Civil War, *Ex parte Garland*, 4 Wall (71 U.S.) 333 (1867).

As in the case of the *ex post facto* objections, because the proposed bill does not impose criminal penalties or other punishment, it would not appear to violate the Bill of Attainder Clause.

The third objection arises from the provision of Article I, Section 10, Clause 1, that no state shall pass any law impairing the obligation of contracts. By its terms, this clause does not prohibit the Congress, as distinguished from the states, from impairing the obligation of contracts. *Continental Bank* v. *Chicago, R.I. & P. Ry. Co.*, 294 U.S. 648, 680 (1935). From an early date, the Supreme Court has read this limitation into the Fifth Amendment, holding that Congress cannot pass a law that destroys or impairs the lawful private contracts of citizens. *Calder* v. *Bull*, 3 Dall (3 U.S. 386, 388 (1798). This principle is limited, however, to acts which operate directly to impair contracts; Congress has authority to pass legislation pertinent to any of the powers conferred on it by the Constitution, even though the legislation operates collaterally or incidentally to impair or destroy the obligation of private contracts. *Continental Bank v. Chicago, R.I. & P. Ry. Co.*, 294 U.S. 648, 680 (1935).

While the right to sue for the enforcement of contracts between individuals and corporations cannot be taken away, a different rule prevails with respect to contracts of sovereigns. Contracts between the nation and an individual are only binding on the conscience of the sovereign and have no pretensions to compulsive force. *Lynch* v. *United States*, 292 U.S. 571, 580-81 (1934), quoting Alexander Hamilton, *The Federalist*, No. 81. Thus, a law which takes away the right to sue the United States on a contract does not impair the obligation of contracts, since the United States may not be used without its consent.

In the light of the above principles, the proposed bills would not impair the obligation of contracts with respect to the agreement entered into by Mr. Nixon and the General Services Administration. The bill would represent an action of Congress, within its inherent sovereign power of eminent domain, to protect and preserve materials in the public interest. Its effect on the Nixon-Sampson Agreement would be incidental and collateral, not direct. To the extent that property rights are embodied in that agreement, any objection must be grounded on the Fifth Amendment rather than on the Obligations of Contract Clause. It is therefore necessary to turn to the Fifth Amendment issues raised by the fourth objection to the bill.

A valid contract with the United States is property, and the rights against the United States arising out of such a contract are protected by the Fifth Amendment; the Due Process Clause prohibits the United States from annulling these rights unless such action falls within the Federal police power or some other paramount power, *Lynch* v. *United States*, (292 U.S. 571, 579 (1934)). Moreover, such property may not be taken without just compensation. Furthermore, there is strong, if not conclusive, legal support for the principle that the papers, tapes and other historical materials of a President are his personal property. See, *e.g.*, Legal Opinion of Attorney General Saxbe, Sept. 6, 1974, reprinted in the CONGRESSIONAL RECORD, page 31176, Sept. 16, 1974).

Accordingly, it is important to determine if the provisions of S. 4016 afford adequate protection for whatever property rights that former President Nixon may have, whether these property rights are found in the papers themselves or in the Nixon-Sampson Agreement concerning storage and disposition of the papers.

In this respect, the proposed bill would appear to afford adequate protection to President Nixon's property rights. Provision is made for a judicial determination of his property rights, and funds are authorized to be appropriated to pay just compensation in the amount which a court of competent jurisdiction adjudges. By using the constitutional term "just compensation," the bill leaves no doubt that Mr. Nixon is to be accorded a full and fair compensation for the impairment of his property rights. To the extent that the Sampson-Nixon Agreement embodies contractual property rights running to Mr. Nixon, the just compensation provisions would apply to any impairment of those rights.

Finally, it would appear that the court proceedings provided in the bill would accord sufficient procedural due process. It can be assumed that the court determination of the amount of compensation due to Mr. Nixon would be made after full hearing on the evidence as to the value of the materials. Proposed amendments to the bill would direct the Administrator of General Services to issue regulations governing claims of privilege, such as the Executive or Presidential privilege established in *United States* v. *Nixon* (U.S. Sup. Ct. No. 73-1766, July 24, 1974). And the bill provides expedited treatment for all legal and constitutional challenges to its provisions, by expressly granting jurisdiction to the U.S. District Court for the District of Columbia.

VINCENT E. TREACY,
Legislative Attorney,
American Law Division.

OCTOBER 3, 1974.

Mr. NELSON. Mr. President, I ask unanimous consent that Mr. Lew Paper, a member of my staff, have the privilege of the floor not only during the consideration of this bill and any subsequent resolution on this matter, but also during the course of the rollcall votes on these measures.

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

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. DOMENICI). The Senator from North Carolina is recognized.

Mr. ERVIN. Mr. President, during the hearings before the Senate Select Committee on Presidential Campaign Activities, uncontroverted testimony was presented relative to the existence of extensive tape recordings of conversations between Mr. Nixon and his various aides and associates in and out of Govern-

ment service. It was further revealed that many of these tape recordings, as well as related documents, memorandums, and other materials, which might be classified as the Presidential historical materials of Mr. Nixon, contained evidence pointing to the commission of various violations of Federal and State penal laws. This information was substantiated in many respects by the record of the impeachment hearings held by the Committee on the Judiciary of the House of Representatives and the subsequent recommendation that Mr. Nixon be impeached. (See H. Rept. 93-1305.)

Following revelations of alleged criminal conduct on the part of various White House aides, associates of Mr. Nixon, some Government officials and officers and employees of the Committee to Re-Elect the President, commonly known as CREEP, substantiated by the tape recordings, and other materials, indictments charging the commission of various crimes were obtained, based substantially on these tapes, and other materials. Thereafter, a number of the indicted individuals pleaded guilty; others were tried and convicted; and still others are now being tried or awaiting trial.

On September 8, 1974, the White House announced and published the text of an agreement, dated September 6, 1974, entered into between Mr. Nixon and Mr. Arthur F. Sampson, Administrator of General Services, concerning the disposition of the papers, tape recordings, and other materials, relating to the period of Mr. Nixons service as President of the United States.

The agreement, which was made pursuant to title 44, United States Code, section 2101, et seq., presumes that all materials relating to Mr. Nixon's tenure as President are his private property. Under its terms, Mr. Nixon stated that he would donate a substantial portion of these materials to the Federal Government at some time in the future, and that all of the materials shall be kept in the custody of the Federal Government at a storage facility near Mr. Nixon's home in California.

The agreement provided further that, first, Mr. Nixon would control access to the materials, and that any requests for access to them, whether by court subpena or other legal process, must be referred to him; second, Mr. Nixon has the right to withdraw any materials—except tape recordings—from deposit after 3 years from the date of the agreement, for any purpose; third, Mr. Nixon agrees to donate the tape recordings to the Federal Government on September 1, 1979, subject to the condition that all the tapes in the Government's custody "shall be destroyed at the time of Mr. Nixon's death or on September 1, 1984, whichever event shall first occur"; and fourth, in any event, Mr. Nixon can direct the Administrator to destroy any tapes Mr. Nixon chooses after the gift becomes effective in 1979.

Mr. President, before I outline the major provisions of this bill, I wish to emphasize the fact that this bill provides only for custody of the tape recordings, and other materials, and does not deal with the question of ownership.

The purpose of S. 4016, as amended, is to: First, protect and preserve tape recordings of conversations, and other materials, recorded or prepared in the White House, the Executive Office Building, and certain other specified places, between January 20, 1969, and August 9, 1974; second, make them available for use by the Special Watergate Prosecution Force; and for ultimate access by the public, under regulations governing access to be promulgated by the Administrator of General Services, who would be required to receive, obtain or retain custody and control of such tapes and other materials; third, require that custody of the tapes and other materials be maintained in Washington, D.C.; and fourth, make all of these materials available to Mr. Nixon, or his designee, for any purpose and at all times, consistent with regulations promulgated by the Administrator for their safety and security.

In order to accomplish these objectives, the bill, as amended, directs the Administrator of General Services, notwithstanding the agreement or understanding he entered into with former President Nixon on September 6, 1974, pursuant to section 2107 of title 44, United States Code, or any other law, to receive, obtain, or retain complete possession and control of all tape recordings of conversations, and all papers, documents, memorandums, and transcripts which meet certain stated conditions.

With respect to tape recordings, the committee amendment covers all recordings of conversations recorded or caused to be recorded by a Federal officer or employee between January 20, 1969, and August 9, 1974, which, first, involve former President Nixon and/or others who, at the time of the conversations, were Federal employees; and second, were recorded in the White House, the Executive Office Building in Washington, D.C.; Camp David, Md.; Key Biscayne, Fla.; and San Clemente, Calif.

The papers, documents, memorandums, and transcripts are those which constitute the Presidential historical materials of Mr. Nixon, as defined in section 2101 of title 44, United States Code, covering the period between January 20, 1969, and August 9, 1974.

In order to insure the safety, preservation, and availability of the tape recordings, and other materials, the bill, as amended, provides that, first, they cannot be destroyed except as the Congress may provide; second, the Administrator of General Services is required to issue, at the earliest possible date, such reasonable regulations as may be necessary to insure their protection from loss, destruction, or access by unauthorized persons; and third, except as may otherwise be necessary to carry out the purposes of this act, custody of all such materials must be maintained in Washington, D.C.

In order to insure their availability for use in judicial proceedings, including court subpena and other legal process, prior to the effective date of the Administrator's regulations governing access thereto, all of the tape recordings, and other materials, are required to be made available, for such uses, subject to any rights or privileges which any party may invoke, immediately upon the date of enactment of the act; and requests for access to them by the Special Watergate Prosecution Force are specifically given priority over any other requests.

As previously noted, in order to insure their availability *for use* by Mr. Nixon, or any party whom he may designate in writing, all of the tape recordings, and other materials, must be made available to him, or his designee, at all times and for any purpose, subject only to the Administrator's safety and security regulations.

In order to protect Mr. Nixon's property, or other legal rights, if any, in the tape recordings and other materials, the bill, as amended, provides two specific remedies: First, it authorizes payment of just compensation, from funds in the general fund of the Treasury, to any individual found by a Federal court of competent jurisdiction to have been deprived of private property by the provisions of this act; and second, it vests in the U.S. District Court for the District of Columbia exclusive jurisdiction to hear challenges to the legal or constitutional validity of any provision of this act. It provides further that such challenges shall be heard by a three-judge court, with the right of direct appeal to the U.S. Supreme Court, and requires that such challenges shall be treated by both courts as priority matters to be given immediate consideration and resolution.

Finally, the bill, as amended, requires the Administrator of General Services to submit to the Congress within 90 days after the enactment of this act, a report proposing and explaining regulations governing access to the tape recordings, and other materials, and provides that they are to take effect upon the expiration of 90 days following their submission to the Congress.

It is further provided that these regulations must take into account the following factors:

First, the need to provide the public with the full truth, at the earliest reasonable date, of the abuses of governmental power, popularly identified under the generic term, "Watergate";

Second, the need to make the tape recordings, and other materials, available for use in judicial proceedings;

Third, the need to prevent general access, except for use in judicial proceedings, to information relating to national security;

Fourth, the need to protect every individual's right to fair and impartial trial;

Fifth, the need to protect any party's opportunity to assert any legally or constitutionally based right which would prevent or otherwise limit access to the tape recordings;

Sixth, the need to prevent unrestricted access to tape recordings, and other materials, which are unrelated to the need to provide the public with the full truth concerning "Watergate" abuses of governmental power; and

Seventh, the need to give to Mr. Nixon, or his heirs, for his sole custody and use, tape recordings, and other materials, which are unrelated to the "Watergate" abuses of governmental powers and are not otherwise of historical significance.

After the report on S. 4106 was filed, the General Services Administration requested a conference with the committee staff in order to clarify and improve certain provisions of the bill. Thereafter, representatives of the committee staff and the staff of Senator NELSON, sponsor of the bill, met with representatives of the General Services Administration and agreed upon a number of amendments which I have offered as committee amendments.

All but two of these amendments are technical and perfecting in nature and do not require any discussion. The two substantive amendments are important and merit an explanation.

The first of these is an amendment to section 3 which adds a new subsection (c), as follows:

Richard M. Nixon, or any party whom he may designate, in writing, shall at all times have access to the tape recordings and other materials referred to in section 2 of this Act for any purpose, subject to the regulations which the Administrator shall issue pursuant to section 5 of this Act.

The purpose of this amendment is clear on its face. It is designed to insure that Mr. Nixon, or his designees, will at all times have access to the tape recordings and other materials, subject only to the safety restrictions which the Administrator of General Services is required by section 5 of the bill to issue in order to insure the protection of the tapes and other materials from loss, destruction, or access to by unauthorized persons. In this connection, I point out that one of the perfecting amendments requires that these regulations be issued by the Administrator at the earliest possible date. I point out further that this provision is entirely consistent with the basic premise of this bill—that the public interest requires protective custody of the tapes and other materials and there is no intent to deal with their ownership. It was originally contained in paragraph (4) of section 6 as an item to be included in the regulations. It was decided that this provision more properly belonged in the law rather than in a regulation.

The second substantive amendment would delete the present section 6 and insert in lieu thereof a new section 6, as follows:

SEC. 6 (a) the Administrator shall, within 90 days after the enactment of this Act, submit to the Congress a report proposing and explaining regulations governing access to the tape recordings and other materials referred to in section 2 of this Act. Such regulations shall take into account the following factors:

"(1) the need to provide the public with the full truth, at the earliest reasonable date, of the abuses of governmental power, popularly identified under the generic term, "Watergate";

"(2) the need to make the tape recordings and other materials available for use in judicial proceedings;

"(3) the need to prevent general access, except for use in judicial proceedings, to information relating to the Nation's security;

"(4) the need to protect every individual's right to a fair and impartial trial;

"(5) the need to protect any party's opportunity to assert any legally or constitutionally based right which would prevent or otherwise limit access to the tape recordings and other materials;

"(6) the need to prevent unrestricted access to tape recordings and other materials unrelated to the need identified in paragraph (1) above; and

"(7) the need to give Richard M. Nixon, or his heirs, for his sole custody and use, tape recordings and other materials which are unrelated to the need identified in paragraph (1) above and are not otherwise of historical significance.

"(b) The regulations proposed by the Administrator in the report referred to in subsection (a) above shall take effect upon the expiration of 90 days after the submission of that report to the Congress."

The proposed new section 6 is essentially similar to section 6 of the bill, as reported, in that it requires the Administrator of General Services to prepare regulations governing access to the tape recordings and other materials, and lists the matters to be included therein. It differs, however, in the following respects:

First, through a clerical error, the reference to "other materials," in addition to the tape recordings, was omitted from the bill, as reported. The new version corrects this error.

Second, the bill, as reported, required that the Administrator of General Services issue regulations governing access to the tape recordings without specifying either a time limit for their promulgation or submission to the Congress. The new version requires the Administrator to submit to the Congress a report proposing and explaining the regulations governing access to the tape recordings and other materials within 90 days after enactment and provides that they are to take effect upon the expiration of 90 days following their submission to the Congress.

The 90-day period was agreed to by the General Services Administration as representing a reasonable period of time within which to formulate the required regulations. The requirement for submission to the Congress, and the 90-day period prior to their effective date, is intended to afford the Congress a reasonable opportunity to determine whether the proposed regulations are acceptable.

Third, the new version places additional emphasis on, first, the need to provide the public with the full truth at the earliest reasonable date, with respect to Watergate abuses of governmental power; second, the protection of every individual's right to a fair and impartial trial; third, the protection of any party's opportunity to assert any legally or constitutionally based right which would prevent or otherwise limit access to the tape recordings or other materials; and, fourth, the need to insure to Mr. Nixon, or his heirs, the right to have sole custody or use of tape recordings and other materials which are unrelated to Watergate and are not otherwise of historical significance. This last item is designed to make certain that the Administrator's regulations will not in any way impair Mr. Nixon's right to sole custody of various categories of personal memorabilia which are of no public interest or concern.

Mr. President, I should like at this point to make a few additional observations.

When this bill was before the Committee on Government Operations, it was suggested that perhaps we ought to have permanent legislation which would apply to the official records made or maintained by any elected Federal official.

It was agreed by the Government Operations Committee, which reported this bill originally, that it would be unwise to attempt permanent regulation of all official records of all elected Federal officials in a summary fashion at this time.

The committee members present at the markup session on the bill agreed that the Government Operations Committee would take up the question of the desirability of making the official records of all Presidents, Vice Presidents, Senators, Congressmen, and other elected officials, such as delegates to Congress, the property of the Federal Government. I think that such legislation is wise, but I think it would be a mistake to put too heavy a burden on one little nag because you might break down that one little nag. This bill really deals with an emergency situation, because some of these documents are needed in the courts and by the general public in order that they might know the full story of what is known collectively as the Watergate affair.

This legislation provides that in the event of the untimely decease of former President Nixon that none of the tapes would be destroyed.

Now, I favor permanent legislation because I have a conviction that in equity and in good conscience all the official records made by an elected Federal official, at the expense of the taxpayers, while he is occupying a Federal office, and which would not have been made except for his occupancy of that Federal office, ought to be regarded as public property and placed in some place where they would be accessible to the public, such as the Archives or the Library of Congress or in the custody of some university or institution of learning which would grant access to those documents under reasonable regulations to persons interested in historical research or other matters of that kind.

This bill is a fair bill. This bill does not undertake to deal with the question of ownership. This bill recognizes that there is a substantial controversy as to whether Presidential papers of an official nature become the private property of the President after he ceases to hold office or whether they are the property of and belong to the public. It leaves that matter to be determined not by Congress but by a judicial proceeding. It expressly provides that if the courts should decide that these records of former President Nixon are his personal records, the Federal Government will pay to him just compensation as required by the Constitution in cases where the Federal Government takes under its power of emminent domain private property for public use.

I think it is a fair bill. I think it pro-

tects the national security. It is the kind of bill we need under the present circumstances.

I sincerely hope that the Senate will pass this bill without delay.

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

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

Mr. DOMENICI. I wonder if I can ask the distinguished Senator from Wisconsin some questions. I have been listening attentively to both the discussions by the distinguished Senator from Wisconsin and the distinguished Senator from North Carolina.

First, might we refer to section VI, 1, which is, as I understand it, that provision which seeks to give the public, as it states there, there is a need to provide the public with full truth at the earliest possible date of the abuses of governmental power, and then we proceed to define that, popularly identified, under the generic term Watergate.

Now I ask the distinguished Senator if my understanding is correct, basically the Senator is saying to the General Services Administration, "We established this as a public need under this bill and we give you 90 days to promulgate rules as to how we can carry out the effect"—and I am referring now only to Arabic number 1.

It seems to me that we are asking the General Services Administration to do a couple of things and one of them kind of disturbs me.

I think it will be easy for them to establish access-type rules and regulations, and that is one of their functions throughout this bill, and obviously with reference to that Arabic 1, the need for the public to get the facts.

I would assume that they could establish a procedure for accessibility.

But now I ask the distinguished Senator, just from what I know it appears to me that there are going to be volumes of documents and reams of tapes, that someone is going to have to make a determination as to whether or not they contain information, whether or not they contain information——

Mr. NELSON. I wonder if the distinguished Senator will yield for a moment.

Mr. DOMENICI. I yield.

Mr. NELSON. The amendment which was adopted some moments ago was proposed by the distinguished Senator from North Carolina although I would be happy to undertake to answer the question, now that the proponent of the amendment has come into the room I think it would be more useful to address the questions to the distinguished Senator from North Carolina, if the Senator would not mind.

Mr. DOMENICI. I am delighted.

Mr. ERVIN. I think it gives a little too much credit, but these amendments were drafted largely at the suggestion of Senator NELSON, Senator JAVITS, and myself with the aid of their staffs and the staff of the Government Operations Committee.

All of these amendments, except two or possibly three, are really clarifying amendments. The bill provides that the custody of the tapes and materials taken by the GSA be under the control of the Administrator of the General Services Administration. The Administrator informed us, after the bill had been approved by the full committee, that he needed some time to prepare regulations. So we put in a provision giving him 90 days, and then providing that the regulations would not become effective until 90 days later, after they had laid before Congress for 90 days.

We specified the things that had to be covered in the regulations.

I will be glad to answer the Senator's questions.

Mr. DOMENICI. I thank the distinguished Senator for calling this to our attention, that it is a collective product, not a product only of the Senator from North Carolina.

Let me start over with my question. I think if I were the head of the GSA, I would have a very difficult time with one of the sections.

In good faith, I would like to get the Senator's idea of what we expect of the Administrator.

If the Senator would follow me for a moment, I will try to be very specific.

In section 6 the bill refers to the Administrator, 90 days after the enactment of this act, shall submit this report to Congress proposing and explaining regulations covering access to the tapes and materials.

He proceeds to say "The regulations shall take into account the following factors."

I would like to talk for a moment with the Senator about No. 1, the need to provide the public with the full truth at the earliest reasonable date of abuses of governmental power, popularly identified under the generic term Watergate.

I can understand how this 90-day promulgation of regulations will be easily administered in terms of access once we have determined which of the materials are popularly identified under the generic term Watergate. So I do not think the GSA has any trouble in reporting back to us within the 90 days how it will be made accessible.

A have a little bit of trouble understanding the GSA's power and duties in determining which of the materials is popularly identified under the generic term Watergate.

I ask the Senator, does he have in mind that perhaps the GSA would report to us that there is a screening mechanism that they will put into effect to make such determination, or do we intend that the GSA, which is not typically this kind of agency, be the one to go through and determine which of these come within this definition?

It would seem to me that they could mostly certainly report back in the 90 days an accessibility regulation, and also a game plan, so to speak, an approach for determining which of this mass comes within that which the public should have access to that is popularly identified under the generic term Watergate.

Mr. ERVIN. To answer that question, the committee staff and representatives of GSA discussed that, and the GSA said they would call upon the National Archives to assist them in that undertaking.

