NO WINDFALL FOR TEACHERS

HON. JOHN B. ANDERSON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 6, 1975

Mr. ANDERSON of Illinois. Mr. Speaker, I am pleased to join today with my colleague from Illinois (Mr. ERLENBORN) in introducing legislation to close a loophole that would allow teachers to draw unemployment compensation during summer vacation.

The loophole was created last December when Congress passed the Emergency Jobs and Unemployment Assistance Act of 1974. This legislation provides special unemployment assistance to two basic groups: Those who have exhausted their regular, additional and extended compensation; and those in a line of work which is not covered under existing State plans. The bill extends coverage to persons otherwise ineligible for regular compensation, provided they meet the State's regular wage and employment standards for compensation on the basis of total employment during the year preceding the claim. By failing to specifically exclude teachers who are not actually working at jobs during the summer, the law permits the States to extend jobless benefits to them, and Illinois has decided to do this.

The legislation being introduced today by Mr. ERLENBORN and myself would deny summer unemployment benefits to any elementary or secondary school teacher who has a contract for the coming school year. The Congress did not intend to create a windfall profit for teachers at the expense of the taxpayer. Just as I am in favor of taxing windfall profits which accrue to big oil companies at the expense of the American consumer, so too am I against such profits evolving from Government programs. I urge its speedy enactment.

SENATE—*Friday, March 7, 1975*

The Senate met at 8:30 a.m. and was called to order by Hon. RICHARD STONE, a Senator from the State of Florida.

PRAYER

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

In the morning and the evening and at noonday we offer our thanks to Thee, O Lord, for Thy goodness and mercy. Open our lives to Thy light and Thy truth that we may serve Thee with our whole mind and soul and strength. May the words of our mouths, and the meditations of our hearts be acceptable in Thy sight, O Lord our Strength and our Redeemer. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 7, 1975.

To the Senate:

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

JAMES O. EASTLAND,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Journal of the proceedings of yesterday be considered as read and approved.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

EXECUTIVE SESSION

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

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

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

DEPARTMENT OF DEFENSE

The assistant legislative clerk read the nominations of Victor V. Veysey of California to be an Assistant Secretary of the Army; and Donald G. Brotzman of Colorado to be an Assistant Secretary of the Army.

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

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

U.S. AIR FORCE

The assistant legislative clerk proceeded to read sundry nominations in the U.S. Air Force.

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

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

U.S. ARMY

The assistant legislative clerk proceeded to read sundry nominations in the U.S. Army.

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

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

U.S. NAVY

The assistant legislative clerk proceeded to read sundry nominations in the U.S. Navy.

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

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

U.S. MARINE CORPS

The assistant legislative clerk proceeded to read sundry nominations in the U.S. Marine Corps.

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

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

NOMINATIONS PLACED ON THE SECRETARY'S DESK

The assistant legislative clerk proceeded to read sundry nominations in the Air Force, Army, Navy, and Marine Corps placed on the Secretary's desk.

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

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

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

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.

AMENDMENT OF RULE XXII OF THE STANDING RULES OF THE SENATE

The Senate resumed the consideration of the resolution (S. Res. 4) to amend rule XXII of the Standing Rules of the Senate with respect to the limitation of debate.

The ACTING PRESIDENT pro tempore. The 1 hour for debate on the cloture motion on Senate Resolution 4, as amended, shall be equally divided and

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controlled by the Senator from West Virginia (Mr. ROBERT C. BYRD) and the Senator from Alabama (Mr. ALLEN).

Who yields time?

The Senator from Alabama.

Mr. ALLEN. I thank the Chair.

Mr. President, I yield myself such time as I may require.

Mr. President, we are faced in a short time with a vote on a cloture motion to bring debate on Senate Resolution 4, as amended by the Byrd substitute, to an end.

No one doubts the outcome of that vote. Why then prolong the consideration of this resolution? In the first place, Mr. President, there are numerous areas involving rule XXII that require or need revision or reform. The Senator from Alabama has 35 meritorious amendments, some of which he believes would be accepted—relatively few; or possibly just to show the great strength and unanimity of the overwhelming majority they will be rejected.