Mr. DOMENICI. The National Archives would do the screening?

Mr. ERVIN. They would advise him as to what would be considered the generic term "Watergate." Also, they would call upon the Special Prosecutor's office to help them, because the Special Prosecutor has dealt with so many of these things in cases which have been processed and cases which are awaiting trial.

Mr. DOMENICI. The Senator is indicating that the bill really intends that of that material delivered to the GSA, that truly only that which is popularly identified under the generic term "Watergate" be given full public access?

Mr. ERVIN. Yes. I think another very significant thing which is in writing in this connection, which would be a very good guide for them to follow, is the authority which was given the Special Prosecutor by the Attorney General as to the kinds of cases that he could bring. I think that, along with the help of the National Archives, would make it not too complex a job for the Administrator of the General Services Administration.

I might state that the purpose of this was to exclude access by the general public to matters to which access should be limited. In other words, the theory of the bill is that Government ought to keep only those materials which relate to Watergate and matters of historical importance; all things that were essentially personal would be returned to the former President.

Mr. DOMENICI. I do ask this in good faith, because certainly in the 90 days when they send us back their proposal we ought to understand how they are going to go to screen and then make this available to the public. If I understand the Senator correctly, we are not talking about limiting in terms of the Special Prosecutor—there are other provisions there about him—but they are to protect them for his rights, for access, subject to the court intervention as to privilege, or the like?

Mr. ERVIN. Yes.

Mr. DOMENICI. But this particular section says the public needs the information about Watergate, this one section.

Mr. ERVIN. Yes.

Mr. DOMENICI. So the General Services Administration has a very difficult and special responsibility here to give us a procedure whereby they will screen it, and a procedure whereby it will be made accessible to the public. Is that correct?

Mr. ERVIN. That is correct. In determining Watergate matters, they would have the guidelines laid down as to what the authority and jurisdiction of the Special Prosecutor was, and they would also have the expertise of the Na-

tional Archives in making this determination.

Mr. DOMENICI. They might be telling us that when they propose the regulations?

Mr. ERVIN. Yes. In the regulations they could set out——

Mr. DOMENICI. This kind of an approach?

Mr. ERVIN. Yes.

Mr. DOMENICI. I thank the Senator.

Mr. ERVIN. I thank the Senator for a very illuminating question.

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

The PRESIDING OFFICER (Mr. DOMENICI). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. PERCY. Mr. President, I congratulate the sponsors of this legislation, particularly Senators NELSON, ERVIN, and JAVITS, as well as our distinguished majority leader, for their efforts in giving the Senate an opportunity to safeguard the tapes and documents of the Nixon administration. The agreement between Mr. Nixon and Mr. Sampson, the Administrator of General Services, is contrary to the public interest, and very possibly, contrary to law. Immediate action on the part of the Congress is called for, and that is what we are doing today.

I need not elaborate on the provisions of this bill, which have been discussed and explained already. However, I feel that it is my responsibility to raise the broader issue of the ownership of papers and documents produced by all elected Federal officials. The legislation before us deals only with the custody of the papers and tapes of one elected official—former President Nixon. I want to raise the broader issue of the ownership of the papers and material generated by all Federal elected officials.

When an elected official generates documents in the course of his official duties, and here I am speaking only of Federal officials, though the principle applies to State officials as well, those documents are the property of the public whom he was elected to serve. These documents are prepared by public employees, on paper paid for by the public, typed on machines paid for by the public, for the use of a public official in the course of his duty to serve the public. It does not make sense to say that such papers are the private property of the elected official.

I would like to take this opportunity to raise this broader issue. I was prepared to offer my amendment No. 1926, with the cosponsorship of other Senators, which would have resolved this problem; but I am reluctant to do so because it might in some way prejudice the speedy enactment of this measure. But I would like to discuss that amendment, and I am going to call upon the chairman of the Committee on Government Operations in just a moment, when I finish my comments, to comment and to get his judgment on the intended purpose of this amendment.

First, I want to give credit to the distinguished Senator from Indiana (Mr. BAYH), who introduced S. 2951 in February of this year. That legislation, which is now pending in the Government Operations Committee, is intended to establish by law the principle of public ownership. Building on the language of that important initiative and having elaborated on it somewhat, along with Senators BAYH, RIBICOFF and CHILES, I have submitted amendment No. 1926.

This amendment would add a new title to the pending legislation and would establish that the papers of all elected officials—Presidents, Vice Presidents, Senators and Representatives—are to remain in the public domain. It would do this by stating very simply that "public documents of elected officials are the property of the United States." I am addressing myself only to Federal elected officials. "Public document" is defined to mean any documents or other materials which have been retained by an elected official, and "which were prepared for or originated by such individual in connection with the transaction of public business during the period when such individual held elective office and which would not have been prepared if that individual had not held such office."

Obviously, it is not the intention to retain as public documents such private correspondence as an elected official happens to carry on while he is in office. But if it is done in connection with his official duties and would not have been carried on if he had not been elected to Federal office, then it would be so classified.

Once an elected official leaves office, he can designate a trustee to be the depository for his public documents.

This trustee can be a library, an educational, historical or not-for-profit institution, or any Federal or State institution, such as the Archives. If, within 180 days of an elected official leaving office, he has designated no such trustee, then the Administrator of GSA is to deposit the public documents in the National Archives.

Because of the fact that some material in the files of an elected official may be potentially embarrassing to someone, or because some information should remain confidential, the elected official and the trustee, subject to the approval of the Administrator, may enter into an agreement which would restrict public access to certain materials. But any such agreement could restrict public access no longer than 25 years after the individual leaves office, or at his death, whichever occurs later. However, if a court orders that a document covered by such an agreement be produced for the use of that court, then the agreement would not apply. Of course, classified material or other material required to be kept secret by law would have to conform to the law.

As I indicated, I will not call up my amendment, because I feel that S. 4016 should pass the Senate quickly and unencumbered and be sent to the House. But I would like to receive, and would appreciate very much receiving, on this broader general question, the judgment of the distinguished chairman of the Committee on Government Operations. Even though he would not be here next year, if the hearings were held next year, I think that, as committee members, we certainly would respect his judgment as to whether at a very early date, the earliest possible date, hearings should be held on this broader issue, on the general principle that what is good for the goose is good for the gander.

If we are going to legislate in the executive branch of the Government and affect the President of the United States let us look at ourselves and see whether or not the present practice, which enables a Senator and a Representative to pull up a truck up against the office building and haul away everything in his files, is not contrary to public policy now. The principle should be established here and now, or as quickly as we can, but not on this bill since it would only encumber it.

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

Mr. PERCY. I yield.

Mr. NELSON. Mr. President, I should like to associate myself with the remarks of the distinguished Senator from Illinois.

I do not think there is any doubt that papers accumulated by elected public officials, acting in their official capacity, properly belong to the public and ought to be turned over to a public institution or otherwise placed under the control of the Government as a trustee for the public.

I was glad to note that the Senator suggested that the public official could designate a nonprofit organization. In my State, for the entire length of my memory, every Governor—including myself, after I left office—has turned over his papers to the Wisconsin Historical Society, which is an historical society with a very fine reputation nationwide. It is important that public officials be authorized, as the Senator suggests, to turn their papers over to libraries in their own States or elsewhere.

I believe this is an important matter for us to address ourselves to early next year, and I know that the Senator from Illinois and the Senator from North Carolina (Mr. ERVIN) have expressed that that should be done.

Sitting up particular standards and methods may be a little complicated. But there is an urgency in the situation now before us. Under the existing agreement between the GSA and Mr. Nixon, if Mr. Nixon died tomorrow, those tapes—if I read the agreement correctly—are to be destroyed immediately; it is also possible that the Nixon papers could be destroyed by 1977. This would be a catastrophy from an historical standpoint.

I agree completely with the Senator from Illinois, and I think his concept is correct. I am certain that Congress, early in the next session, will be able to address itself to this question and develop a piece of legislation which is urgently needed.

Mr. PERCY. Mr. President, I thank the distinguished Senator.

I yield to the chairman of the Committee on Government Operations.

Mr. ERVIN. Mr. President, I join the distinguished Senator from Wisconsin in saying that I agree completely with the position taken by the distinguished Senator from Illinois.

We discussed this matter in the committee, and it was the consensus of the committee that we should not add an amendment of this kind to the pending bill, but that we certainly should have hearings on the proposal of the Senator from Illinois at the earliest possible moment.

Senator RIBICOFF, who in all likelihood will succeed to the chairmanship of the Government Operations Committee, stated during the colloquy among the committee members in discussing this point that if the people of Connecticut returned him to the Senate and he became the chairman of the committee—as he is in line to become—he would see that hearings were held.

In the event that a member of the present majority party does not become chairman of that committee, the distinguished Senator from Illinois would be in line for the chairmanship, and I am sure that he favors the proposition he has mentioned.

I agree with the consensus of the members of the committee, when we finally reported the bill, that it would be inadvisable to put too much baggage on one nag if we wanted to make that one nag make a swift journey.

I think the provisions of the proposal of the Senator from Illinois are very wise. They would take care of all the contingencies I can think of that can arise. I particularly like the provision that allows a Senator or a Representative to designate the repository of his official papers, with the understanding that they will be accessible to the public after a reasonable time, not to exceed 25 years.

I went so far as to volunteer to come back and testify in favor of legislation of this kind at a hearing before the Government Operations Committee.

I wish to take this occasion to say that one of the most pleasant experiences in my life, notwithstanding the fact that it entailed a lot of hard work, has been serving the past 2 years as chairman of the Senate Committee on Government Operations. I wish to pay especial tribute to the distinguished Senator from Illinois and the distinguished Senator from New York (Mr. JAVITS), who sit on the opposite side of the aisle in this body, but there was no opposite side of the aisle in the committee.

I think the committee brought forth some very fine legislation, which they were particularly helpful in formulating, along with other members of the committee. There was never any partisanship. There was nothing but a bipartisan basis at all times, and everybody cooperated wholly in trying to formulate good and wise legislation.

In all of the 20 years of my experience on Senate committees, I have never seen any committee exhibit in more magnificent fashion the legislative process working at its best than did the Committee on Government Operations. I give the Senator from Illinois a substantial amount of credit for that having been true.

I am glad that the Senator will not press his amendment. I hope the Congress will enact it into law at the next session.

Mr. PERCY. Mr. President, I thank my distinguished colleague. I wish simply to say that he has, in his gracious way, mentioned even miracles, that the minority could become the majority. Certainly, if I did succeed to the chairmanship of the Committee on Government Operations and believed in miracles, we would certainly have hearings on this matter and call, as our very first witness, our distinguished past chairman.

I very much appreciate the assurance that has been provided through our chairman with respect to the intentions of Senator RIBICOFF should he become chairman. I shall look forward to early hearings then.

I shall not call up this amendment, because I do not wish to encumber or in any way delay enactment of this bill which I, once again, commend as well as our distinguished chairman and his role in drafting it. I pay particular tribute to Senator NELSON for his authorship of the bill and to Senator JAVITS for his cosponsorship. I thank my distinguished colleague and commend the legislation before us.

Mr. ERVIN. If the Senator has not done so, I think it would be well for him to insert in the RECORD his amendment in the form of a proposal so that the public may be apprised of it and know the reason why he did not press it.

Mr. PERCY. Mr. President, I ask unanimous consent that amendment No. 1926 be printed at the conclusion of my comments.

The PRESIDING OFFICER (Mr. WILLIAM L. SCOTT). Without objection, it is so ordered.

(See exhibit 1.)

Mr. PERCY. Mr. President, I should like also to commend the staff of the Committee on Government Operations, which has always cooperated in a bipartisan spirit. It has been one of the most magnificent staffs I have ever worked with. I think its inspiration comes from the chairman.

EXHIBIT 1

At the end of the bill, add the following:

TITLE II

SEC. 1 (a) Title 44, United States Code, is amended by adding at the end thereof the following new chapter:

"Chapter 39—PUBLIC DOCUMENTS OF ELECTED OFFICIALS

"Sec.
"3901. Definitions.
"3902. Public documents of elected officials.
"3903. Preservation of public documents.
"3904. Agreements limiting access to public documents.
"3905. Judicial review

"3901. Definitions

"For purpose of this chapter—

"(1) 'elected official of the United States' means the President, Vice President, Senator, and Member of (or Resident Commissioner or Delegate to) the House of Representatives, including any individual holding such office for any period by reason of appointment to such office or succession to such office; and

"(2) 'public documents' means, with respect to an elected official of the United States, the books, correspondence, documents, papers, pamphlets, models, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other objects or materials retained by an individual holding elective office under the United States and which were prepared for or originated by such individual in connection with the transaction of public business during the period when such individual held elective office and which would not have been prepared if that individual had not held such office; except that copies of public documents preserved only for convenience of reference, and stocks of publications and of public documents previously processed under this title are not included.

"§ 3902. Public documents of elected officials

"Public documents of elected officials are the property of the United States. Subject to the requirements of sections 3903 and 3904 of this title the Administrator of General Services shall obtain any objects or materials of each elected official of the United States who ceases to hold office and is no longer an elected official of the United States which the Administrator determines to be public documents within the meaning of section 3901(2) of this title, and such elected official shall transmit such documents to the Administrator. The Administrator has final authority with respect to the disposition of such documents.

"§ 3903. Preservation of public documents

"(a) The Administrator of General Services shall deposit in the National Archives of the United States the public documents of each elected official of the United States obtained under section 3902 of this title unless such official designates an alternate depository in accordance with the provisions of subsection (b) of this section.

"(b) An elected official of the United States may designate a trustee to be the depository for the public documents of such official. Such trustee may be a library, or educational, historical, or not-for-profit institution, or a State or Federal institution. The Administrator of General Services shall transmit such documents to the trustee so designated at the earliest practicable time after the date on which such trustee is designated as trustee, except that the Administrator shall not transfer any such document if such document is the subject of compulsory process in any court proceeding until such time as such proceeding has been concluded.

"(c) (1) If any public official fails to designate a trustee under the provisions of subsection (b) of this section within one hundred and eighty days after such official is no longer an official of the United States, the provisions of subsection (a) of this section shall apply.

"(2) Upon transfer of the public documents of an elected official of the United States to a trustee designated under the provisions of subsection (b) of this section any request for access to any such document, including any subpena issued by any court, shall be made to such trustee. Upon a finding by the trustee that access to any such document would violate any agreement made pursuant to section 3904 of this title, the Administrator of General Services shall, at the request of such trustee, take such action as may be necessary to determine whether such request shall be granted.

"§ 3904. Agreements limiting access to public documents

"An elected official of the United States may enter into an agreement with respect to granting public access to the public documents of such official with the Administrator, or in the case of any such official who has designated a trustee under section 3903

(b), may enter into an agreement with respect to public access to any such document with such trustee subject to the approval of the Administrator. In addition to any other materials required to be kept from public disclosure by law, any agreement under this section may provide for such limitations on public access to such documents as may be necessary to protect confidentiality of communications or to save embarrassment to any individual, except that no such agreement shall provide for restrictions on access for any period in excess of twenty-five years from the date on which such official ceases to be an official of the United States or upon his death, whichever occurs later. No such agreement shall have any effect on any subpena issued by any court for the production of any such document.

"§ 3905. Judicial review

"A decision by the Administrator of General Services that any object or material is a public document of an elected official of the United States within the meaning of section 3901(2) of this title shall be a final agency decision within the meaning of section 702 of title 5.".

(b) The table of chapters, preceding chapter 1 of such title 44, is amended by adding at the end thereof the following:

"39. Public Documents of Elected Officials ---------- 3901".

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unnanimous consent that the order for the quorum call be rescinded.

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

Mr. JAVITS. Mr. President, is there any time limitations on the bill?

The PRESIDING OFFICER. There are no time limitations.

Mr. JAVITS. Mr. President, I wish to address myself to the general challenge which the Senate faces on this bill. But first, Mr. President, I wish to salute the initiative of the majority leader, with whom I had the privilege of associating myself; second, to pay every credit to the urgency with which the chairman of our committee, Senator ERVIN, and the ranking member, Senator PERCY, addressed themselves to the problem so that the day after this legislation was introduced, the committee actually reported out a bill.

Third, I give credit to the fine initiative of Senator NELSON in presenting us with the original bill, which Senator ERVIN and I cosponsored.

Fourth, I should like to thank the committee for adopting the several changes which I suggested in our committee markup and in our further discussions prior to our consideration of the bill today. We seek today to preserve potentially crucial evidence until the needs of justice have been served. Because Senator PERCY has just expressed his view, which he also voiced most eloquently in the committee, that this ought to be a bill of universal application, I wish to say that I feel the same way. Indeed, when Senator MANSFIELD made his speech here, I was on my feet to suggest that I was going to introduce generic legislation to cover all Presidents.

Senator PERCY and Senator BAYH, whose model he is following, are seeking to extend the principle of this bill to include all Members of Congress. I can speak to this issue because I have already, myself, determined to donate all my papers, with no tax deductions, to my own alma mater, New York University. I add also that my former colleague in this office, Senator Goodell, I understand, has already donated his papers to the New York Public Library.

I can assure the Senate that my accountants told me the very same thing that former President Nixon's accountants and counsel told him, that it was a very good tax deductible item.

I felt that my papers had been gained in the public service, were an element of the public service, and that I owed them to the public without personal benefit to me. So, all of us have been animated by the same feelings and objectives.

The question is can we and shall we go forward with a generic bill, or shall we confine this bill to the papers which ex-President Nixon has in being, considering the state of the law? My judgment is as follows. One, the fact is that we are not in a hypothetical situation at the moment, but in a situation with an extended number of pending criminal investigations and proceedings and a Special Prosecutor of the United States who is charged with the responsiblity to prosecute the most serious cases arising out of one of the most extraordinary scandals in our Nation's history. A unique national emergency has been created, with reference to a particular President's official papers. The courts have in the past recognized unique situations as they are now in this particular situation, and authorized Government action analogus to what we seek to do in this bill.

Second, Mr. President, it is the fact that by the authority of the President, an agreement has already been entered into with respect to these papers between the Administrator of the GSA and former President Nixon, so that if anything is to be done about that agreement, it has to be done by law, obviously, and the law must stand constitutional tests.

Third, Mr. President, we not only need a law, we need one that is going to be passed now, because certain rights affix to these papers under that agreement, which, unless we stay the movement of events, may very well fix and prejudice what we, as a Congress, and, with the President's concurrence, as a country, think ought to be done about these papers.

Therefore, Mr. President, I think we have a very strong case. We are going right ahead with this bill as reported out by the Committee on Government Operations, allowing Senators who choose to do so to move to substitute or amend.

Indeed, Senator ERVIN, Senator NELSON, and I have offered several strengthening amendments which we proposed this morning dealing with certain aspects of the bill, and the need to confine the bill to the existing urgency, and then to pledge ourselves to proceed.

We are all resolved to deal with the more general question of ownership of all official papers—congressional as well as Presidential. I am sure, Sentaor ERVIN has or will pledge, as will Senator PERCY, and as will I.

Now, Mr. President, the bill addresses itself to the question of control and custody of these papers. It says that such custody should be in the United States. Considering all the pending criminal cases, and bearing in mind that the former President himself is involved in those pending criminal cases, either as a witness or, as the grand jury said, as an unindicted conspirator, the bill is most reasonable. We are not making those findings, the grand jury has done so already.

Second, Mr. President, the bill does not resolve questions of ownership. We were very careful about that. It simply sets up an expedited procedure by which that question may be resolved. If the papers and tapes are truly public property, then Congress is exercising its power under the Constitution to control public property. If they are the former President's private property, then, because of the exigencies of the case constituting an important public purpose, Congress may take protective custody of them for that important public purpose and will provide just compensation, if the courts determine that such is required.

Third, I am very much interested in the opinion upon which President Ford acted—and no one here is challenging the President's good faith or his interest in seeing that the ends of justice be served. I find, in the opinion which the Attorney General has himself given, the following statement. He says:

> Historically there has been consistent acknowledgement that presidential materials are specially affected by a public interest which may justify subjecting the absolute ownership rights of the ex-President to certain limitations, directly related to the character of the documents as records of government activity.

That is in the opinion of the Attorney General given to the President dated September 8, 1974. He then goes on to quote the case of Folsom against Marsh, in order to sustain that proposition, and then goes on to refer to the criminal code as applying that concept, even though the papers may continue in the possession of a former President, citing the precedent in Franklin D. Roosevelt, Sr.'s time.

If the court determines that the papers and tapes are Mr. Nixon's private property, the bill takes care of that contingency through exercising the right of eminent domain over any property right, whether in whole or in part. Even in our bill, there is no question about trying to challenge a property right. What we are dealing with is custody and control, and dedication to a public use, rather than actual ownership. We may or may not be found right on that score, but that is not germane to the issue in this bill, or to its purpose, because all the bill provides is that the tapes and papers shall not be destructible at some given time, as is contained in the agreement with the ex-President, but that they should be made continuously available, and that the Special Prosecutor shall receive priority.

So the protection which I have just described is one protection which does

not challenge the property right, and even itself is subject to consideration in the courts.

There is a further excellent safeguard in the requirement of a report, which must be submitted to Congress within 90 days, proposing and explaining regulations which may be issued by the GSA respecting public access to these papers, the regulations taking into account various special criteria. The criteria, Mr. President, endeavor to protect due process for individuals who may be named in the papers as well as any privilege which may be involved in the papers, and of course the necessary access of the former President himself.

In short, the argument that the bill authorizes absolute unrestricted public access does not stand up in the face of the criteria and the requirement for regulations which we have inserted in the bill today.

There will be no broad and unrestricted public access which could nullify, the criteria to which I have referred.

So, in summary, Mr. President, we believe that here has been presented a scheme of legislation which reaches the immediate problem. Indeed, that is the only reason I or any of us could give as to why there were no hearings in this matter—because the immediate objective is so narrow and efficacious as to require no hearings upon this methodology.

So, Mr. President, we seek to deal in this particular legislation, only with this particular set of papers of this particular ex-President.

This is a matter of first impression, and although we would have an excellent precedent by passing this bill, it does not involve the subjects directly which were considered in all of the Watergate hearings, and therefore does not determine the particular issue as to what ought to be in other kinds of reform legislation.

If we write a bill involving the public papers of all Members of Congress and Senators, this legislation could get bogged down. If we address that complex matter generically in the manner that I have described and the manner Senator PERCY's amendment would reach, instead of passing our bill promptly, we will have failed to respond to an urgent national challenge to the integrity of our criminal justice system.

Mr. President, I do not think anyone has any doubt that we will proceed along the generic lines for all future Presidents, having gone through the experience which we have respecting papers and tapes, and that the issue can broaden that public custody and control. As to the papers and tapes of Representatives and Senators, that issue will be fairly vented, and undoubtedly in some way will be acted upon, but with deliberation, because it is not subject to the existing urgency; and to try to stretch it to that point now, Mr. President, is only loading the camel so that his back will break, and we will have nothing at all.

Therefore, I would hope very much that we—that is, those of us who are involved in the drafting, management, and presentation of the bill to the Senate—will resist a simplistic analogy, because we are addressing ourselves to a particular problem which requires a particular and immediate solution, and we should not allow our rights to be prejudiced, or to effect a solution by trying to do infinitely more than the situation calls for, or that we know is capable of practicality within the span of time which we have.

Let us not forget, Mr. President, that these papers are already subject to an agreement and that, under existing law, may be binding upon the United States if nothing further is done; and that it is very perilous indeed to leave a matter like this in that condition where we can again divide the country in some awful quarrel because the responsibility is divided when it should not be, when it should be single at this point in time with that responsibility in the U.S. Government.

I hope very much that we will go through with this bill and that we will act on it quickly, and in the same patriotic spirit in which we have proposed it, because of the immediate exigencies to which it addresses itself. I hope that all may cooperate in this effort, testing whatever issues they wish to test, but doing it with that celerity which this situation demands.

Mr. ERVIN. Mr. President, if the Senator will yield, I commend the Senator from New York for his very excellent statement and for pointing out that the question of whether we would adopt a generic bill was considered fully by the Government Operations Committee at the time we voted to report this bill. It was the unanimous agreement that we should not attempt to do so.

I want to pay special tribute to the distinguished Senator from New York who assisted very much in revising the original bill which Senator NELSON and I introduced, and also in respect of the work he did after the committee had reported the original bill and the administrator of the General Services Administration asked us to adopt some amendments. The Senator made a wonderful contribution throughout the consideration of this bill, and the country owes him a debt of gratitude for it.

Mr. JAVITS. I thank my colleague very much.

I yield the floor.

Mr. GRIFFIN. Mr. President, I was so impressed by the argument made by the distinguished Senator from Illinois (Mr. PERCY) in behalf of the merits of his amendment that I indicated to him before he left the floor that I wished he would offer it to the pending bill. Indeed, I told him that if he were not going to offer it himself that I might offer it.

So, I do so at this time. I send it to the desk, the amendment discussed by Mr. PERCY—No. 1926—and ask that it be stated.

The PRESIDING OFFICER (Mr. WILLIAM L. SCOTT). The clerk will report the amendment.

The assistant legislative proceeded to read the amendment.

Mr. GRIFFIN. Will the clerk read under "definitions" the words beginning with "for purposes of this chapter," and so on.

The assistant legislative clerk again proceeded to read the amendment.

Mr. GRIFFIN. 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:

TITLE II

SEC. 1. (a) Title 44, United States Code, is amended by adding at the end thereof the following new chapter:

"Chapter 39—Public Documents of Elected Officials

"Sec.
"3901. Definitions.
"3902. Public documents of elected officials.
"3903. Preservation of public documents.
"3904. Arguments limiting access to public documents.
"3905. Judicial review.

§3901. Definitions

"For purposes of this chapter—

"(1) 'elected official of the United States' means the President, Vice President, Senator, and Member of (or Resident Commissioner or Delegate to) the House of Representatives, including any individual holding such office for any period by reason of appointment to such office or succession to such office; and

"(2) 'public documents' means, with respect to an elected official of the United States, the books, correspondence, documents, papers, pamphlets, models, pictures, photographs, plats maps, films motion pictures, sound recordings, and other objects or materials retained by an individual holding elective office under the United States and which were prepared for or originated by such individual in connection with the transaction of public business during the period when such individual held elective office and which would not have been prepared if that individual had not held such office; except that copies of public documents preserved only for convenience of reference, and stocks of publications and of public documents previously processed under this title are not included.

"§ 3902. Public documents of elected officials

"Public documents of elected officials are the property of the United States. Subject to the requirements of sections 3903 and 3904 of this title the Administrator of General Services shall obtain any objects or materials of each elected official of the United States who ceases to hold office and is no longer an elected official of the United States which the Administrator determines to be public documents within the meaning of section 3901(2) of this title, and such elected official shall transmit such documents to the Administrator. The Administrator has final authority with respect to the disposition of such documents.

"§ 3903. Preservation of public documents

"(a) The Administrator of General Services shall deposit in the National Archives of the United States the public documents of each elected official of the United States obtained under section 3902 of this title unless such official designates an alternate depository in accordance with the provisions of subsection (b) of this section.

"(b) An elected official of the United States may designate a trustee to be the depository for the public documents of such official. Such trustee may be a library, or educational, historical, or not-for-profit institution, or a State or Federal institution. The Administrator of General Services shall transmit such documents to the trustee so designated at the earliest practicable time after the date on which such trustee is desig-

nated as trustee, except that the Administrator shall not transfer any such document if such document is the subject of compulsory process in any court proceeding until such time as such proceeding has been concluded.

"(c)(1) If any public official fails to designate a trustee under the provisions of subsection (b) of this section within one hundred and eighty days after such official is no longer an official of the United States, the provisions of subsection (a) of this section shall apply.

"(2) Upon transfer of the public documents of an elected official of the United States to a trustee designated under the provisions of subsection (b) of this section any request for access to any such document, including any subpena issued by any court, shall be made to such trustee. Upon a finding by the trustee that access to any such document would violate any argument made pursuant to section 3904 of this title, the Administrator of General Services shall, at the request of such trustee, take such action as may be necessary to determine whether such request shall be granted.

"§ 3904. Agreements limiting access to public documents

"An elected official of the United States may enter into an agreement with respect to granting public access to the public documents of such official with the Administrator, or in the case of any such official who has designated a trustee under section 3903(b), may enter into an agreement with respect to public access to any such document with such trustee subject to the approval of the Administrator. In addition to any other materials required to be kept from public disclosure by law, any agreement under this section may provide for such limitations on public access to such documents as may be necessary to protect confidentiality of communications or to save embarrassment to any individual, except that no such agreement shall provide for restrictions on access for any period in excess of twenty-five years from the date on which such official ceases to be an official of the United States or upon his death, whichever occurs later. No such agreement shall have any effect on any subpena issued by any court for the production of any such document.

"§ 3905. Judicial review

"A decision by the Administrator of General Services that any object or material is a public document of an elected official of the United States within the meaning of section 3901 (2) of this title shall be a final agency decision within the meaning of section 702 of title 5.".

(b) The table of chapters, preceding chapter 1 of such title 44, is amended by adding at the end thereof the following:

"39. Public Documents of Elected Officials ---------- 3901".

Mr. GRIFFIN. This amendment, as the Senator from Illinois (Mr. PERCY) had explained earlier, would extend general principles involved in the bill before us to all Presidents, Vice Presidents, Senators, and Congressmen.

I believe this amendment has considerable merit and I think we ought to vote on it.

Mr. ERVIN. Mr. President, I think the unwisdom of considering this amendment in connection with this bill has been made evident by the argument of the distinguished Senator from New York (Mr. JAVITS), the distinguished Senator from Wisconsin (Mr. NELSON), and by the unanimous action of the Government Operations Committee which reported the bill, that the addition of such an amendment as this was unwise.

If we attempt to put too much of a burden on one little nag that has to make a speedy journey we prevent the necessary speed being made, and it might break the back of the nag and I, therefore, move to table this amendment, and suggest the absence of a quorum.

Mr. GRIFFIN. Mr. President, will the Senator withhold his motion for just a moment or two? May I ask a question of the Senator?

Mr. ERVIN. Yes.

The PRESIDING OFFICER. Does the Senator withdraw his motion with respect to the absence of a quorum?

Mr. ERVIN. Yes, I withdraw the request for a quorum.

Mr. GRIFFIN. As I understand it, the principal argument is that we ought to have hearings on this amendment which would extend application of the bill to Senators and Representatives, but that we do not need hearings on the bill before us; is that correct?

Mr. ERVIN. I do not think we need any hearings on anything connected with Watergate. That is all we have been hearing about in this country for almost 2 years.

Mr. GRIFFIN. Does the Senator from North Carolina concede there are any constitutional questions in this bill before the Senate?

Mr. ERVIN. Not in this bill. This bill expressly provides that if anybody objects to any provision of the bill, he can go into court, and if he claims any privilege, he can go into the courts and, therefore——

Mr. GRIFFIN. I can say that would be true in the case of the amendment, as well.

Mr. ERVIN. We already have it in the bill so we do not need it in the amendment.

Mr. JAVITS. Mr. President, will the Senator withhold a moment in making his motion?

Knowing that this amendment would be proposed, I made the arguments about what I consider the simplistic nature of the approach to the problem which it adopts. We simply have to believe that Members of the Senate are more sophisticated than that. Sure, if we were people who just descended from Mars, it sounds so logical to apply this to all Presidents, and why not apply it to every elected official. I agree.

But we know that in a sophisticated sense if we try to do that we are being unfair to all the people concerned. The Senators and the Congressmen had no reason to suppose we were going to deal with their particular problems in this way. That was not the case with former President Nixon. President Nixon had every reason to suppose it because he made an agreement and thought through exactly how he would enjoy joint control. I am sure——

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

Mr. JAVITS. Not yet.

It was he who stipulated that at a given point the tapes could be destroyed, despite the enormity of all that has happened and the fact that important criminal cases are jeopardized by this agreement.

Now, I think again it is denigrating all of us that any of this should be construed or endeavored to be painted as being vindictive or mean to a former President.

I have myself said, although I thoroughly disagree with President Ford about the precipitate nature of a pardon, that all of us know that at some given point, there would be concurrence between Congress, the President and the American people that our former President be accorded clemency. I have said that myself when I objected, and I think that was the general opinion of Congress. So I hope that we will not feel embarrassed about discussing this in a legitimate and objective way, but let us also remember what is at stake here.

No one can fairly deny that there is a burning and thoroughly defensible public interest in preserving this particular ex-President's papers. They have been so hotly controverted that he himself has agreed to compromise what he considers his ownership interest in those papers.

It is not unqualified, it is not absolute. He has yielded some ground on that score in the agreement. I am a lawyer and I am the first to say so.

It is my conviction and, I gather, that of our whole committee which reported our bill unanimously that under the present circumstances it would simply be a travesty not to have the United States in unqualified and complete control and custody of these papers.

Personally I would say to my colleagues that I think it is rather unfortunate that we should be driven to these kinds of speeches on this matter, I really do.

Mr. GRIFFIN. I do, too. May I have a minute or two?

Mr. JAVITS. I am very unhappy about it.

Mr. GRIFFIN. May I have a minute or two?

Mr. JAVITS. Only 2 minutes. I am not making a long speech.

The PRESIDING OFFICER. The Senator from North Carolina (Mr. ERVIN) has the floor.

Mr. JAVITS. He has yielded to me.

Mr. ERVIN. I yield to the Senator from New York, without losing my right to the floor, and he can yield to the Senator from Michigan.

Mr. JAVITS. Mr. President, we are trying to be objective and, professional in this emergency. We have addressed ourselves to the emergency.

We fully appreciate the point of the Senator from Michigan and Senator PERCY's point. It is entirely well taken. But it is not apposite to the situation we face.

Mr. ERVIN. Mr. President, I believe I still have the floor in reservation.

Mr. GRIFFIN. Mr. President, will the Senator yield to me without losing his right to the floor?

Mr. ERVIN. With the understanding that I do not lose my right to the floor.

Mr. GRIFFIN. I want to say that I share the concern about some aspects of

the existing agreement that has been entered into, particularly that part of it which would provide for the destruction of papers in the event of the death of the former President. I do not think that is wise and that should be changed.

I agree that Presidential papers and tapes of the former President should be held in custody and under some arrangement where they could be made available under court process and subpena in the event that there should be necessity for that, and, if indicated, that that would be necessary.

But this legislation goes much further than that and it is not just the rights of the former President that are involved. The Senator and others know that defendants and potential defendants have rights that are also going to be affected.

Mr. ERVIN. I might state that this bill gives them the right to assert any claim of privilege they may have.

Mr. GRIFFIN. It seems rather odd to me that there could not have been 1 or 2 days of hearings held to allow those that have a direct interest to come in and make the arguments on their behalf, rather than putting a bill out on the floor here with no hearings whatsoever, no consideration by the Judiciary committee of the very substantial constitutional issues that are involved, which the Senator from Nebraska has raised and will raise in great detail.

They are very significant, substantial questions, and yet the Senator wants us to go ahead and pass this. Yet, of course, when it comes to a similar measure that would apply to Senators and their papers, oh, no, we cannot do that, we have got to have hearings, we have got to take some time.

Mr. PERCY. Will the Senator yield for a question?

Mr. ERVIN. I have the floor.

Mr. GRIFFIN. The Senator from North Carolina has the floor.

Mr. PERCY. Will the Senator yield for a question?

Mr. ERVIN. I will just say that, so far as I have heard, no Senators have been allegedly involved in Watergate; therefore, that situation is not relevant to this bill.

Now, I will yield to the distinguished Senator from Illinois with the understanding that by so doing I do not lose my right to the floor, and I ask unanimous consent to that effect.

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

Mr. JAVITS. Will the Senator yield to me?

Mr. ERVIN. On the same terms.

Mr. JAVITS. Thank you.

Mr. PERCY. Under those conditions, I am happy to pose my question.

I would like to ask the distinguished Senator from Michigan, who was not here, unfortunately, during the course of the discussion of the so-called Percy amendment and did not have the benefit of all of the arguments that were made at that time as to why it would be unwise to offer it now and why hearings should be held on it, whether or not in the judgment of the Senator from Michigan it would not have been wise for the Director of GSA, Mr. Samson, to have had hearings before he precipitiously entered into an agreement?

Mr. GRIFFIN. Yes.

Mr. PERCY. Which bound the United States of America without any kind of law, and which may have been contrary to law, and which forced us to accept them in this matter simply as a response, not only to our conscience, but also to the outrage of the American people at this kind of an agreement, would it not have been wise then to have had hearings at that time before an agreement was signed and bound and a fait accompli, before anyone in Congress I know of knew anything about it?

Mr. GRIFFIN. Well, I have already said that I did not subscribe to or approve of all the provisions of the agreement. I have said that.

If this legislation before us were directed only and solely to that defect, there would not be any particular problem, but it goes much further than that.

It purports to determine ownership of these papers, and so forth, and that is a very serious question.

Mr. ERVIN. Will the Senator pardon me?

Mr. GRIFFIN. Yes.

Mr. ERVIN. That is a question that this bill does not undertake to determine at all. It leaves it to the courts.

Mr. GRIFFIN. The Senator means he allows the courts to upset the ruling, the determination?

Mr. ERVIN. The authors of this bill and those who support it in the Government Operations Committee, which was all members present, recognize there is a serious controversy as to whether or not the official papers of a President on his retirement become his personal property or remain the property of the public.

So we expressly do not undertake to decide the question of ownership in any form or fashion.

We say that matter can be litigated in court at the instance of the former President and that in the event the court adjudges that he is the owner of them, that he will be paid fair compensation for their value as fixed by the court.

Mr. GRIFFIN. Well, it is my view that this legislation—and I noticed that even the editorial in the Washington Post the other day recognized that was the case—goes too far. It goes beyond what is necessary to remedy the problem that we have and if we are going to go that far with respect to a former President, then I will vote for an amendment to make the same principles generally apply to all former Presidents and to Vice Presidents and to Members of the Senate and Members of the House of Representatives.

Mr. ERVIN. Including——

Mr. JAVITS. Mr. President, what we are talking about——

Mr. ERVIN. I yield to the Senator from New York on the understanding I do not thereby lose the floor.

Mr. JAVITS. What we are talking about now is a pending motion to table a particular amendment. If any Senator, Senator GRIFFIN or the distinguished minority leader or any other Senator, has any other ideas in respect to this bill, they will have to be brought up and dealt with.

Right now, all we are arguing against is the simplistic notion that you do what Senator GRIFFIN wishes us to do, which is that you apply this to everybody, and that, therefore, shows egalitarianism. We must reject that argument. We must also reject arguments which question the constitutionality of our bill. As Senator ERVIN and I and everyone else knows, courts can stay anything once we give them the authority, and they do have the authority, so they can stay any element of this bill if there is enough of a case made to justify that there is a reasonable doubt.

I have a very interesting and what I consider to be an outstanding brief by the Library of Congress Research Service on the alleged constitutional issues which I understand Senator NELSON has already placed in the RECORD. It is a most useful and persuasive document, and I commend it to my colleagues.

Mr. LONG. Will the Senator yield?

Mr. ERVIN. I yield without losing my right to the floor.

Mr. LONG. Let me make it clear, I am not sure whether I am going to vote for the resolution or the amendment or anything, I just walked in and heard some of the debate.

Now, if I understand what the thrust of the proposal is, simply, that certain information and certain material should not be destroyed without Congress or others who might have an interest in the matter having opportunity to find out what they could, is that correct?

Mr. ERVIN. Correct, and this only deals with existing information. It does not deal with information that may have been accumulated before the former President was inaugurated in January 1969, and it does not deal with any information accumulated after his resignation on August 9.

Mr. LONG. But it seems to me, this is parallel to something I thought I would discuss with the Senator when I had a chance to get around to it, when the press of business permits, a small matter, but it would be nice to have somebody investigate it, and when we seek to start an investigation, we would like to be sure those who have the evidence do not destroy it before we can find out what the evidence is.

But it does seem to me the controversy here is somewhat parallel to what there is when you seek a search warrant.

We have to allege that we have some reason to think there is something that is going on that should be looked into or that we have reason to think there is some evidence that would be obtained if we entered that dwelling place, or that place of business, and to indicate what it is that we are after, then we get the warrant.

But that does not give the right just to break into everybody's house unless we have reason to think somebody put something——

Mr. ERVIN. That is why I stated to the distinguished Senator from Michigan a while ago that there is no Senator and no Representative that has been

allegedly involved in any way in the Watergate, so far as I have ever heard.

Mr. LONG. The though that occurs to this Senator is that if anybody has any reason to think there is any information any of us have in our files about some subject that might be thought to be criminal conduct of anybody, fine, bring in the resolution, order him to see his papers, but if we are just talking about the need of everybody on the theory everybody is a suspect, like Watergate—

Mr. ERVIN. There is an agreement between the Administrator of General Services and the former President that provides, in effect, that evidence which is relevate to criminal cases will be destroyed at the death of former President Nixon. It was made under a statute which gives the administrator authority to take steps regarding the use of official documents, but it does not give him any authority to provide for the destruction of official documents.

Mr. LONG. I thank the Senator. I wanted to know what it was that this whole thing was about, and, for that matter, what this had to do with papers of Members of Congress. I am not aware that there is any Member of Congress I want investigated right now, but I was concerned about the idea that because somebody wants to look at those papers, to know what might be in them, that that means we ought to initiate an investigation of every Member of Congress. I do not see how that quite follows.

Mr. ERVIN. This contract even includes within its embrace the tapes which the Supreme Court of the United States said the Special Prosecutor was entitled to have produced for use as criminal evidence in cases now pending.

Mr. GRIFFIN. Will the Senator yield to me?

Mr. ERVIN. I yield to the Senator from Michigan with the understanding——

Mr. GRIFFIN. Would the Senator from Louisiana pay particular attention——

Mr. ERVIN. Wait a minute. I yield to the distinguished Senator from Michigan with the understanding that I will not lose my right to the floor even though he may propound interrogation or engage in a colloquy with other Members of the Senate.

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

Mr. GRIFFIN. I refer to the bill now before the Senate, particularly to page 4, beginning on line 16. Let us see what this bill would apply to.

The Senator from North Carolina has referred several times to the fact that the bill refers only to Watergate matters.

But the bill reads: "Notwithstanding any other agreement or understanding made," and so forth, "the Administrator of General Services Administration shall obtain, or, as the case may be, retain, complete possession and control of all papers, documents, memorandums, and transcripts which constitute the Presidential historical materials of Richard M. Nixon" * * * "between the period January 20, 1969, and August 9, 1974," which, of course, is the entire time during which he served.

Will the Senator from North Carolina accept an amendment to that language qualifying it so that it would apply to those papers, documents, memorandums, and transcripts which refer to, or relate to, the so-called Watergate matter?

Mr. ERVIN. I am sorry that the Senator from Michigan was not here when I explained this bill. This bill clearly makes a distinction between the Watergate matters and other matters. It provides for the impounding of the Watergate matters. It also provides for the impoundment of other matters only to the extent they are of historical importance. I think that situation is taken care of already.

Mr. GRIFFIN. The Senator does intend, then, for the bill to apply to all the papers of the former President during the period of his service?

Mr. ERVIN. All of his official papers, at least temporarily.

Mr. GRIFFIN. Not just those that relate to Watergate, but all of them?

Mr. ERVIN. All of them, but if the Senator——

Mr. GRIFFIN. I want that to be clear, that it applies to all the papers.

Mr. ERVIN. If the Senator will permit me, I will make it clear.

This provides that all of the papers are to be preserved by the General Services Administration. It also has mechanisms in it under which all the papers which do not relate to Watergate are not to be made accessible to the public. It also makes provision for the General Services Administration, with the help of one of its component subdivisions—the Department of Archives—to go through the papers. The ones that do not relate to Watergate and the ones that do not have historical importance will be surrendered to the President.

Mr. GRIFFIN. Will the Senator accept an amendment to this bill restricting its application to those papers that refer to, or relate to, the Watergate matter?

Mr. ERVIN. No, because we need them both. We have to look through the others for historical importance. I do not believe the President has a right to destroy papers that have historical importance in the history of our country.

I think this is a good bill as it is. It has been very carefully gone over and studied by a committee of many Senators.

At the present time, if I still have the floor, Mr. President, I move that the amendment offered by the distinguished Senator from Michigan be tabled, and I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CLARK), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Maine (Mr. MUSKIE), the Senator from Alabama (Mr. SPARKMAN), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I also announce that the Senator from Maine (Mr. HATHAWAY) is absent to attend a funeral of a former Congressman of Maine.

I further announce that, if present and voting, the Senator from Iowa (Mr. CLARK) and the Senator from Maine (Mr. HATHAWAY) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Massachusetts (Mr. BROOKE), the Senator from New Jersey (Mr. CASE), the Senator from Kentucky (Mr. COOK), the Senator from Kansas (Mr. DOLE), the Senator from Colorado (Mr. DOMINICK), the Senator from Oregon (Mr. PACKWOOD), the Senator from Ohio (Mr. TAFT), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that the Senator from Nebraska (Mr. CURTIS) is absent to attend a funeral.

The result was announced—yeas 48, nays 32, as follows:

[No. 450 Leg.]

YEAS—48

Abourezk	Huddleston	Montoya
Allen	Hughes	Moss
Bennett	Humphrey	Nelson
Bible	Inouye	Nunn
Biden	Jackson	Pastore
Burdick	Javits	Pell
Cannon	Johnston	Percy
Chiles	Long	Proxmire
Cranston	Magnuson	Randolph
Eagleton	Mathias	Ribicoff
Eastland	McClellan	Schweiker
Ervin	McGee	Stennis
Hart	McGovern	Symington
Hartke	McIntyre	Talmadge
Haskell	Metzenbaum	Tunney
Hollings	Mondale	Williams

NAYS—32

Aiken	Fannin	Pearson
Baker	Fong	Roth
Bartlett	Goldwater	Scott, Hugh
Beall	Griffin	Scott, William L.
Bentsen	Gurney	Stafford
Brock	Hansen	Stevens
Buckley	Hatfield	Thurmond
Byrd, Harry F., Jr.	Helms	Weicker
Byrd, Robert C.	Hruska	Young
Cotton	Mansfield	
Domenici	McClure	
	Metcalf	

NOT VOTING—20

Bayh	Curtis	Muskie
Bellmon	Dole	Packwood
Brooke	Dominick	Sparkman
Case	Fulbright	Stevenson
Church	Gravel	Taft
Clark	Hathaway	Tower
Cook	Kennedy	

So the motion to table Mr. GRIFFIN'S amendment was agreed to.

The PRESIDING OFFICER (Mr. HELMS). The Senator from Nebraska is recognized.

Mr. HRUSKA. Mr. President, in order that my position in the pending matter will be clear and that the orientation from which I approach it will be clear, I briefly state this: I am fully aware of the historical importance of the papers that are sought by the Ervin bill. I know of the insistent and wide demand of many members of the public for its right to know.

I am in accord with the concept that Presidential papers should be Govern-

ment property. I am in favor of the proposition that the records should not be destroyed even though the current agreement to that effect is within the terms of the present law. It should be changed.

I am mindful of the fact that there are these very powerful arguments. But they are beside the point unless consider that the objectives of the bill should be achieved with due regard for other rights—not only the right of the public to know, but also other rights that arise from the very nature of releasing this material. There are many other competing rights which must be considered.

There are the rights of private property. The papers and records involved are the property of Richard Nixon. They are his personal property. If we depart from that norm, it will be at variance with every precedent since the time George Washington retired from office. Without variation and without any exception of any kind, those papers have always been regarded as the President's property.

We have obligations that arise by reason of the privilege of confidentiality which is accorded to the President with reference to these records. It is a privilege, Mr. President, that has been asserted by every President to whom was addressed a request for papers that he was unwilling to surrender. Recently, Mr. President, that right of executive confidentiality was confirmed and defined in solid constitutional law, less than 10 weeks ago, by the current Supreme Court in the historic case of United States against Nixon.

There is also the right of privacy involved in the issue before us, Mr. President, and that is a very precious right. I have heard many a debate here, on this floor and in committee rooms, on the right of privacy. There are a number of bills pending on the subject now. Curiously enough, many of those who are most outspoken for the right of privacy, we find as cosponsors of the present bill that we are considering, S. 4016. It is not only the right of privacy, Mr. President, of the former President, Mr. Nixon; it is also the right of privacy of the numerous individuals with whom he had conversations or conferences, and who are the subject of many of these papers that are now being sought for public access.

Mr. GRIFFIN. May we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order. The Senator is entitled to be heard.

The Senators are asked to take their conversations to the cloakroom.

Mr. HRUSKA. It is not only the right of privacy of Mr. Nixon with which we should concern ourselves, it is that of numerous other individuals, Mr. President.

There is the proposition of eminent domain. Eminent domain, the right of the government to take property, is not unlimited. It is an inherent power in the government, but it is not unlimited and some of the constitutional considerations which I have already mentioned are fundamental rights that will compete with the government's power to take under the right of eminent domain. I shall demonstrate that in due time.

Then there is the matter of due process, Mr. President. We had a curious turn of events here, where we were asked not to adopt an amendment that would make the proposed law apply to Senators and Congressmen, because it would be unfair to them. It was urged that they had no reason to believe that such an amendment would be proposed, and that Members of Congress ought to be given a right to be heard in hearings.

But Mr. President, the Committee on Government Operations did not hold a single minute of hearings on this bill. Mr. Nixon, people representing him, and others who have a concern in preserving some semblance of orderly procedure under the Constitution had a right to be heard.

The Senate is now being addressed by a Senator who would have dearly loved to be heard. For the first time, we get a forum here on the floor—after the fact. After the fact, after the bill has been reported, there has been more information placed in the RECORD—yesterday afternoon and that will be put in this afternoon—on this subject than has ever appeared any place in the deliberations or in the consideration of the committee that reported this measure.

Let me say that I firmly believe that the public has a right to know, subject to other rights. The papers in question are important. They should be protected and they should not be destroyed.

Mr. YOUNG. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator will suspend until the Senate is in order.

The Senator may proceed.

Mr. HRUSKA. They should not be destroyed and they should be made Government property. All these things I believe, but this should be accomplished in an orderly fashion and in compliance with the constitutional provisions and obligations.

Mr. President, S. 4016 presents some very deep-seated propositions bearing on the nature of the Office of the President of the United States and its continued viability; upon the separation of powers; and on the rights of numerous individuals. Many of these considerations are constitutional in nature or are grounded on policy or both. Because none of these fundamental issues was considered in the committee which reported this bill, no hearings have been held, and because the report on the bill fails to discuss these issues, I shall oppose the bill and also the resolution.

Because of the lack of a full consideration of the constitutional issues involved by the committee, I feel compelled to discuss those fully for the record.

At the threshold, I must admit that it would be easy to vote for this bill, Mr. President. In essence, it would be a vote against a man who is the first to be forced to resign from the Presidency, a man the House Judiciary Committee voted to impeach.

But I want to make it very clear that my arguments against this bill have nothing to do with Mr. Nixon as an individual, pro or con, and the positions he has taken or not taken in a political or social sense. My concern is with the Office of the Presidency as an institution and with the constitutional rights of those who wrote or spoke to the President.

I also want to make it crystal clear that by opposing this bill, it should not be inferred that I do not want to know all the facts about the Watergate break-in and coverup. I want the Watergate story told. I think that most of the story is known. In fact, Mr. Doar, the chief counsel to the House Judiciary Committee, has stated that the President's resignation does not represent something of an unfinished symphony. He said in an interview with the New York Times on September 13, 1974, that "the facts have been established." And additional information about the former President's conduct, Mr. Doar said, "would just be cumulative." I ask unanimous consent that the article to which I have referred be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. HRUSKA. I rise in opposition to this bill because I am a lawyer who is deeply troubled by the measures contemplated by this bill. I firmly believe that this bill raises serious and fundamental constitutional issues. I am a Senator who took an oath to support and defend the Constitution, an obligation just as great as the obligation of the Supreme Court in the tasks assigned to it, and that obligation is just as serious and demanding as that of any other part of the Government.

If the subject of this bill were anyone other than Mr. Nixon, it is highly unlikely that it would even have gotten out of committee. So I ask my colleagues to try to put these matters in perspective. Consider whether the procedures embodied in the bill would be constitutional, let alone wise, if the subject of the bill were a Senator, Congressman, president of a large corporation, or some other famous figure.

Mr. President, we have already had the answer given as to Representatives and Senators. It was turned down as premature and untimely. It was not premature and untimely, apparently, for Mr. Nixon or the other people whose rights could possibly be infringed. It was not untimely for them, but for Members of Congress it has been decided by vote of the Senate that we do need hearings. And whether the private papers of a Senator or Congressman could legally be appropriated by the Government and made available to every litigant who wants them and every person who wants to rummage through them. For if the President's papers can be seized and disclosed to all the world, then surely the private papers of a Senator or Congressman or perhaps a corporation president, union leader, or other well-known person can be seized and disclosed to all potential litigants and to the curious. It is in this context that we should view this bill. I ask my colleagues to look at this matter in that perspective.

Mr. President, S. 4016 appears to suffer

the same infirmity that is suffered by most bills that are introduced out of the passions and emotions of an unprecedented event. The infirmity is compounded here by the fact that this bill has been quickly brought to the floor without going through the regular legislative process and without an airing of even the very fundamental issues. No hearings were held. The infirmity is the confusion of a power's validity with the cause the power is to serve. In short, the philosophy adopted is that the end justifies the means.

Justice Jackson expressed this apprehension very well in the Steel Seizure case:

> The opinions of judges, no less than executives and publicists, often suffer the infirmity of confusing the issue of a power's validity with the cause it is invoked to promote, of confounding the permanent executive office with its temporary occupant. The tendency is strong to emphasize transient results upon policies . . . and lose sight of enduring consequences upon the balanced structure of our Republic. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634 (1952).

Mr. President, that is as good a quotation as could have been written to fit the situation at hand. It needs only one minor correction, and that would be to say, instead of "confounding the permanent executive office with its temporary occupant," to make it read "confounding the permanent legislative offices with a temporary occupant of an office in the executive branch." Then the citation would be completely applicable to the situation at hand.

Mr. President, this bill raises a number of very fundamental constitutional issues—issues that apparently were not even considered by the Committee on Government Operations because there is no discussion of the issues in their report. In fact, there were not any hearings to allow the issues to even be aired.

Before discussing these fundamental constitutional issues in more detail, I shall briefly list them.

First. The first involves the basic doctrine of separation of powers—the privilege of the Chief Executive to maintain in confidence those communications the disclosure of which would hamper or impair the effective functioning of the executive branch. The discussion of this privilege and its application to a former President is very cogently and simply discussed by President Truman in his letter to the House Committee on Un-American Activities in which he declined to comply with a subpena after he had left the Office of the Presidency. President Truman argued then that the privilege would be shattered and the proper functioning of the Office of the Presidency impaired if the privilege were not recognized. Those same concerns are just as compelling here, but they are ignored by S. 4016.

Second. The second issue involves the power of eminent domain. What S. 4016 purports to do is to require the U.S. Government to take into possession all the papers and recordings of the President. The Administrator of GSA would then exercise control of the papers and recordings and release them to the public and to litigants suing or prosecuting the President. This is a taking of literary property which is unprecedented. It is a taking of a man's ideas and innermost thoughts. If a former President's ideas, thoughts, and confidential communications can be exposed for all to see, then what would prevent any Senator's, Congressman's, businessman's or union leader's papers from being bared to the criticism of his fellowman.

Third. The third issue builds upon the second. It involves the first amendment. If an individual's papers and the recordings of his conversations can be taken from him and exposed to the public, it is obvious that his right to speak freely will be chilled. How could a man speak freely and candidly, if his conversations are going to be exposed to the cold winds of public criticism and discussion? How can any man, how can any person, have any conferences or any discussions or participate in any transactions or any negotiations knowing that his confidential conversations could be completely disclosed? The first amendment provides that no law shall be passed that infringes upon the right to speak and write. S. 4016 appears to violate that basic right.

Fourth. The fourth issue involves the right to privacy. S. 4016's forced disclosure of the tapes leads to a governmental invasion into the privacy of numerous individuals' innermost thoughts. Most of the individuals recorded on the tapes were unaware that their conversations were being recorded. They expected their private communications to remain just that—private. Yet this bill purports to repudiate that right.

Fifth. The fifth issue centers around the bill of attainder clause of the Constitution. A bill of attainder is a legislative act that applies to a named individual in such a way as to inflict punishment upon him without a judicial trial. S. 4016 certainly is a legislative act and it certainly applies to a named individual. The Senate has insisted that it will remain identified with only an individual, to the exclusion of any other elected official. Does it inflict punishment? The taking of the papers from their owner and the giving of them to every individual who files a case against the President for civil damages appears to be a penalty and, therefore, appears to violate the constitutional provision prohibiting a bill of attainder.

I will have more to say on that in a little bit.

This is a thumbnail sketch of the issues, Mr. President, these five points that I have just stated. But it is clear that just by an enumeration of them that they are fundamental and they are significant and, once again, I say it is very unfortunate that these issues were not considered.

But to elaborate on these issues, I offer for the RECORD a memorandum discussing these five issues and ask that it be printed at this point of my remarks.

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

MEMORANDUM: CONSTITUTIONAL ISSUES RAISED BY S. 4016

I. EXECUTIVE PRIVILEGE

In *United States v. Nixon*, —— U.S. —— (1974) 42 U.S.L.W. 5237, 5244, the Supreme Court unanimously recognized that the confidentiality of presidential communications is of constitutional dimension. This privilege to maintain these communications in confidence is based on the doctrine of separation of powers. As the Court stated:

"Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decision making process. Whatever the nature of the privilege of confidentiality of presidential communications in the exercise of Art. II powers the privilege can be said to derive from the supremacy of each branch within its own assigned area of constitutional duties. Certain powers and privileges flow from the nature of enumerated powers; the protection of the confidentiality of presidential communications has similar constitutional underpinnings."

Furthermore, the Supreme Court ruled that Presidential communications are "presumptively privileged":

"The expectation of a President to the confidentiality of his conversations and correspondence, like the claim of confidentiality of judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and added to those values the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in presidential decision-making. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for presidential communications. The privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution."

While the Court recognized the constitutional underpinnings of an Executive privilege, it also recognized that the right to the production of all evidence at a criminal trial similarly has constitutional dimensions. The Sixth Amendment confers upon every defendant the right to use compulsory process to obtain evidence and the Fifth Amendment guarantees that no man shall be deprived of liberty without due process of law.

The Court, thus, had to balance one constitutional right against another and, in the end, held that the fair administration of criminal justice—because it involves the liberty of an individual—outweighs the privilege of confidentiality.

S. 4016 presents no such difficult analysis. There is no apparent constitutional right that the bill seeks to vindicate. It seeks to preserve the recordings and papers for the use of some future, unnamed litigant and for exposure to the general public. While interesting, the merit of such a purpose is not relevant. It is not of constitutional dimension and therefore must be outweighed by the constitutionally based Executive privilege.

The fact that the papers are those of a former President is immaterial with respect to the invocation of the privilege. Executive privilege, like all privileges, does not cease upon the termination of the relationship that gave birth to the privilege. A doctor-patient privilege does not cease when the patient chooses another doctor; a lawyer-client privilege does not expire when the client retains a different lawyer; a priest-parishioner privilege does not die when the priest moves to another parish. Freedom of discussion would be chilled if there was the risk that the communications would be exposed if the relationship changes.

Similarly, the rationale underlying Executive privilege and the interest it serves compel the conclusion that a former President may indeed invoke Executive privilege in the

same manner as a sitting President. It must be obvious that future discussions with future Presidents would ever after be chilled by the knowledge that within at least eight years those discussions would be exposed to the public.

The question of the application of the privilege to a former President is not novel. President Truman, after he returned to private life, refused to comply with a subpoena issued by a House Committee on the basis of Executive privilege. He explained in a letter to the Committee that a move to subject former Presidents to inquiries into their acts while President would violate the separation of powers:

"It must be obvious to you that if the doctrine of separation of powers and the independence of the Presidency is to have any validity at all, it must be equally applicable to a President after his term of office has expired when he is sought to be examined with respect to any acts occurring while he is President.

"The doctrine would be shattered, and the President, contrary to our fundamental theory of constitutional government, would become a mere arm of the Legislative Branch of the Government if he would feel during his term of office that his every act might be subject to official inquiry and possible distortion for political purposes." The privilege thus is constitutionally based and it is applicable to a former President. S. 4016 would however repudiate that privilege. It would make the Nixon recordings available to the courts in any case, civil or criminal. While the privilege may be required to defer to the constitutional needs presented in a criminal trial, the privilege may outweigh any civil litigant's need for the privileged information. In fact, in *Committee for Nuclear Responsibility, Inc. v. Seaborg*, 463 F.2d 796, 799 (D.C. Cir. 1971)—a civil case—the court acknowledged the importance of confidentiality in contributing substantially to the effectiveness of government decision-making and held that if the privilege was rightfully invoked, that is, if it related to the information withheld, the privilege would be upheld. S. 4016 does not, however, acknowledge the right to assert a privilege in a civil proceeding. It does not provide for any balancing of rights. Instead, it makes the information, whether privileged or not, available to the adversary. S. 4016, therefore, appears to overrule by statute a judicial decision grounded on the Constitution.

But beyond that, S. 4016 would grant *public* access to the Presidential papers and communications without regard to the confidences upon which they were produced. This feature of the bill also appears to be unconstitutional. As the United States Court of Appeals for the District of Columbia Circuit recognized in *Nixon v. Sirica*, 487 F.2d at 715:

"We acknowledge that wholesale public access to Executive deliberations and documents would cripple the Executive as a co-equal branch."

In short, S. 4016 purports to defeat a constitutional privilege and for that reason appears to be unconstitutional.

II. THE TAKING OF LITERARY PROPERTY BY EMINENT DOMAIN

S. 4016 represents a novel and unprecedented attempt to appropriate for public use the private papers of an individual. By taking custody of the papers and recordings and furnishing these communications to litigants and the public, S. 4016 purports to vest in the Administrator of GSA full dominion over the Presidential communications. An exercise of full dominion over another's property can be achieved only by the exercise of eminent domain—the taking of property of another by the government with the payment of just compensation for the individual's loss of his property.

While it is clear that the Government can take real property and personal property, it is unclear whether it can take literary or intellectual property—the personal papers of an individual, his innermost thoughts. The extent and nature of this exercise of eminent domain appears to be unprecedented. A step by the Government to appropriate an individual's personal papers, his thoughts and ideas, contemplates not only a novel exercise of eminent domain but also an invasion of privacy and an infringement of the First Amendment.

III. FIRST AMENDMENT RIGHTS

It is an understood principle that the right to free speech is not lost with election to high government office. Surely, even a President should not be denied the right to speak freely in public debate. Moreover, an extension of the principle of free speech in public is the private formulation of thoughts and ideas among intimates and friends.

Courts have not ruled on a First Amendment challenge to forced revelation of a continued pattern of an individual's comments, public and private for an extended period of time. They have, however, addressed a question of less magnitude with respect to attempts to discover a simple list of persons who belong to a political organization. In so doing, they have held that the privacy of a political organization is recognizably related to the notion of free thought and expression under the First Amendment of the Constitution:

"It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action upon the particular constitutional rights there involved. This Court has recognized the vital relationship between freedom to associate and privacy in one's association." *NAACP v. Alabama*, 375 U.S. 449, at 462 (1958). See also *Shelton v. Tucker*, 364 U.S. 479 (1960).

As stated by Justice Brennan, ". . . inhibition as well as prohibition against the exercise of precious First Amendment rights is a power denied to government." *Lamont v. Postmaster General*, 381 U.S. 301, 309 (1965). The same principle must be applied to legislative attempts to monitor any man's daily political expression. *Cf. Eastern Railroad Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961). The "chilling effect" of the knowledge that every political utterance or writing, whether tentative or experimental, will be exposed to public scrutiny would be an intolerable inhibition upon any man's thought and political development.

Yet this would be precisely the effect of S. 4016. It seeks to obtain and make available to the public the voluntarily-kept, daily record of a man's tenture in the Presidency.

No one can deny that perhaps there is a legitimate public interest in allowing every thought of the man occupying the White House to be made public. It holds much appeal. But it must be recognized that the development of presidential political thought differs little from that of any other man and is inhibited by the same factors. The right of the electorate to monitor the conduct of public officials should go to the decision made, not necessarily the options considered.

There is nothing in the Constitution, or in political theory which argues that high government officials must live in a fishbowl. *E.E.A. v. Mink*, 410 U.S. 73 (1973); *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, 40 F.D.R. 318 (D.D.C. 1966). Rather, it is anticipated that those elected to public office will develop and modify their political assessments and judgments in the same manner as private citizens, through public debate and private discussion.

A President as much as any man is guaranteed freedom from restraints on his right to think and talk freely among his close associates and advisers. Knowledge that notes and tape recordings made for personal use can, by whatever means, be condemned and published will inevitably inhibit and constrain this process. As stated by Judge Learned Hand,

("The First Amendment) presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have stated upon it our all." *United States v. Associated Press* (52 F Supp. 362, 372) (S.D.N.Y., 1943)).

S. 4016 provides for the wholesale acquisition of a man's tape recordings and personal notes. It must be obvious to all that if the thoughts of a man in his office were published for all to see, the right of a man to speak, let alone think, would be chilled.

To the extent that criminal wrongdoing may be involved, the Constitution provides formal judicial mechanisms for the discovery of relevant material. *United States v. Nixon, supra*. As an alternative, any legislation directed to the acquisition of the personal notes and communications of a President, or any other high government official, should take into account the First Amendment guarantees which courts have long underscored as the foundation of a political system where the development of free expression is fundamental.

IV. THE RIGHT OF PRIVACY

Section 6 of S. 4016 grants to the Administrator of GSA the authority to release the tape recordings to the public. None of the restrictions to access enumerated in the bill serves to protect the right of privacy. The recordings would be made public notwithstanding any rights of those who talked with the President.

It is clear that most of those who communicated with the President were unaware that their conversations were being recorded. They spoke freely, frankly and they thought confidentially. This is how we would expect presidential advisers to speak with the President. Yet S. 4016 would thwart this confidentiality and make these innermost thoughts public.

The right to privacy has been recognized by the courts in many contexts—the First Amendment, *NAACP v. Alabama*, 357 U.S. 449 (1958); the Fourth Amendment, *Weeks v. United States*, 232 U.S. 383 (1914); and the Ninth Amendment, *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965). And it is clear that the conversations of persons recorded on tapes are the type of material encompassed by the right of privacy.

Yet, S. 4016's forced disclosure of the tapes appears to constitute a governmental invasion into the innermost thoughts of many individuals. This disclosure is not for the purposes of a criminal trial. It is for the public's consumption. This invasion is unprecedented and apparently unwarranted.

V. THE BILL OF ATTAINDER CLAUSE

As construed by its sponsors this bill could constitute a bill of attainder as prohibited by Article I, Section 9, Clause 3 of the Constitution.

The Supreme Court has stated that "legislative acts, no matter what their form, that apply either to named individuals, or to easily ascertainable members of a group in such a way as to inflict punishment upon him without a judicial trial are bills of attainder prohibited by the Constitution." *United States v. Lovett*, 328 U.S. 303 (1946) at 315.

S. 4016 appears to fit this classic definition of a bill of attainder. S. 4016 certainly is a legislative act and it is certainly designed to apply to a named individual—specifically former President Richard Nixon. It would

deprive him of his property rights. The former President would be deprived of title and rights pertaining to his papers by the provision of the bill authorizing the GSA Administrator to take complete possession and control of all his presidential materials.

The deprivation would be accomplished not by the judicial process but by legislative determination.

It appears that such a deprivation of property can be considered a form of punishment against Richard Nixon. Mr. Nixon's most private papers, Watergate related or not, would be subject to public scrutiny conflicting with his Fourth Amendment right to be secure "against unreasonable searches and seizures."

But more than that, by granting access to these tapes and papers to every litigant who wants them to be used against the President in any case, appears to inflict a punishment. Certainly if the case is criminal in nature—which it could be since the pardon applies only to Federal cases not State cases—this forfeiture of the papers appears to violate the Fifth Amendment's guarantee that no man can be used as a witness against himself.

No matter how fine the public policy arguments to the effect that important papers must be preserved, this bill if enacted would interfere with the former President's Constitutional rights and could therefore be construed as a form of punishment.

It should be noted that the same fine public policy argument regarding the presentation of records applies equally to those of other public officials, presidents and congressmen. The fact that this bill applies only to Mr. Nixon creates further suspicion as to its punitive character.

Mr. HRUSKA. Mr. President, I have heard some who say that we should pass this bill and let these issues be resolved by the courts. Is that not a novel theory? Proceeding into this very complex area of government, proceeding in a field fraught with constitutional difficulties, obstacles, and intricacies, and blithely passing a law saying, "Oh, well no harm will be done. The former President and anyone else affected can go to court and he can prove his case, he can attack the constitutionality, and everything will be all right." The Supreme Court in due time, several hundreds of thousand dollars later in costs and attorneys' fees is going to get the case. It may be a year or two or three, together with the expenditure of money, that the question will be resolved. I find it incredible that it is suggested that such a situation be brought about by a body of men and women composing the Congress of these United States. Every one of these Members has taken an oath to support and defend the Constitution, and has assumed the responsibility to do it just as conscientiously, just as competently, just as thoroughly, as the Supreme Court. Congress will dismally fail in that regard if it enacts this bill into law without regard to the legal consequences.

I believe that such a suggestion to let the courts cure any defects in the legislation reflects a lack of responsibility. Each of us has taken an oath to uphold and support the Constitution. To be responsible legislators, we must examine a bill very carefully to determine that it passes constitutional muster. We cannot pass a bill with a number of constitutional issues unresolved and then expect the individuals affected to spend a great deal of time and money in court attempting to vindicate their rights. Such a course is not only unwise; it is irresponsible.

I introduced a bill yesterday entitled the Official Documents Act. It preserves the tape recordings and papers of the President. At the same time, it also preserves the right of privacy and the privilege accorded Presidential communications. But I am not thoroughly satisfied that all of the constitutional objections have been obviated.

I would hope that my bill and S. 4016 can be used as a working basis to come up with a rational and reasonable and, most of all, constitutional measure. In order to insure that all of these issues will be thoroughly examined, it is my hope that S. 4016 and my bill will be referred to the Judiciary Committee for careful consideration.

Now then, Mr. President, the purpose of S. 4016 is clear. The thrust of it is to make available generally to the public a lot of material to which they are not entitled and which they should not have. No attempt is made to delineate what properly should be public and what should not. The public has the right to know, but there are other considerations that we should take due note of before a wholesale delivery is made of all documents.

Present law enables access to and the use of documents by prosecutors and litigants in criminal cases, in an orderly fashion without new legislation. Present law takes care of that. The Supreme Court clearly indicated there was an exception to the President's confidentiality privilege. That exception arises when there is a collision between the President's desire to withhold documents and the desire of a court to get certain documents for specific purposes; namely, either to prove a criminal case or to clear the charges brought in a criminal case against a defendant. This is also a constitutional right.

The entire effort, however, represented in this bill is regrettable. It is distressing, Mr. President, that there has been this total disregard for a well balanced and orderly consideration of a very far-reaching and important piece of legislation.

I do not want to say that all of the constitutional issues I have raised are positively fatal to the bill before us. I do mean to say, however, that these issues are serious enough to be considered and discussed in hearings to determine whether or not that is the case or whether some of them are applicable.

But the record, Mr. President, is completely silent to all of these constitutional considerations to which I refer. It is completely silent.

So, from the standpoint of procedure, it is the lack of opportunity for others to be heard and, especially, Members of Congress other than the members of the committee which reported the bill, which is a black mark against this attempted legislation.

Now, the subject matter of this legislation is of great importance. I have already stated that it is of wide interest, and it is of importance not only to preserve documentation of what has transpired, but also for such guidance as it may provide for us in the future.

There is a great and pressing desire by the general public to get at this Presidential information, all of it, Mr. President, Christmas cards and all. I know such cards are in a subcategory, but they are included, along with personal correspondence, and everything else from January 20, 1969, to August 9, 1974, under the terms of S. 4016. I have yet to hear anyone who suggested that Watergate started in January 1969.

Now, this Senator recognizes the importance of most of the papers, and I have said, and I mean it, that I have sympathy with the right of the public to know. But such a right should be and must be governed or balanced by other rights which exist. This is true with all constitutional rights.

The Supreme Court was faced with two fundamental and competing rights in the case of United States against Nixon. It was confronted with the right of Presidential confidentiality of records, and the right that there be a fair trial—that the prosecution on behalf of the people would get certain evidence and that the defendants in those cases would get certain evidence.

The court had to make a decision between the two of these rights.

What is the constitutional right that S. 4016 seeks to vindicate? What is the constitutional right that we must balance against the principle protecting the confidentiality of Presidential communications?

Mr. President, I believe that we should consider the facts surrounding and the current law applicable to the material in question.

Present law and long-observed practices are ample to provide for the preservation and proper availability of the Nixon papers, records, tapes, and transcripts, either through 44 U.S.C. chapter 21 or injunctive proceedings until we have hearings on this legislation.

If it is considered necessary to legislate, and I believe it is, it should be done by way of a general law, properly drawn and processed, and of wide application, rather than being directed against a single man. This narrow application, aimed at one individual, in my judgment, makes S. 4016 vulnerable as a bill of attainder and destructive of a number of the former President's rights.

It is also destructive of a number of other persons' rights, and it is violative of the safeguards of the office of the Presidency, not only the Presidency of Mr. Nixon, but the current President, the next President, and the President after that.

Now, as to the present law, the subject of Presidential documents is treated very extensively and in fine comprehensive fashion in 44 United States Code, chapter 21.

Now, the basic law there was passed, I believe, in 1948 or 1949 and has been amended from time to time, but not basically until 1968, just 6 years ago.

There was great care taken at those times to set forth the provisions of the law and prescribe what it would do and how it would operate in the case of presidential documents.

A little bit ago, we had discussion which included the suggestion that here

was an agreement made between the former President and the GSA which had no foundation in law, made under the dark of the Moon, surreptitiously and before anybody knew anything about it.

Mr. President, the procedure under which the agreement was made had been the law a long time. I will read the language of this law which is found in the code that I mentioned, title 44, section 2108, and under paragraph (b):

The Administrator, in negotiating for the deposit of Presidential historical materials, shall take steps to secure to the Government, as far as possible, the right to have continuous and permanent possession of the materials. Papers, documents, or other historical material accepted and deposited under section 3106 of this title and this section are subject to restrictions as to their availability and use stated in writing by the donors or depositors, including the restriction that they shall be kept in the Presidential archival depository. The restrictions shall be respected for the period stated, or until revoked or terminated by the donors or depositors or by persons legally qualified to act on their behalf.

Five printed pages of statute exist, Mr. President, dealing with the subject of how these arrangements should be made.

Now, it may not be a wise law and I do believe that the provision with reference to the destruction of those documents should be treated legislatively, if it is constitutionally possible to do so.

That would properly fall within the area of public policy, that there will not be a void in the country's historical records and in the conduct of the Nation's business over a period covered by these documents.

But, Mr. President, we are a nation of law, we are governed by laws, not men, and the Constitution frowns upon laws of this kind that are confiscatory in nature, that are destructive of constitutional rights and privileges and directed against one man.

Now, my bill provides that with respect to former Presidents, starting in 1929, their papers will be subjected to the provisions of the bill which I have introduced, which I will, in due time, offer as an amendment to the pending bill in the nature of a substitute.

It is a general law, it applies to all of these people, including Members of Congress, Mr. President, and that is the way it should be.

In the bill the procedures are spelled out on what may be kept and what must be turned over, and the procedures are spelled out, and there is a provision that those papers are Government property. But the accessibility and use of those papers are governed by restrictions contained in the Constitution, and as nearly as we can in a general legislation. But it would not be done in a punitive nor in a discriminatory way.

Now, Mr. President, an agreement has been made pursuant to the law here, to this statute. It has been entered into between Mr. Nixon and the GSA Administrator, and notwithstanding the committee's report to the contrary, there is no imminent danger of destruction, Mr. President.

The earliest that the tapes could be destroyed is in 1984 or upon the demise of the past President, Mr. Nixon. Even then, there would be ample time if that were to occur, at a relatively earlier date, it would be still competent for the Congress to legislate that offensive part of the agreement out of existence. The judicial system could perhaps also be utilized to get an injunction enjoining the destruction of the tape recordings.

And how is their safekeeping assured? It is assured from this fact: There are two keys that are provided for under this agreement. One will be held by the Archivist; the other will be held by the President, or whomever he designates. In either instance, and without both keys, the documents will not become available. There is the assurance that there will be joint control. It gives us that period of time which is necessary to properly process this legislation and do a good job of it, instead of doing a discriminatory job and one that is fraught with constitutional deficiencies.

It is for this reason, Mr. President, that I introduced S. 4080. I was highly complimented when I read the substance of the amendment of the Senator from Illinois. There is not a case of plagiarism, but there is high similarity between many of the propositions that are taken care of in his amendment, which was unfortunately turned down by the Senate, and the provisions of my bill.

I hope the Senate, after a little debate and a little bit of thinking, will reverse themselves on that point and accept this bill, if they are going to accept anything. It should be by way of a substitute. The preferable way would be, and I am frank to say it, to recommit the bill to the Government Operations Committee and simultaneously to refer it to the Judiciary Committee to thrash out some of these propositions, and get out on firm, hard ground. Then we will know where we are.

Mr. President, the second proposition I want to advance, and to which I have already referred, is that these papers are the property of the former President. There is not any question about that. There should not be any question about it. Here is the text of the Attorney General's opinion as it appeared in the CONGRESSIONAL RECORD yesterday, for the benefit of those who will read these remarks and who will be asking for the full text. At a very early part of his opinion, here is what the Attorney General said, and he documents his proposition very, very carefully and persuasively:

To conclude that such materials are not the propetry of former President Nixon would be to reverse what apparently has been the almost unvaried understanding of all three branches of the Government since the beginning of the Republic, and to call into question the practices of our Presidents since the earliest times. In Folsom against Marsh—

I leave out the citation—

Mr. Justice Storey, while serving in circuit, found that President Washington's letters, including his official correspondence, were his private property which he could bequeath, which his estate could alienate, and to which the purchaser could acquire a copyright. According to the testimony of the Archivist of the United States in 1955, every President of the United States, beginning with Washington, regarded all historical materials which accumulated in the White House during his administration, whether of a private or official nature, as his own property.

A classic exposition of this Presidential view was set forth by former President Taft in a lecture presented several years after he left the White House. I am informed by his grandson, who is one of our colleagues, that former President William Howard Taft donated his papers. He donated them and did not ask anything in return. But he recognized in the following quotation the proposition that those papers belonged to the President under whose administration they came into being.

I quote now from former President William Howard Taft:

The office of the President is not a recording office. The vast amount of correspondence that goes through it, signed either by the President or his secretaries, does not become the property or record of the Government unless it goes on to the official files of the department to which it may be addressed. The President takes with him all the correspondence, originals and copies, carried on during his administration.

That was before the days of the tapes, Mr. President, but that would apply equally well to any tape, transcript, photo, or anything in which likeness is portrayed.

Mr. President, the Joint Committee on Internal Revenue Taxation came to the same conclusion when they were assessing the situation pertaining to the former President's income tax return. They came to the same conclusion. There is found at page 28 of that report a subsection E, which is entitled "Who Owns the Presidential Papers?"

I ask unanimous consent that at this point in the RECORD that subsection be printed.

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

WHO OWNS PRESIDENTIAL PAPERS?

A question that has been raised in connection with President Nixon's gift of his pre-Presidential papers is whether he actually owns the papers generated during his public career. If the papers were considered to be public property rather than personal property, the President would not, of course, be permitted to take a charitable contribution deduction for the donation of any of these papers. The staff has, therefore, examined the question whether the papers of a President are appropriately considered public papers.

Since the time of George Washington it has been customary for Presidents of the United States to treat their papers as their own personal property. In addition, Congress by action in this area has suggested that it agrees with this view. In 1950, Congress enacted the Federal Records Act (64 Stat. 583) which provides for the deposit of personal papers of Presidents of the United States. The Act specifically provided that the Administrator of GSA may accept for deposit "the personal papers and other personal historical documentary materials of the present President of the United States." This Act is now known as the Presidential Libraries Act (44 U.S.C. 2101 et seq.). As far as the staff can determine, this custom of treating papers generated during a public career as personal property has been followed in the case of public officials generally. As a result, the staff believes that the historical precedents taken together with the provisions set forth in the Presidential Libraries Act, sug-

gest that the papers of President Nixon are considered his personal property rather than public property.[8]

Of course, conditions have changed significantly since George Washington was President. A President's papers now contain not only much that is of historical value but also may contain much that is essential in conducting the national business in subsequent administrations. Questions have also been raised as to whether it is desirable for Presidents of the United States to derive profit from the sale of materials that were produced while they were public servants.

The 1969 Tax Reform Act limited one way in which public officials could profit from their public service (that is, by claiming charitable contribution deductions for donations of their papers). However, officials can still profit by selling their papers or by bequeathing them to someone who can then make tax-deductible gifts. (Gains on the sale of papers are taxed at ordinary income rates, however, and bequests of them are subject to estate tax.)

On the other hand, the fear has been expressed that the 1969 change in the tax laws may cause future Presidents to scatter their papers widely and make future historical work more difficult. There also are problems with limiting public officials' ownership of their papers. They may be tempted to destroy certain sensitive papers, instead of holding them until they become sufficiently less sensitive to be released. Also, it is difficult to draw the line between personal papers, which presumably should remain the property of the official, and official papers.

In view of these diverse considerations, it may be that the whole question of the ownership of papers of public officials is a matter which the appropriate congressional committees may want to consider.

Mr. HRUSKA. I read only one sentence:

As a result, the staff believes that the historical precedents, taken together with the provisions set forth in the Presidential Libraries Act, suggest that the papers of President Nixon are considered his personal property rather than public property.

Mr. President, maybe that is bad law. I believe it is. I believe those papers should belong to the Government. The question arises though: Do they belong to the Government? Is Congress competent to change that? Very likely, yes. But the point should be carefully considered as to method and mechanics after it is determined that Congress is competent to do so. It should be on a general basis, applicable to other past Presidents within a reasonable range of time; and it should be in conformity with the Constitution. It should recognize other constitutional rights and powers in the provisions which will be created in legislation and enacted into law.

That has not been done here. It should be done.

Now let me get to the subject of the separation of powers. For a long time I served on the Separation of Powers Subcommittee, chaired by the distinguished Senator from North Carolina. It was a real education in the respective jurisdictions and the realms of the legislative, the executive, and the judicial branches of Government.

I have already referred, Mr. President, to the decision of the Supreme Court on the subject of Presidential executive confidentiality of documents and other materials.

The issue arose, of course, on the demand of the Special Prosecutor for certain papers which the then President decided he should not yield.

During the course of the opinion, here is what the Supreme Court said:

Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process. Whatever the nature of the privilege of confidentiality of Presidential communications in the exercise of Art. II powers the privilege can be said to derive from the supremacy of each branch within its own assigned area of constitutional duties. Certain powers and privileges flow from the nature of enumerated powers; the protection of the confidentiality of presidential communications has similar constitutional underpinnings.

The Court goes on in the course of its opinion to reach the point where they speak of Presidential communications as being presumptively privileged.

It unanimously held on this point, Mr. President, as follows:

The expectation of a President to the confidentiality of his conversations and correspondence, like the claim of confidentiality of judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and added to those values the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in presidential decision-making. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for presidential communications. The privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution.

Mr. President, that is a clear statement. Its basis and its necessity are very clearly demonstrated, and of course, it is highly applicable.

In 1953, former President Truman was invited by a House committee or subcommittee to appear before them, and there to give testimony about certain things which will develop as I read the text of the letter. It is dated November 12, 1953. He said:

In spite of my personal willingness to cooperate with your committee, I feel constrained by my duty to the people of the United States to decline to comply with the subpoena.

In doing so, I am carrying out the provisions of the Constitution of the United States; and am following a long line of precedents, commencing with George Washington himself in 1796. Since his day, Presidents Jefferson, Monroe, Jackson, Tyler, Polk, Fillmore, Buchanan, Lincoln, Grant, Hayes, Cleveland, Theodore Roosevelt, Coolidge, Hoover and Franklin D. Roosevelt have declined to respond to subpoenas or demands for information of various kinds by Congress.

The underlying reason for this clearly established and universally recognized constitutional doctrine has been succinctly set forth by Charles Warren, one of our leading constitutional authorities, as follows:

"In this long series of contests by the Executive to maintain his constitutional integrity, one sees a legitimate conclusion from our theory of government. * * * Under our Constitution, each branch of the Government is designed to be a coordinate representative of the will of the people. * * * Defense by the Executive of his constitutional powers becomes in very truth, therefore, defense of popular rights—defense of power which the people granted to him.

President Jackson was quoted, and then President Truman went on to say:

I might commend to you reading the opinion of one of the committees of the House of Representatives in 1879.

And he refers to that document, which went into the subject and came to the same conclusion. To wit:

The Executive is as independent of either house of Congress as either house of Congress is independent of him, and they cannot call for the records of his actions, or the action of his officers against his consent, any more than he can call for any of the journals or records of the House or Senate. House Report 141, March 3, 1879, 45th Cong., 3d Sess.

President Truman then discussed the application of the privilege to former Presidents:

It must be obvious to you that if the doctrine of separation of powers and the independence of the Presidency is to have any validity at all, it must be equally applicable to a President after his term of office has expired when he is sought to be examined with respect to any acts occurring while he is President.

The doctrine would be shattered, and the President, contrary to our fundamental theory of constitutional government, would become a mere arm of the Legislative Branch of the Government if he would feel during his term of office that his every act might be subject to official inquiry and possible distortion for political purposes.

If your intention, however, is to inquire into any acts as a private individual either before or after my Presidency and unrelated to any acts as President, I shall be happy to appear.

So said President Truman.

Mr. President, curiously enough—I do not know why; there are some reasons—the stand that Mr. Truman took in 1953 received great public acclaim. It was in my first year in Congress, and I was pleased to see that there was the idea that the Constitution in this respect meant something. It met with public acclaim and approval. People clapped hands all over the country, and rightly so.

Of course, a Democratic ex-President was involved. Of course, it was a Republican-controlled Congress, the second Republican-controlled Congress that this country has been fortunate enough to have since 1930. That might have been some factor. I do not know. At any rate, that was received with great acclaim.

Now we have an attempt to deny the very tenets of that very sound constitutional position.

Mr. President, I want now to get to the right of privacy. We tried to deal with the right of privacy in one context a couple of years ago. We passed eavesdropping laws to secure an individual's privacy. We passed a wiretapping bill that made it illegal to have wiretaps and electronic measures of certain kinds unless they were approved by a court and for specified purposes.

Great concern is shown about the right of privacy. Yet, this bill bares to the public conversations which individuals did not know were being recorded. While the recording did not constitute eavesdrop-

ping as the offense is defined in title 18, because one of the participants in the conversation knew of the recording, the privacy of numerous individuals will be infringed by granting public access to these conversations.

It is clear that most of the persons who did speak to the President were never aware that their conversations were recorded. Yet, the innermost thoughts of those individuals would be exposed to the curiosity of the public. It would result in a wholesale release of every recording and every scrap of paper upon which abstracts or transcripts of such interviews were recorded. They would be produced as being fair game for any member of the public to satisfy his curiosity, or to furnish material for a book or a column in the newspapers or a picture show, on TV, or whatever.

Frankly, when I considered this bill and read it in its fullness, it surprised me a great deal to see the blatant infringement of the right of privacy contemplated by it. It cannot be said that it is directed to Watergate. There was no Watergate on January 9, 1969. That did not come until a full 3½ years later. All those papers, all those records, all those materials are called for in two or three places in this bill, S. 4016.

So we have the issue of the rights of privacy, and those rights are not limited to the former President alone. It embraces hundreds and hundreds of people.

Section 6 of the pending bill would result in an abridgement of the constitutionally guaranteed right of privacy with respect to all persons whose conversations were the subject of tape recordings to be condemned and made public by the bill.

Section 6 gives the Administrator the authority to release the tape recording to the public, subject to only three restrictions: First, information relating to the Nation's security. That must not be disclosed.

Second, there shall be no release if the Office of Watergate Special Prosecution Force certifies in writing that such disclosure or access is likely to impair or prejudice an individual's right to a fair and impartial trial.

Third, there shall be no release if a court of competent jurisdiction determines that such disclosure or access is likely to impair an individual's right to a fair and impartial trial.

Those availabilities to the prosecutor and to the court generally have already been established by the Supreme Court. That is firm law now, and it is totally understood. The rest of the material not sought for criminal prosecution or criminal defense purposes is all fair game, with one exception of national security.

I understand that in the amendment that was proposed today, there was some broadening, also, of some other provisions, but the major part of the proposition still stands. The bulk of this material, if it is required to be made available to the public, will constitute a very flagrant and massive violation of the right of privacy.

Mr. President, I should like to discuss the subject of eminent domain. This is a wide field of the law. It is very important. It is said that the right of eminent domain is inherent in government, and it is. The question arises, therefore, whether this attribute of sovereignty, this method of exercising sovereignty, could work such a change in the law of private property and its uses as is contemplated in the bill.

In order for that to be done, Mr. President, it seems to me that there would be a collision with certain other powers, certain other responsibilities, and certain other privileges which are granted by the Constitution.

The power of eminent domain exists as an attribute separate and apart from the written Constitution, to be sure. But does that mean that it is an absolute power? Can it be granted in spite of Presidential confidentiality? Executive privilege, for example, which is so deeply rooted—can the Federal Government go in and take records and, notwithstanding this doctrine of Presidential confidentiality, wipe that one out? Or wipe out the private ownership of these records to a point where the man, having acquired it under present law legally and properly, could be deprived of it?

That is the question which would be raised and would have to be resolved.

If there is a taking, which of the other rights and responsibilities of the Constitution will be discarded in its favor, which will survive as being paramount to the right of Government to exercise eminent domain?

This exercise of eminent domain provided in the bill is of a novel type, Mr. President. It extends to literary property, to personal papers, and to the most personal possessions; indeed, the innermost thoughts of Richard Nixon as he expressed or recorded them.

Not only is the subject matter of the condemnation novel, but the extent of it is unique, extending to every piece of paper produced in the White House, personal or official, whether existing there as a home or as an office, for over 5 years. This is without precedent and contemplates an invasion of privacy unparalleled in congressional history.

In stark contrast to the wholesale condemnation proposed by the pending bill is the approach used in Public Law 89-318. There, evidence was accumulated by the Warren Commission, and it was to be considered by the Attorney General in order to determine which particular items it was necessary for the United States to obtain. The items so determined were condemned, and the provision was made for just compensation.

This exercise of eminent domain demonstrates a responsible and constitutional approach of condemning only that property necessary for public use. It would be well to incorporate those considerations into the bill which we are processing.

On the subject of the first amendment, Mr. President, I have made a brief allusion to first amendment rights. It is an understood principle that the right of free speech is not lost with election to high government office. Surely even a President should not be denied the right to speak freely in public debate.

Moreover, the extension of the right of free speech in public life is the private formulation of thoughts among intimates, friends, and associates. Courts have not ruled on a first amendment challenge to forced revelation of a continued pattern of an individual's comments, public and private, for an extended period of time. They have, however, addressed a question of lesser magnitude with respect to attempts to discover a simple list of persons who belong to a political organization.

In so doing, they have held that the privacy of a political organization is recognizably related to the notion of free thought and expression under the first amendment of the Constitution.

Quoting from the case of NAACP against Alabama:

> It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action upon the particular constitutional rights there involved. This Court has recognized the vital relationship between freedom to associate and privacy in one's association [375 U.S. at 462] *See* also *Shelton* v. *Tucker*, 364 U.S. 479 (1960).

It was Justice Brennan who said that inhibition as well as prohibition against the exercise of precious first amendment rights is a power denied to government.

And, Mr. President, when it is denied to Government, that means Government under our Constitution, which includes and provides for eminent domain to be exercised by the Federal Government. The same principle must be applied to the legislative attempts to monitor any man's daily expression. The chilling effect of the knowledge that every political utterance or writing, whether tentative or experimental, or whether by way of position paper, will be exposed to public scrunity—that would be an intolerable inhibition upon any man's thoughts and political development.

Yet this would be the precise effect of the pending bill. It seeks to obtain and make available to the public the voluntarily kept daily record of a man's tenure in the presidency.

No one can deny that perhaps there is a legitimate public interest in allowing every thought of the man occupying the White House to be made public. It holds much appeal. But it must be recognized that the development of presidential political thought differs little from that of any other man, and is inhibited by the same factors. The right of the electorate to monitor the conduct of public officials should go to the decision made, not necessarily to the options considered.

There is nothing in the Constitution or in political theory which urges that high government officials must live in a fishbowl. That was so held in the case of the Environmental Protection Agency against Mink, as recently as 1973. Rather, it is anticipated that those elected to public office will develop and codify their political assessments and judgments in the same manner as private citizens, through public debate and private discussion.

A President, as much as any man, is guaranteed freedom from restraints on his right to think and talk freely among his close associates and advisers. Knowledge that tapes or notes made for personal use can, by whatever means, be condemned and published, will inevitably inhibit and constrain that process. The revered Judge Learned Hand put it this way:

[The First Amendment] presupposes that right conclusions are more likely to be gathered out of a multitude of torques, than through any kind of authoritative selection. To many this is, and always will be, folly, but we have staked upon it our all. *United States* v. *Associated Press* [52 F. Supp. 362, 372 (S.D.N.Y., 1943)].

The pending bill provides for the wholesale acquisition of a single man's tape recordings and personal notes. It must be obvious to everyone that if the thoughts of a man in his office were to be published for all to see, the right of a man to speak, let alone think, and the right of people speaking and conferring with him to think and speak and express themselves, certainly would be chilled; and it is that kind of a chill that the Supreme Court has frowned upon and forbidden. I venture to say when that priority will be established as between the effect of eminent domain and its exercise as against the continuance of this first amendment power, I have the clear idea in my own thinking that it will be the first amendment which will prevail. And it should be.

Now, Mr. President, I should like to turn to the proposition of what part in this does bill of attainder type of legislation play? What is there in it that can give us a little enlightenment?

To start out with a description or a brief definition of a bill of attainder, we can quote from the Lovett case. The Supreme Court stated in that case:

Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group, in such a way as to inflict punishment upon them without a judicial trial, are bills of attainder prohibited by the Constitution.

That case was decided in 1946. It pretty well defines what the bill of attainder is, and if we turn to the Constitution annotated, we find a brief treatment of a definition therein written in the commentaries of the Constitution by Justice Story.

Among other things, he says:

Bills of attainder . . . are such special acts of the legislature, as inflict capital punishments upon persons supposed to be guilty of high offenses, such as treason and felony, without any conviction in the ordinary course of judicial proceedings. If an act inflicts a milder degree of punishment than death, it is called a bill of pains and penalties. . . . In such cases, the legislature assumes judicial magistracy, pronouncing upon the guilt of the party without any of the common form and guards of trial, and satisfying itself with proofs, when such proofs are within its reach, whether they are conformable to the rules of evidence, or not. In short, in all such cases, the legislature exercises the highest power of sovereignty, and what may be properly deemed an irresponsible despotic discretion, being governed solely by what it deems political necessity or expediency, and too often under the influence of unreasonable fears, or unfounded suspicions.

That is the end of the quotation from Justice Story.

But the note of the annotation goes on to say that the bill of attainder includes the bills of pains and penalties to which reference has been made. But the clause thus prohibits all legislative actions, no matter what their form, that apply either to any individual or to easily ascertainabe members of the group in such a way as to inflict punishment upon them without a judicial trial.

And there is punishment here, Mr. President. There is punishment here, and it need not be punishment in the sense of a punitive penalty or a retributive remedy. It can also be punishment of a preventive kind. That was held in the opinion written in the Brown case which was decided back in 1965, with Chief Justice Warren writing the opinion.

So we have, in this situation here, by legislative fiat the situation of Congress reaching out and saying to Mr. Nixon, "Give us those papers; in fact, we are going to take them from you, and then we will give them to every litigant who decides to sue you. We will not allow you to assert a defense or privilege to the production of the papers." This is a forfeiture of property. It is the use of a man's own papers against himself in a trial. This is the nature of the punishment. The Garland case is a good precedent in which the Supreme Court held that the forbidding of a man from practicing law before certain courts for failure to take an oath is punishment. Forbidding employees to find a new job, or forbidding Communists from holding office, are also punishments subject to a Supreme Court decision in an effort to find out the nature, the impact, and the constitutional prohibition of a bill of attainder.

Mr. President, after even this rather cursory treatment of some of the major constitutional points and difficulties, some of them formidable, I am confident that a number of them constitute very substantial constitutional issues. It seems to me that the debate we have had here yesterday and today, and which I presume will continue tomorrow, this field of constitutional law, and the law and compassion extending to an individual who has been in high office, and to the many associates which he had, the many visitors, and the many dignitaries with whom he talked, not only about national security but other things, should all be taken into consideration. We should deliberate upon them properly and studiously, so that we will turn out a first-class legislative problem, and not yield to the influence of what one would almost call instant law, because the summary fashion in which this legislation was processed—or rather not processed—is very serious indeed.

Mr. President, in due time it will be my purpose to offer an amendment to the pending bill. It will be in the nature of a substitute. I do not know whether the text of that amendment is printed yet; it was not a few hours ago. But the text of the amendment, which is not too long, is to be found in the CONGRESSIONAL RECORD of yesterday; and for the curious who might want to know where it is located, it is at page 33416.

It provides, Mr. President, that papers and other reported communications of recent Presidents and other elected officials, namely, Vice Presidents, Senators, and Congressmen, shall constitute public property.

A concern that has troubled many of my colleagues is the profiting that can result when an elected official sells the papers that he originated at a time when he was serving the public and for which he was being compensated by the public.

Mr. ERVIN. Mr. President, will the Senator yield for a question on that point?

Mr. HRUSKA. I would be happy to yield.

Mr. ERVIN. The way I read that bill it does not constitute property of the person unless it is acquired by him before his tenure of office has expired, which would eliminate President Nixon on that point because his tenure of office expired on August 9.

Also it does not constitute public property unless it has been deposited with the General Services Administration. President Nixon's tapes are not deposited with the General Services Administration. Some of them, we are told, are in the White House, and some of them are in the office of the Special Prosecutor, and some of them God knows where, I do not. But I know they are not at the General Services Administration. So that would not solve the problem as to public property.

Mr. HRUSKA. If the Senator from North Carolina will read the text of the bill he will see section 2203(a) which says:

Notwithstanding any other agreement or understanding made pursuant to section 2107 of title 44, United States Code, or any other law, the Administrator of General Services shall obtain, or, as the case may be, retain complete possession and control of all the official communications of a President or former President of the United States for all terms served since March 20, 1929.

Mr. ERVIN. Yes, it says that at one place. But the place where it defines what the public property is it has no relationship whatsoever, and it applies to public property only if the tenure of the President expires after this bill is enacted or only as to matters that have been deposited with the General Services Administration. Neither one of those events has occurred with respect to President Nixon.

Mr. HRUSKA. That definition applies to officials other than the President.

Mr. ERVIN. It applies to every public official because it talks about what official papers are public property.

Mr. HRUSKA. If the objection is on the ground that the simple declaration of making it public property will not make it public property, that can be achieved by a change of drafting the bill. That is its intent, and that is one of the purposes of a hearing, to find out how to do it properly and to do it effectively.

Mr. ERVIN. It says:

The official communications of an elected official of the United States compiled during the tenure of an elected official ending after the date of enactment of this bill—

And the tenure of President Nixon ended on August 9, long before this bill or a substitute will be enacted.

Mr. HRUSKA. Mr. President, I submit that there will be a clarifying amendment to section 2202 of the bill which I have introduced. It would then read:

The official communications of an elected official of the United States compiled during the tenure of an elected official, or deposited or to be deposited with the Administrator of General Services under section 2203 of this title shall constitute public property.

It seems to me that will take care of that. If that will be inadequate let us contrive something that will be adequate. Again, I say, that is the purpose of hearings.

The Senator from North Carolina brought forward a two- or three-page list of amendments which he asked to be made operative to the measure he introduced. They were afterthoughts. I am sure if we spend a little more time canvassing his bill we may find other things that may require change.

When we get into the orderly process of hearings on it and there is due deliberation in executive session by the committee——

Mr. ERVIN. The Senator, in addition to clarifying his proposal, should clarify a statement he made just a moment ago. The Senator referred to the bill which he introduced. Do I understand the Senator's proposed substitute is now the pending business? Has it been introduced formally?

Mr. HRUSKA. No, I have not submitted the amendment yet.

Mr. ERVIN. That clarifies the Senator's statement.

Mr. HRUSKA. I said in due time it would be my intention to propose an amendment in the nature of a substitute.

Mr. ERVIN. The Senator said in due time he was going to introduce it, which he said he had introduced, and I just wondered if he had.

Mr. HRUSKA. Excuse me, I misspoke myself.

Mr. ERVIN. I thank the Senator.

Mr. HRUSKA. But the Senator's bill was introduced.

Mr. ERVIN. Oh, yes.

Mr. HRUSKA. And the Senator's bill was amended by two or three pages with a great number of little clarifying amendments, which I welcomed and which I approved.

Mr. ERVIN. Which made it just about as perfect a piece of legislation as has been presented to the Senate of the United States in many years. [Laughter.]

Mr. HRUSKA. Well, to all appearances there was not that much confidence in it because it was not submitted, Mr. President, to a series of public hearings where people having different ideas on the subject would be allowed to speak out and to give some reasons.

This Senator has raised some propositions which, I am sure, in due time will be very thoroughly canvassed.

Mr. ERVIN. This bill relates to Watergate, the material that relates to Watergate, and there have been more hearings about Watergate, weeks of hearings, months of investigation by the Department of Justice, weeks of hearings by the Senate select committee, weeks of hearings by the House Judiciary Committee, a long trial in the courts, and I think there have been more hearings about Watergate than there have been about anything in the world since the earth began except, perhaps, the salvation of man. [Laughter.]

Mr. HRUSKA. Mr. President, let me patiently say once again that there is more involved within the scope of the pending bill than Watergate matters. That was brought out by the Senator from Michigan. If necessary, we can bring it out again. But, even so, the law of property with reference to Presidential papers does not say that those Presidential papers belong to former President Nixon except for Watergate-related matters. It says all of them.

Mr. ERVIN. It says that the General Services Administration take control of all these papers; that all of the papers which do not relate to Watergate will be returned to the sole custody and use of President Nixon, and that the only other papers not to be returned would be the ones that they say are of great historical importance.

Mr. HRUSKA. All of the objections on the right of privacy being invaded, the right of property, and the separation of powers that I have enumerated here, together with others, apply even if that were the impact, even to the bill so bobtailed as that.

Mr. ERVIN. Not with the amendments. The amendments say that the man who made this agreement with the President allowing the President—providing that all the tapes will be destroyed if the President dies, and providing that even after the President gives them to the United States that they be destroyed, anyone he selects, this man is given the power to write a regulation that would deny access to anything except the Watergate material.

Mr. HRUSKA. The bill is still one which partakes of the characteristics of a bill of attainder, no matter how abridged it might be, and it is objectionable for that reason, as well as all of these other reasons.

Now then, if we want a bill that will take care of this matter, let us retire to the committee room and form a list of witnesses and have them come in and testify on it. Let us then make it of general application. Why single out this matter when there are many other matters about which the American people have been very curious over a sustained period of time, and I understand there will be an amendment offered some time tomorrow which will seek to broaden that a little bit.

Mr. ERVIN. Why have hearings? There are 26 books of hearings by the Senate select committee, there are hearings by the House committee about this high. There are tapes that have been released that are in the Supreme Court report. Why any more hearings?

But about the bill of attainder, a bill of attainder is a legislative act which condemns a person of wrongdoing without a judicial trial and inflicts punishment on him.

This bill does not condemn anybody and does not inflict punishment, so it is not a bill of attainder.

Mr. HRUSKA. First, with respect to hearings—no hearings were held on the custody and availability of Presidential papers, the subject of this bill.

Second, with respect to the bill of attainder, the punishment is the forfeiture of a man's papers so that they can be used by any litigant who sues him. This is a denial of his right to defend himself in court and to me that is punishment.

Mr. President, the amendment which I will in due time submit in the nature of a substitute would go also to the proposition of making all official communications of these elected officials public property and require they be preserved and protected.

This provision prevails notwithstanding any agreement executed between elected officials to the contrary.

If it deprives any individuals of any papers or recordings now considered to be property without just compensation, the General Services Administrator is authorized to provide such compensation, which is similar to the provision in the bill, S. 4016.

There is a provision that grants the elected official other than the President an option to allow him to donate his papers to a university, museum, or library open to the public. If he chooses not to exercise the option, the papers remain public property and would be deposited in the National Archives.

Then the bill does establish standards for public access to the public communications. The standards established are similar to those prescribed by every President from Herbert Hoover on to the present.

For example, official communications that are properly classified communications that might be used primarily to embarrass, damage, injure or harass any living person, and communications the disclosure of which is likely to impair or prejudice an individual's right to a fair and impartial trial.

All these could be withheld from public disclosure. There are seven such classifications in the bill.

The bill provides for the maintenance of any records for use in any judicial proceeding.

Consistent with the requirements of the Constitution, the bill preserves the right of the elected individual to assert any privilege or defense to a subpena or motion to produce the records.

So that will be the proposition which will be contained in the amendment which in due time I shall propose and which I shall advocate.

Again, I want to say, Mr. President, so that my position is not misinterpreted, I know that sometimes those things happen either because of incomplete reporting or perhaps for other

reasons, I am in thorough sympathy with the Government owning these papers. I am in thorough sympathy and have complete awareness of their importance. They should not be destroyed, but measures should be taken, and in due time and properly to revise the existing agreement between the former President and the GSA so that that clause will be eliminated.

The right of the public to know should be accorded full consideration, but not in total and absolute disregard of other very important constitutional rights.

It is on that basis that I offered these discussions this afternoon and which I would like to pursue to some degree when I offer my amendment tomorrow.

Mr. President, I yield the floor.

EXHIBIT 1

[From the New York Times, Sept. 13, 1974]

DOAR SAYS PARDON CAN'T CHANGE FACTS

(By James M. Naughton)

WASHINGTON.—John M. Doar, the House Judiciary Committee's special counsel on impeachment, declared today that the record of President Nixon's role in the Watergate scandal was clearly established for history despite President Ford's pardon of his predecessor. Mr. Doar said he was "firmly convinced that justice was done" in the forced resignation of Mr. Nixon.

Mr. Doar declined, in the first interview he has granted since assuming direction of the House committee's impeachment inquiry nine months ago, to discuss directly what he described as "current events"—the pardon granted by Mr. Ford last Sunday and the furor that has followed.

Nonetheless, he clearly disagreed in the 75-minute interview with those in Congress and elsewhere who have objected to the pardon on the ground that it foreclosed the opportunity to document Mr. Nixon's Watergate role through the judicial process.

FACTS "ESTABLISHED"

"The facts have been established," Mr. Doar said in his slow, laconic style as he sprawled on a blue leather couch in his cluttered office in a one-time hotel that now houses Congressional staffs. Armed guards continue to secure the secrecy of some of Mr. Doar's documents. Any additional information about the former President's conduct, Mr. Doar said, "would just be cumulative."

He said that "the die was cast" when the Judiciary Committee voted, 27 to 11, on July 27 to approve the first of three articles of impeachment, accusing Mr. Nixon of playing a central role in the Watergate obstruction of justice.

"Anything after that, as I look back on it, would have been anticlimactic historically," Mr. Doar said.

Explaining why he was confident that justice had been done in Mr. Nixon's case, Mr. Doar said:

"The President committed high crimes and misdemeanors that warranted his impeachment and removal from office. The facts were presented in a way that afforded the President and his counsel an understanding not only for the charges against him, but of the facts that underlay the charges.

"He had every opportunity to state his position. There were no surprises. The American people had an opportunity to understand the nature of the charges and the facts that supported the charges.

"I had no frustration, or no disillusionment or no despair with the way the process ended," he said, tapping a pencil on the arm of the sofa. "Speaking from a legal standpoint, because I've never felt it was my place to express a political view on whether anyone should vote for impeachment, I thought that the case for impeachment and conviction [in a Senate trial] had been established."

Asked if Mr. Nixon's resignation, followed by the abandonment of the formal attempt to remove him from the White House, had not represented something of an unfinished symphony, Mr. Doar said, with rare emphasis, "No. No. Not at all. The facts have been established."

NO SENSE OF INCOMPLETENESS

Concluding the Congressional inquiry by filing the thick report, rather than acting on it, Mr. Doar added, had not left him with a sense of an incompleted task.

"If you're in any kind of contest," he said, "and your opponent doesn't come out for the second half there is nothing you can do about it."

Nor, Mr. Doar replied, did he believe that any damage had been done to the system in the precedent set by Mr. Nixon's resignation.

"I assume there is nothing about the way the President left office that either you or I are not familiar with," he said. "Faced with the vote of the Judiciary Committee, faced with the surrender of the June 23 [1972] tape, he decided he'd resign.

"I do not feel the process was short-circuited because of that. It was inevitable, a fact of life."

Mr. Doar said his belief that President Nixon was deeply enmeshed in the Watergate cover-up had come gradually and could not be traced to any specific moment in the impeachment inquiry or to a single, compelling piece of evidence.

TRANSCRIPT DIFFERENCES

But he said that "the thing that was highly persuasive to me was the differences between our transcripts and the White House transcripts" of Mr. Nixon's Watergate conversations.

Mr. Doar recalled the months of the inquiry as an "awfully tough" physical strain. He said that the inquiry staff had about one day a month off and frequently went for days on four hours sleep a night.

Now, rested—or, at least, lacking the bags beneath his eyes that had become a fixture—he smiled and said:

"I'm alive and well and part of a very historic experience. I'm very proud of that. I don't think it's ever hurt anybody to work hard. It didn't hurt me."

He called James D. St. Clair, the Boston attorney who represented Mr. Nixon in the inquiry, a "formidable adversary." But Mr. Doar appeared bemused as he reflected that, "by the time the hearings started, it was clear to me that Mr. St. Clair and I were talking about two different cases."

He said Mr. St. Clair's "premise was that you can't prove the President knew anything about the cover-up before March 21 [1972] so therefore he didn't."

"A LOT OF EVIDENCE"

By contrast, he said, the inquiry staff's premise was that "we might not be able to reach a standard of proof the Congress or the country might set, but that there was a lot of evidence that the President did know before March 21," the date of his fateful meeting with John W. Dean 3d, the former White House legal counsel.

"We had," he elaborated, "a series of circumstances and we had some direct testimony which, in ordinary affairs of adult citizens, would have caused you to inevitably draw one conclusion.

"It was amazing to me how reluctant the general public opinion was to draw that conclusion against the President. That was explicable, because everybody wanted to believe their President. I wanted to believe my President."

After three weeks of vacation, during which Mr. Doar said he encountered a wide variety of citizens in New York, where he had directed a Bedford-Stuyvesant self-help project, and in Wisconsin, his native state, he was persuaded that the nation had accepted the outcome.

"The impeachment proceeding is not a procedure to punish," he said. "It's a corrective procedure. The whole point was that the committee was not concerned with an individual, but with the preservation of a system of government."

Had it been preserved?

"I believe," Mr. Doar said, "that it has."

The PRESIDING OFFICER. What is the will of the Senate?

Mr. GRIFFIN. 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.

FULL DISCLOSURE OF WATERGATE WRONGS IS NECESSARY

Mr. CRANSTON. Mr. President, I support S. 4016. The Watergate events and the offenses charged against Richard Nixon by the House Committee on the Judiciary have greatly lowered public confidence in our Government. The President's pardon of Mr. Nixon for any and all offenses he may have committed during his tenure in office exacerbated the distrust of millions of citizens of their Government, and their concern that this principle that everyone is equal under the law is being violated.

Restoration of public confidence in government can only be earned; it cannot be commanded or wished for. The first step toward earning renewed confidence in government is to permit, consistent with the vital security interests of the United States, full and open access to all of the papers and tape recordings of the Nixon administration from January 20, 1969, until August 9, 1974, the day Richard Nixon left office. Only this way will we learn why and how Watergate happened and the full story of the Nixon administration.

We cannot wait for future historians to delve into dusty archives long after we are gone from the scene to determine what did and did not actually happen in the Nixon administration. Public confidence in our institutions of government is impaired right now.

Extremely serious allegations of wrongdoing have been raised against the administration of Richard Nixon. The conviction of many of his former aides and the indictments of others, including his two closest advisers, H. R. Haldeman and John Ehrlichman, makes more urgent than ever the need for a complete disclosure of Presidential involvement in the outrageous Watergate events and abuse of our political system.

Tens of millions of Americans wanted the final questions of guilt or innocence of Richard Nixon settled in a court of law.

The expectation has been denied by President Ford's unwise pardon of Nixon. Furthermore, the former President's resignation has effectively blocked further congressional inquiry through the impeachment process to determine the ex-

tent of his involvement in the criminal offenses and abuses of our political system attributed to his administration.

It now appears that further disclosures could be cut off by the agreement dictated by Richard Nixon to Arthur F. Sampson, Administrator of the General Services Administration, giving the former President control of the bulk of the papers and tapes generated during his tenure in office.

It is my own view this is wrong. I do not believe that the papers and records of a President should be his personal property to be controlled, commercially exploited, or destroyed as he may see fit. That issue, however, is not presented for our consideration by S. 4016 and I agree that it can be put off until another day. What cannot wait is the question of full disclosure of the records of events transpiring during the administration of Richard Nixon.

No other administration in the history of the country has been so thoroughly impeached by its own words and deeds. No other President has had to resign to avoid impeachment. Subsequently, the resigned President accepted a full pardon from President Ford for any and all offenses he may have committed against the United States from January 20, 1969, through August 9, 1974, inclusive. By accepting a pardon, Richard Nixon gave a tacit admission of his guilt for having committed offenses known and as yet unknown. No other President has left office under such circumstances.

This situation requires that the American people must know once and for all exactly what did and did not happen in the Nixon administration.

S. 4016 fully protects the vital security interests of the United States. No other public interest is served by additional secrecy.

S. 4016 also permits those individuals charged with having committed crimes while holding office in the Nixon administration to have full access to the record of truth in order to make their defense. Their concern is required by our Constitution.

Mr. President, Richard Nixon, that troubled man, is left to find his own peace. We, in the Congress, on the other hand, must work to rebuild what has been destroyed—confidence of the people that their Government will not take part in coverups of wrongdoing by those holding positions of great trust and power.

S. 4016 will open to the cleansing power of truth and knowledge the dark crannies which still hide unknown secrets of the Nixon administration.

Mr. HUDDLESTON. Mr. President, the unfortunate episode in our past which we now familiarly refer to as "Watergate" left the American people with a legacy of unanswered questions. Our efforts to dig out the answers, especially those contained in Mr. Nixon's Presidential tapes and papers, have been consistently hampered, interfered with and discouraged by the dilatory practices of the previous administration. However, through the persistence of the Congress, courts, and Special Prosecutor we have freed a great deal of revealing and sometimes shocking information about Watergate and related matters.

Within the last month another obstacle has risen which threatens to forestall the disclosure of further relevant facts regarding Watergate. This obstacle is the agreement negotiated between Mr. Arthur F. Sampson, Administrator of the General Services Administration, and Mr. Nixon. In accordance with this agreement Mr. Nixon retained full title to his Presidential papers, documents, materials, tapes, and transcripts and the GSA accepted custody of them for deposit purposes only. Mr. Nixon agreed to make future donations of substantial portions of the materials and not to withdraw any material for 3 years. The provision dealing with the tape recordings is most discouraging. Pursuant thereto the tapes would be donated to the United States in 1979 with the understanding that they would be destroyed at the time of Mr. Nixon's death or in 1984, whichever occurred first. Subsequent to 1979 the Administrator is required to destroy any tapes that Mr. Nixon may designate. Thus, the tapes, which contain valuable information relevant to Watergate and related matters, have been placed in a situation where they are subject to being destroyed at any time. The recent illness of the former President underscores the precarious position the tapes now occupy.

Last week the Government Operations Committee reported S. 4016, introduced by Senator NELSON, cosponsored by myself and other Senators, which would authorize the Federal Government to retain custody and possession of all Mr. Nixon's Presidential papers, tapes, documents, memorandums and transcripts. This bill would assure the safety and continued existence of the papers and tapes and make them available for use in any future or present legal actions. Furthermore, the Administrator of the GSA would be required to establish reasonable regulations governing access to the tapes.

Also reported was Senate Resolution 399 introduced by Senator MANSFIELD and Joint Resolution 240 introduced by Senator ERVIN. Senate Resolution 399 would urge President Ford to afford the American public full access to all facts connected with and relating to Watergate matters including access to all of Mr. Nixon's Presidential papers, documents, memoranda, tapes and transcripts, except where national security matters are included. Senate Joint Resolution 240 would require President Ford to make such disclosures.

I believe that these pieces of proposed legislation go as far as Congress can to protect and preserve the tapes and papers. On their face, they appear to settle the matters of disclosure, possession and custody. However, I would be less than candid if I did not recognize that the legal intricacies revolving around this matter will probably propel the issue into the courts for final disposition.

There is a very real question as to who has legal title to the papers and tapes. The Attorney General, in an opinion dated September 6, 1974, has held that Mr. Nixon has full title to them. While the weight of authority tends to support such a position, we must realize that such authority is mostly a concoction of inferences and tradition. There is no clear-cut precedent on the issue, nor is there a specific statute granting a President title to his official papers. The leading case on the issue, Folsom against Marsh, is over 100 years old and subject to question on several points.

Although S. 4016 deals only with the possession and control of the papers and tapes, the question of title would have a direct bearing on the matter.

A very sound argument can be put forth that all papers, documents, memorandums, tapes and transcripts generated by a President in his official capacity are the property of the U.S. Government. The paper on which the material is set forth is provided by the Government, the machines on which it is prepared are owned by the Government, the secretaries and clerks who assist in the preparation are employees of the Government and the material relates to official Government business.

The logical conclusion to draw from all this is that title and right to the material rests with the Government and not the official who instigated its preparation.

Nevertheless, should a party who claims a property right in the papers or tapes contest the action of Congress in the courts and it is found that private property rights have been interfered with, S. 4016 provides that compensation shall be awarded. This, of course, would be consistent with the constitutional requirement that the Federal Government not take private property without just compensation.

The history of Presidential papers has a poignant lesson which we should profit from. Every President since George Washington has treated the papers generated by his office as his own private property—a tradition that arose more by accident than design. The result of this practice is a relatively incomplete picture of the administrations of many past Presidents. Numerous documents were destroyed by accident such as fire while others were deliberately destroyed either by Presidents or their relatives. Whether or not this destruction was in the best interest of a particular President we will never know, but we can be certain that it was not in the best interest of the American public. In order to adequately assess an administration and learn from its successes and failures we must have access to all of the facts. Without sufficient information our conclusions and evaluations will never be completely valid.

The controversy surrounding Mr. Nixon's Presidential papers and tapes has served to highlight this problem. Serious and far-reaching accusations have been made against the former President—accusations which reach to the very heart of our democratic system of government. If the President or his advisers did engage in illegal acts which abrogated certain of our constitutional rights, the public has the right to all the related facts and the Congress has the duty to provide the means of access. Furthermore, if the accusations are in-

correct the public has to know this also. Only in this way can the American people regain the confidence and trust in their Government which is necessary for a healthy political system.

I seems to me that the most important thing we can do in the aftermath of a tide of events that led to the resignation of a President of the United States and numerous indictments and convictions of high public officials is to assure that the American people know the complete story—not just the present generation, but all generations to come.

It should be made clear that this proposed legislation is not designed to cause Mr. Nixon any additional embarrassment, humiliation or suffering. In my opinion his resignation from the highest office of the land has been substantial punishment in itself and we should not seek to inflict more. This is why the pending legislation affords the former President every protection and consideration while at the same time protecting the right of the public to be completely informed about a matter that affects us all so intimately.

There is a maxim which says we should learn from history in order not to repeat our mistakes. However, if one man is allowed to selectively edit a substantial portion of our history at his own discretion we may very well be destined to repeat our mistakes, only on a grander scale next time. This is why it is extremely vital that we provide the means for settling this matter as soon as possible.

Mr. RIBICOFF. Mr. President, the bill pending before us, S. 4016, is of utmost importance. Materials involving information relating to Watergate crimes, are in danger of imminent destruction. The still secret White House tapes may now be locked up or destroyed. The New York Times in an editorial today addresses itself to this issue, and I ask unanimous consent that the contents of that editorial be inserted in the RECORD at the close of my remarks.

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

(See exhibit 1.)

Mr. RIBICOFF. I lend my support to S. 4016 as a cosponsor and as an elected official concerned with the preservation of the documents of all elected officials.

S. 4016 concerns itself specifically with the protection and preservation of tape recordings of conversations, and other materials involving former President Richard M. Nixon during the period of January 20, 1969, and August 9, 1974.

No Presidential records ever contained information so vital to the American people. No former President has ever before resigned his office. No former President has ever accepted a full pardon for all possible crimes committed during his term of office. No former President has ever before sought specific assurances from the Government that he be allowed to destroy Presidential documents. Mr. Nixon has already been spared the judgment of the courts—must he also be spared the judgment of history?

Surely, legislation must now address itself to the immediate question of the preservation of these tapes and documents.

According to the agreement between Mr. Sampson, Administrator of the General Services Administration and Mr. Nixon, on September 8, 1974, the Presidential tapes could be destroyed after 1979, or upon Mr. Nixon's death. For 3 years, the former President would share access to the tapes with the Federal prosecutors who could subpena them for use in Watergate-related trials. However, any requests for access to them, no matter by what legal processes, must be referred to Mr. Nixon. The main assumption of the agreement is that all the materials during Mr. Nixon's Presidency are his private property. This agreement was made pursuant to section 2107, title 44, United States Code, which allows the Administrator of General Services to accept for deposit the "papers and other historical materials of a President or former President of the United States—subject to restrictions agreeable to the Administrator as to their use."

Although Mr. Sampson has the statutory authority to accept these materials, he is given no authority to agree to their destruction. On the contrary—the Administrator, according to title 44, section 2108, United States Code, must "take steps to secure to the Government, as far as possible, the right to have continuous and permanent possession of the material." Surely, a protective intent is not permission to allow destruction.

S. 4016 does not seek to determine ownership of the tapes. There is no Supreme Court decision on this point. Nor is there any statute which expressly states that a President has legal title to his documents during or after office. If a Court should determine that legislation deprives Mr. Nixon of private property, just compensation is provided for by the Administrator from funds in the Federal Treasury. This is in accordance with the Federal Government's power of "eminent domain." (*United States ex rel TVA* v. *Welch*, 327, U.S. 546 (1946); *Backus* v. *Fort Street Union Depot Co.*, 169 U.S. 557 (1898). What we are concerned with is the custody of the tapes by the Government so that valuable documents may be preserved.

Public Law 373 provides "for the acceptance and maintenance of Presidential libraries." The Federal Government has trusted the preservation of Presidential documents not to the protection of law, but to the good will of each succeeding President. The Government can only take advantage of the generosity of Presidents, former Presidents, their associates and friends. For instance, the papers of Lincoln were sealed by his son until 1947—82 years after Lincoln's death. Should such important papers, so vital to the history of our Nation, be kept from public scrutiny for so long a time? Might it not be better for Congress to mandate its intent by legislation for the permanent custody of documents such as these?

S. 4016 provides the necessary criteria so that these materials will be preserved, that they will be made available for use in judicial proceedings or other legal process, and that there shall be public access to tape recordings.

Our version of Mr. Nixon's role in the Watergate matters will no longer depend on information which has been edited and revised. History will be able to judge the unanswered questions before us.

Now, for a moment, I would like to comment briefly on the amendment to S. 4016 introduced by Senator PERCY and Senator BAYH and cosponsored by myself. This amendment is similar to a bill introduced by Senator BAYH in February 1974. It requires that all elected officials turn over to the National Archives "all papers and documents dealing with official business" within 180 days after leaving office. Public papers and documents of public officials transacting public business should belong to the public. Our amendment provides that public documents of elected officials are the property of the United States. Elected officials of the United States may enter into agreements with the GSA Administrator regarding public access to the documents. The historical custom of letting public officials remove their files and then sell them back to the Government should be challenged. Historians and archivists have been continually concerned with this problem.

Congress must insure that all the records of Federal employees which are produced by public funds remain the property of the Government. Congress is surely empowered to set such a regulation under its power to regulate Federal employment and to control the expenditures of the executive branch.

Numerous court cases have dealt with the right of State governments to maintain access to the records of public employees which were produced in the performance of official duties. The principle of the State's access to State documents has been set forth in *Coleman* v. *Commonwealth*, 25 Grattan (66 Va.) 865:

> Whenever a written record of the transactions of a public officer in his office, is a convenient and appropriate mode of discharging the duties of his office, it is not only his right, but his duty to keep that memorial whether expressly required so to do or not; and when kept in becomes a public document—a public record belonging to the office and not the officer; is the property of the state and not of the citizen, and is in no sense a private *memorandum*.

S. 4016 is based on similar reasoning.

Records maintained by Government officers in the discharge of their assigned duties are the property of the Government. This practice has been applied to Government employees in the past. Yet, for some reason, the records of elected officials have been exempt from this practice.

Mr. President, the assumption in our amendment that public documents of elected officials of the United States belong to the public is an issue which I hope will be considered during hearings and debate at the earliest possible opportunity.

We can continue to allow the erosion of trust and confidence in our Government, or we can begin to restore the belief that Government can be used to advance that trust and confidence. Surely, elected officials have an opportunity to alleviate fears about the working of our Government by allowing their documents

to become the property of the United States in whose hands their trust is maintained and perpetuated.

EXHIBIT 1

THE NIXON RECORDS

Clearing away the debris of the Nixon Administration is proving more difficult than cleaning up the Santa Barbara oil spill. A variety of questions relating to the former President's transgressions, records and upkeep are now making their tortured way through the Congress. A vote on the most important of these—the preservation of the Nixon records—is to come on the floor of the Senate today.

The measure up for Senate consideration is a commendable effort by the Government Operations Committee to modify the improvident agreement President Ford made with Mr. Nixon about White House tapes and papers. That agreement recognized Mr. Nixon's questionable claim of ownership of the materials and made access to them subject to his wishes, desires and assertions of legal right.

The principal aim of the proposed Senate bill is to give the United States immediate custody and control of the papers. It does not attempt to resolve questions of ownership or restitution, but it does provide for speedy judicial disposition of those questions.

The bill has two chief virtues. First, it forestalls transfer of custody of these records to Mr. Nixon. Second, it negates the provision of the Ford agreement permitting destruction of the White House tapes at the time of Mr. Nixon's death. Watergate questions that are left unanswered will haunt Americans through history. Preserving the records of the Nixon Administration is the first step toward answering those questions. The negotiations currently being carried on by Special Prosecutor Jaworski for access to the documents are no adequate substitute for the Senate proposal. It should pass without delay.

Mr. MUSKIE. Mr. President. I rise in support of S. 4016 and the companion resolutions Senate Resolution 399 and Senate Joint Resolution 240. I wish to commend the work of the majority leader, the distinguished chairman of the Committee on Government Operations, the senior Senator from New York and the Senator from Wisconsin for their able and conscientious efforts to bring forward this important legislation.

During the past 2 years we have heard first one call and then another to bring an end to Watergate—to terminate this national nightmare and relegate it to the past. All too frequently, however, the pleas for ending Watergate were accompanied by efforts to prevent either the judicial system or the public from knowing what really happened.

Those demands for an end to Watergate are reminiscent of efforts to hide the family skeletons simply by closing and locking the closet door. However, Watergate will not die if the facts are buried first. It will continue to be a national issue until we bring to a fair and orderly conclusion the related criminal proceedings in the courts and are able to assure the public that all of the relevant facts have been made known to them. The momentum of this national tragedy has been sustained in the past by the repeated disclosure of new elements or facts with the passing of each day or week. More than 2 years after the initial Watergate buglary, when many people believe that most of the facts had finally emerged, it was the previously undisclosed release of a June 23 tape recorded conversation which started the final chain reaction that led to our Nation's first Presidential resignation.

The events surrounding that resignation comprise a sad, but nevertheless, vital segment of our Nation's history. Our generation and future generations will profit from that experience. But judgment cannot be rendered without all the facts at hand.

The agreement signed on September 6 by former President Nixon and General Services Administrator Sampson, would frustrate that objective. Under it's provision, Mr. Nixon is given control over the tape recordings and is permitted to destroy any of them after September 1, 1979. In addition the agreement provides that all the tapes will be destroyed upon Mr. Nixon's death or on September 1, 1984, whichever comes first.

The uncertainty of human life dictates the importance of immediate action by the Congress to assure access to the tape recordings and other materials for present and future judicial proceedings.

Without attempting to decide the more complex question of who should have title in the presidential documents, this legislation addresses itself to the immediate problem of court access to the Nixon Presidential tapes and materials as well as to the need to provide the public with the full truth at the earliest possible date of abuses of Government in power, identified by the term "Watergate."

The authors of the measure before us have given careful attention to the many problems associated with the handling of the Presidential materials in question. In addition to making them available to appropriate judicial proceedings, they have recognized the need to guard against the disclosure of national security information involved and the need to protect every individual's right to a fair trial. In order to assure that appropriate procedures are adopted for access to these materials, GSA is directed to promulgate regulations. Within 90 days of the effective date of this act. Congress could then examine those regulations to see if they meet the purposes and goals of this legislation.

The legislation before us is not an effort to deprive Mr. Nixon of his property. Rather it is designed to recognize both Mr. Nixon's need for access to these Presidential tape recordings and materials as well as the public need for protecting these materials and assuring their availabilty to judicial proceedings and historical study.

In order to avoid any further delay or legal proceedings, a procedure is wisely provided for review of any challenge to this act by a three-judge Federal court.

This is a twilight area defined more by procedure than by the law. Without attempting to decide the question whether title and custody of future records of Presidential actions should be placed in the American people, this legislation meets an immediate need for assuring the immediate safety and appropriate use of the Nixon Presidential tapes and materials.

Again, I commend the efforts of the Senators who have worked on this legislation and hope that it will receive the approval of the Congress.

ORDER FOR ADJOURNMENT UNTIL 9 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9 o'clock tomorrow morning.

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

ORDER FOR RECOGNITION OF SENATOR THURMOND, SENATOR WEICKER, AND SENATOR MANSFIELD TOMORROW AND FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized under the standing order on tomorrow, the following Senators be recognized, each for not to exceed 15 minutes and in the order stated: Mr. THURMOND, Mr. WEICKER, and Mr. MANSFIELD; after which there be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements limited to 5 minutes each, at the conclusion of which the Senate will resume its consideration of the measure now pending.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

EMPLOYEE PARTICIPATION IN STOCK OWNERSHIP

Mr. LONG. Mr. President, I am pleased to note that the Committee on Finance has moved again in the direction of implementing a proposal that workers for companies in this Nation, particularly the large ones, should have the benefits of ownership of stock in those companies. The U.S. Senate has now placed its stamp of approval, twice, on the so-called kelso plan, or the proposal that corporations have employee stock ownership plans, which would mean that over a period of time, in addition to the pay that a worker receives for his efforts, he would receive some stock in the company.

The Committee on Finance had proposed, as a part of seeking to provide jobs where a payroll moves away from an area due to the impact of increased imports, that there be a very positive and forward looking community development program. It is interesting to note that one aspect of this is that there should be

an employee stock ownership plan in cases where the Federal Government guarantees loans.

I read from a press release issued yesterday by the Committee on Finance:

Yesterday, the Committee approved a new program of guaranteed loans to companies establishing or expanding facilities in areas impacted by increased imports. Today, the Committee agreed to require that a firm whose loan is guaranteed directly or indirectly by the guarantee program would be required to establish an employee stock ownership plan involving stock worth one-quarter of the amount of the loan guarantee. (The employee stock ownership plan has been adopted twice by the Senate in connection with pension reform legislation and the railroad reorganization legislation.)

Mr. President, we see now that Pan American Airways is plagued by a number of problems, not all of them that company's making by any means, and there is talk of passing legislation to assist the company. There is also talk of permitting a merger of Pan American and TWA, in order that those companies might, working together, solve a problem they could not solve separately.

If such legislation comes before Congress, Mr. President, I intend to propose, as a part of whatever the solution—be it aid, loan guarantee, merger, or whatever it may be—that there be an employee stock ownership plan required of those companies. I only regret that I had not thought of using that approach in connection with the Lockheed loan. If we are going to guarantee a loan to a company such as Lockheed, then why should not the fellows who get out there and work to make Lockheed a success day by day by the sweat of their brows share in some of the good fortune of saving that corporation and putting it on a sound financial basis?

We have made a similar approach in guarantees or Federal grants and Federal gifts to help a company establish itself and move ahead, I find myself wondering, why did we not make an effort to see that, in the event the endeavor was a success, not just the outside creditors and shareholders who had the benefit of the Federal loan but the workers, who in the last analysis made it possible for the firm to succeed by dint of hard work, would have a piece of the action?

So we on the Senate Finance Committee have simply moved forward one more stride with the trend that had been developed in Congress in the Commerce Committee and in the Ways and Means Committee of the House of Representatives, in implementing the approach that when the Government is going to use its power to give special help and special advantages to some group, even though they may be in distress, the Government should require, as a part of that consideration, that the beneficiaries of this Government assistance include the employees of the affected company. By so doing, through the requirement of an employee stock ownership plan, we move toward the day when many in this country will own an interest in the means by which wealth is produced—I refer to the tools rather than the labor in this case—rather than the means of production being owned by about 3 percent of the people, as is the case today.

I really think, Mr. President, that those people who are so fortunate as to own millions or hundreds of millions of dollars worth of stock in companies will be far safer and more secure in what they own against the vicissitudes of life than one might expect for the years ahead if ownership continues to be concentrated in the same company, without broadening the base and appeal of that ownership.

In other words, I think that a Rockefeller or anyone else who has the good fortune of owning a huge amount of wealth will be safer and more secure in what he owns if there are millions of working people in this country who own a little of the same.

Sears, Roebuck & Co. has had one of the most successful employee stock ownership plans. It is my good fortune to know a number of workers of that company who have worked as long as 30 years for the company, who have accumulated fairly substantial estates. In a modest way, one can say they are independently wealthy because of their accumulated stock ownership in that company under the foresighted policy that the company had in designing, for those who worked for it, an employee stock ownership plan.

We believe we shared the same foresightedness when we added a stock ownership program and plan to the community adjustment assistance proposal. I am pleased to say that that proposal has been supported enthusiastically by both Democrats and Republicans. It has been supported by the Senator from Arizona (Mr. FANNIN) and by a number of other Republicans in this body, as well as by some of us on this side of the aisle.

I ask unanimous consent that a press release issued by the Senate Finance Committee on October 2 be printed in the RECORD at this point.

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

FINANCE COMMITTEE CONTINUES ACTION ON TRADE REFORM BILL

The Honorable Russell B. Long (D., La.), Chairman of the Committee on Finance, announced that the Committee had continued its work on the Trade Reform Act in executive session today, making tentative decisions outlined below.

1. Community adjustment assistance: tax provisions deleted.—Yesterday, the Committee tentatively approved a program of community adjustment assistance which, in addition to grants, direct loans, and loan guarantees, would have included two types of tax credits to encourage the development of new jobs in areas where increased imports have led to higher unemployment. Today, the Committee agreed not to include the tax provisions as amendments to the trade bill so as to keep the bill limited to trade and tariff matters.

2. Community adjustment assistance: employee stock ownership plans.—Yesterday, the Committee approved a new program of guaranteed loans to companies establishing or expanding facilities in areas impacted by increased imports. Today, the Committee agreed to require that a firm whose loan is guaranteed directly or indirectly by the guarantee program would be required to establish an employee stock ownership plan involving stock worth one-quarter of the amount of the loan guarantee. (The employee stock ownership plan has been adopted twice by the Senate in connection with pension reform legislation and the railroad reorganization legislation.)

3. Positive Congressional approval procedure for non-tariff barrier agreements.—The Committee agreed to modify its earlier decisions concerning the Congressional procedure by which non-tariff barrier agreements would be considered by the Congress for positive approval. Specifically, the Committee agreed that 45 legislative days after a resolution to implement a trade agreement has been introduced, the Committee (or Committees) to which the resolution has been referred would be discharged from further consideration (if the Committee had not already reported the resolution). The Senate or House would then have 15 legislative days to approve or disapprove the resolution. No amendments to the resolution could be adopted.

4. Packaging of Non-Tariff Barrier Agreements for Submission to Congress.—In another action, the Committee provided for a formal consultation requirement, under which the full membership of both the House Committee on Ways and Means and the Senate Committee on Finance, would be given an opportunity to determine (through consultation with the Special Trade Representative) prior to the conclusion of any trade agreement involving changes in U.S. laws, the manner in which specific non-tariff barrier agreements may be combined for submission as a package to Congress for it approval. No non-tariff barrier trade agreement package could be submitted to Congress prior to such consultation. Generally, the Committee felt that such agreements should be as self-contained as is feasible, and that the Committee report would indicate that it would be undesirable to combine many unrelated trade agreements affecting U.S. laws in one package.

Mr. LONG. Mr. President, I was proud to propose this amendment by the committee, and was joined in it by the Senator from Arizona (Mr. FANNIN). I hope very much that the Senate will agree with our judgment when we have occasion to act on the trade bill later on in this session of Congress.

ORDER FOR ADJOURNMENT ON TOMORROW UNTIL 12 O'CLOCK ON MONDAY, OCTOBER 7, 1974

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, it stand in adjournment until the hour of 12 o'clock noon on Monday next.

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

ORDER FOR RECOGNITION OF SENATOR HARRY F. BYRD, JR. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the distinguished Senator from Connecticut (Mr. WEICKER) has finished speaking under the order previously entered, the distinguished senior Senator from Virginia (Mr. HARRY F. BYRD, JR.) be recognized for not to exceed 15 minutes.

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

S. 4016—UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that time for debate on the Presidential Recordings and Materials Preservation Act S. 4016, the measure now pending before the Senate, begin running at the conclusion of routine morning business on tomorrow, and that it be equally divided between and controlled by Mr. ERVIN and Mr. HRUSKA; that at the hour of 1:30 p.m. tomorrow the vote occur on a motion to be made by Mr. HRUSKA to refer the bill (S. 4016); that if that motion is not adopted, a vote then immediately occur without any intervening motion or amendment on an amendment in the nature of a substitute to be offered by Mr. HRUSKA; and provided further, that a vote on the final passage of S. 4016, with paragraph 3 of rule XII waived, then occur.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the rollcall vote, which will occur at 1:30 p.m. tomorrow, any subsequent back-to-back rollcalls be limited to 10 minutes each on such rollcalls with the warning bells to be sounded after the first 2½ minutes.

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

Mr. GRIFFIN. Will the distinguished majority whip yield to me?

Mr. ROBERT C. BYRD. Yes.

Mr. GRIFFIN. I believe this is an acceptable arrangement, after checking around with those on our side whom I have any reason to believe are interested in this matter.

I wonder if the leadership on both sides should not protect themselves, however, with the understanding, perhaps the modification of the agreement, that if there are Senators—and I know of none—who do want to offer an amendment to this pending measure that, of course, they can come over and do so during the period of time prior to 1:30, when we vote on the bill, with the understanding that a vote on such amendment would occur at 1:30 p.m., although this would be a modification of the agreement. Or would the vote come prior thereto?

Mr. ROBERT C. BYRD. We could modify the agreement so that it could go either way. But I believe, based on the understanding that was reached, if such votes are to occur they probably ought to be disposed of prior to the hour of 1:30.

Mr. GRIFFIN. Prior to 1:30.

Mr. ROBERT C. BYRD. So that at 1:30 the vote could occur on Mr. HRUSKA's motion to refer.

Mr. GRIFFIN. That is acceptable. I did want some discussion of the possibility that other amendments could at least be offered and considered because I do not think we want to completely cut off all Senators from that possibility.

Mr. ROBERT C. BYRD. Yes.

Well, could we have this understanding: If any such amendments are to be offered that rollcall votes on such amendments would have to be completed by 1:30.

Mr. GRIFFIN. 1:30.

Mr. ROBERT C. BYRD. No later than the hour of 1:30 p.m., but this would not rule out any intervening amendments without debate thereon to immediately follow the vote on the amendment in the nature of a substitute by Mr. HRUSKA, and immediately prior to final passage.

Mr. GRIFFIN. I see.

Mr. ROBERT C. BYRD. It still would leave an opening there for an amendment, but without debate.

Mr. GRIFFIN. All right; that is satisfactory.

The PRESIDING OFFICER. There is no request for further modification?

Mr. ROBERT C. BYRD. Mr. President, I believe the way I worded the request, no intervening amendment or motion can come in following the vote on the motion to refer and prior to the vote on the amendment in the nature of a substitute by Mr. HRUSKA.

However, such intervening amendments can come in following the vote on the Hruska substitute and prior to the vote on final passage, but without debate.

The PRESIDING OFFICER. The Senator is correct; the understanding is clear.

Mr. ROBERT C. BYRD. Now, if the distinguished assistant Republican leader would seek to incorporate into the agreement the understanding previously reached with respect to votes on other amendments, that they must be completed prior to the hour of 1:30, we could do that, or we could go just on an understanding, which is not a very good way to proceed, I think.

Mr. President, I also wish to incorporate in the agreement that aside from intervening amendments which can come in just prior to the vote on final passage, without debate, if there are other amendments called up during the morning or during the day prior to 1:30 p.m., that any rollcall votes thereon must be completed by the hour of 1:30 p.m.

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

Was it intended to protect against votes occurring before 1:30?

Mr. ROBERT C. BYRD. No. I am glad the Chair raised that question.

Might I ask the distinguished assistant Republican leader and the distinguished Senator from North Carolina if we might also agree that there will be no rollcall votes prior to the hour of 11:30 a.m. tomorrow.

The PRESIDING OFFICER. Is there objection to such an understanding of the agreement? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I revise the unanimous-consent request as follows: I ask unanimous consent that the vote on the motion by Mr. HRUSKA to refer occur at 1:30; that immediately thereafter, if that motion is not adopted, a vote occur, without intervening motions or amendments, on the amendment in the nature of a substitute to be offered by Mr. HRUSKA; that immediately thereafter a vote occur on final passage of the bill (S. 4016) with paragraph 3, rule XII waived; with the further proviso if any other rollcall votes have been ordered on amendments, debatable motion, or appeals, such votes occur, without further debate, immediately following the vote on the amendment in the nature of a substitute by Mr. HRUSKA, and prior to the passage of the bill.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. And the agreement has already been entered into that all votes, all rollcall votes, after the first rollcall votes, which will occur at 1:30 p.m., will be 10-minute rollcall votes.

The PRESIDING OFFICER. That is agreed to.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows: There will be certain modifications in the program as against the orders previously entered and I ask unanimous consent that the program as stated be the order to be followed.

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

Mr. ROBERT C. BYRD. Mr. President, the Senate will meet at the hour of 9 a.m. tomorrow.

After the two leaders or their designees have been recognized under the standing order, the following Senators will be recognized, each for not to exceed 15 minutes, and in the order stated: Mr. WEICKER, Mr. HARRY F. BYRD, JR., Mr. THURMOND, and Mr. MANSFIELD; after which there will be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements limited therein to 5 minutes each; at the conclusion of which period for the transaction of routine morning business, the Senate will resume consideration of S. 4016, a bill to protect and preserve certain tape recordings, with the time for debate thereon being equally divided and controlled by Mr. HRUSKA and Mr. ERVIN, with the first rollcall vote tomorrow to occur at the hour of 1:30 p.m., such vote to be on the motion by Mr. HRUSKA to refer S. 4016 to a committee.

Immediately upon the disposition of that vote, if the motion fails, the Senate will proceed to vote by rollcall on the amendment in the nature of a substitute to be proposed by Mr. HRUSKA; that vote will be followed by a rollcall vote on final passage of S. 4016; and all rollcall votes after the first vote will be 10-minute rollcalls.

There is a further understanding which was included in the agreement, that if rollcall votes, in addition to those aforementioned, are ordered prior to the hour of 1:30 p.m., such rollcall votes will occur immediately prior to final passage of the bill (S. 4016) and following the vote on the amendment in the nature of a substitute to be offered by Mr. HRUSKA.

It is further understood that this statement of the program does not order rollcall votes by unanimous consent. None of the rollcall votes which I have mentioned have yet been ordered, but undoubtedly they will be ordered on tomorrow by request and by a sufficient number of seconds.

So, there will be at least three rollcall votes tomorrow and there may be more.

I would say that upon the final disposition of S. 4016 tomorrow no further rollcall votes are anticipated tomorrow.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ROBERT C. BYRD. Under the order entered, the motion to refer which will be voted on at 1:30 p.m. tomorrow, would not be subject to a tabling motion, am I correct?

The PRESIDING OFFICER. If the request is that the vote shall be on the adoption of that motion, it would, I am advised, not be subject to a tabling motion.

Mr. ROBERT C. BYRD. That was the understanding of all parties, so I make such request.

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

Mr. ROBERT C. BYRD. Now, on the amendment to be offered in the nature of a substitute, it was the intention that that amendment not be subject to a tabling motion.

The PRESIDING OFFICER. If it is on the adoption of the substitute, without objection, it will not be subject to tabling.

Mr. ROBERT C. BYRD. Very well.

Then, Mr. President, the right to table all other amendments, motions and appeals would be preserved under the order.

The PRESIDING OFFICER. That is correct.

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

ADJOURNMENT TO 9 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 9 a.m. tomorrow.

The motion was agreed to; and at 6:46 p.m. the Senate adjourned until tomorrow, Friday, October 4, 1974, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate October 3, 1974:

OFFICE OF MANAGEMENT AND BUDGET

Paul H. O'Neill, of Virginia, to be Deputy Director of the Office of Management and Budget. (New position.)

IN THE AIR FORCE

Col. William A. Orth, [redacted] FR, for appointment as permanent professor, U.S. Air Force Academy, under the provisions of section 9333, title 10, United States Code.

The following-named Air Force officers for promotion in the Air Force Reserve, under the provisions of sections 8376 and 593, title 10, United States Code:

LINE OF THE AIR FORCE

Lieutenant colonel to colonel

Vissotzky, Raymond W., [redacted]

LINE OF THE AIR FORCE

Major to lieutenant colonel

Adams, John H., [redacted]
Barbay, Lawrence, [redacted]
Bowman, William R., [redacted]
Brady, Ronald L., [redacted]
Byrne, Thomas E., [redacted]
Richmond, James R., [redacted]
Stocker, Henry, [redacted]

MEDICAL CORPS

McGee, James W., IV, [redacted]
Palmer, Jaques J., [redacted]

BIOMEDICAL SCIENCES CORPS

Johnson, Arthur L., [redacted]

The following-named persons for appointment as reserve of the Air Force, in the grade indicated, under the provisions of section 593, title 10, United States Code, with a view to designation as a medical officer, under the provisions of section 8067, title 10, United States Code:

MEDICAL CORPS

To be colonel

Armstrong, Raymond G., [redacted]
Betts, Stanley L., [redacted]
Childers, Leland E., [redacted]
Goslin, Frederick B., [redacted]
Jannett, Andrew F., [redacted]
Jones, Otis W., [redacted]
Schultz, Morris A., [redacted]
Smith, Herbert T., [redacted]
Young, Robert M., [redacted]

To be lieutenant colonel

Nash, George W., [redacted]
Schmidt, John Z., [redacted]
Silver, James A., [redacted]
Stalzer, Edward V., [redacted]

The following-named persons for appointment as Temporary officers in the United States Air Force, in the grade indicated, under the provisions of sections 8444 and 8447, title 10, United States Code, with a view to designation as Medical Officers, under the provisions of section 8067, title 10, United States Code:

MEDICAL CORPS

To be colonel

Nash, George W., [redacted]
Schmidt, John Z., [redacted]

To be lieutenant colonel

Acevedo, Julio E., [redacted]
Calcagni, John A., [redacted]
Laborati, Juan C., [redacted]
Mills, Billy G., [redacted]
Rapatz, Edward R., [redacted]
Silver, James A., [redacted]

The following-named officer for appointment as a reserve of the Air Force, in the grade indicated, under the provisions of section 593, title 10, United States Code:

LINE OF THE AIR FORCE

To be lieutenant colonel

Swingle, Alfred R., [redacted]

The following-named officer for appointment in the reserve of the Air Force (ANGUS), in the grade indicated, under the provisions of sections 593, 8351 and 8392, title 10, United States Code:

LINE OF THE AIR FORCE

To be colonel

Murphy, Francis J., [redacted]

The following-named officers for appointment as a reserve of the Air Force, in the grade indicated, under the provisions of sections 593 and 1211, title 10, United States Code:

LINE OF THE AIR FORCE

To be colonel

Shaddix, Willis J., [redacted]

DENTAL CORPS

To be colonel

Watt, Robert S., [redacted]

CONFIRMATIONS

Executive nominations confirmed by the Senate October 3, 1974:

DEPARTMENT OF THE INTERIOR

Lynn Adams Greenwalt, of Maryland, to be Director of the U.S. Fish and Wildlife Service.

IN THE ARMY

Gen. Frederick Carlton Weyand, [redacted], Army of the United States (major general, U.S. Army), for appointment as Chief of Staff, U.S. Army, under the provisions of title 10, United States Code, section 3034.

(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.)

EXTENSIONS OF REMARKS

A TRIBUTE TO THE NATIONAL SLOVAK SOCIETY

HON. JOSEPH M. GAYDOS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 3, 1974

Mr. GAYDOS. Mr. Speaker, I rise today to commend an organization which observed the 84th anniversary of its founding during a recent convention in the city of Pittsburgh, Pa.

The National Slovak Society was founded February 16, 1890, in Pittsburgh and it is interesting to note today the foresight demonstrated by the group's original leaders. In establishing the long-range objectives of the society, these men proved themselves to be far ahead of their time.

Life was hard in 1890 for immigrants to the United States. Work, particularly in the mines and mills of heavy industrial areas where many Slovaks settled, was extremely hazardous. There were few, if any, Federal social programs for people. There was no medicare, social security, job safety, or pension protection. Because of the risk involved, many commercial insurance companies refused to sell policies to these workers. If a man was killed or crippled on his job, his widow and family receive no benefits. They were forced to depend on relatives, friends, or neighbors just to survive.

The National Slovak Society knew the need of its people and when it was established it vowed "to protect the widowed, orphaned, sick, disabled, distressed, and aged" among its members. Remember, gentlemen, this was in 1890—84 years ago. To date, the National Slovak Society has distributed millions of dollars to its sick and disabled. It has disbursed millions more in death benefits. It has gone beyond its objective by substantial expenditures for educational, literary, cultural, and patriotic purposes.

In contrast, I might point out, the Federal Government did not pass legislation creating similar programs for all Americans until some time later. For example, social security came into existence in the