The distinguished Senator from Maine (Mr. HATHAWAY) has an excellent amendment that I hope will be given serious consideration. So this cloture procedure needs revision in areas other than the fraction of the numbers of Senators required to cut off debate. It needs no revision at that point, in the view of the Senator from Alabama.

The gag rule Senators have made one little change in the amendment, changing the fraction two-thirds to three-fifths. That one fraction I believe is the only change they made in their original proposal they rammed through the Senate up to the point of actual vote. That earned them the title of reform Senators, whereas other Senators have meritorious amendments seeking to reform this cloture process and they are referred to as antireform Senators. The Senator from Alabama believes those terms ought to be reversed.

But, whether or no, the amendment or the rule, rule XXII, being before the Senate now for consideration not just on this one issue but for consideration because every single word of rule XXII is carried over into the Byrd substitute, plus additional matters making a different rule for the rules change, all of which are just excess verbiage because the gag rule Senators will not follow that procedure when they get ready to amend the Senate rules again; they will go the steamroller route of ramming the change through by a majority vote. So we have got majority cloture; that is what we have.

They talk piously about having the rules changes which would require two-thirds vote all the time, knowing when the time comes they will just move the steamroller out and go the constitutional route—this alleged constitutional route, I might say.

So, Mr. President, we need deliberate consideration of the amendments that the Senator from Alabama has, the Senator from North Carolina has, the Senator from Maine has.

Mr. President, there are two main reasons, other than the substantive reason, why amendments are in order and amendments should be made. One is, one reason we should consider this issue at length, and I guess this is the main reason, there should be no appeasement of this type of effort—there should be no appeasement of this effort, and I have likened this situation to what took place at Munich where the demands of Hitler were met with appeasement, and Hitler piously said:

> Give me this Sudetenland and I will never make any more territorial demands.

Well, the gag-rule Senators say, "Give us this little change and we will never seek again to amend the rule except under the rules."

Yet, Mr. President, the Senator from Alabama offered an amendment yesterday that sought by words—and it is a pending amendment—to hold them to that type of commitment.

A strange thing took place in the Senate on yesterday when the Senator from Alabama got through talking on his amendment, expecting a vote thereon. Why, what happened? Why the distinguished Senator from Minnesota (Mr. MONDALE) and the distinguished Senator from Vermont (Mr. LEAHY) got up and conducted what had to be called a filibuster. The entire filibuster was carrying a filibuster to prevent the amendment of the Senator from Alabama from being considered yesterday.

It was stated in the Chamber yesterday, "Well, do not worry, we will give you a vote on tomorrow"—that is today.

That is not the point, Mr. President. They well knew that if this amendment were rejected by the gag-rule Senators on yesterday, they were going to lose two or three cloture votes.

Let us see what it says.

At the end of the resolution, add the following new section:

> Section —. Motions, Resolutions, Bills or other measures having any reference to an amendment of the Senate Rules offered or presented at the beginning of a Congress or at any other time shall be governed by the debate limitations provided for in this Resolution in like manner as any other bill, resolution, motion or other measure, and the method of limiting debate provided in this resolution shall be the exclusive method, other than by unanimous consent, of limiting debate on any such motions, resolutions, bills or other measures having any reference to an amendment of the Senate rules irrespective of when offered.

So the gag-rule Senators filibustered that amendment to the point that it could not be acted on yesterday.

Well, we say, "What is wrong with that? Get a vote on it today."

Yes, but the vote will not come until after cloture has been invoked.

Many Senators making a good-faith effort to compromise this issue with the gag-rule Senators exacted a commitment, as the Senator from Alabama understands it though he was not a part of the negotiations, that this precedent of majority debate cutoff established by the Vice President on February 20 would be reversed.

Well, it has not been reversed.

But this amendment, while it could not bind gag-rule Senators, keep them from coming in 2 years from now and ramming through another change by a majority vote, would constitute some little restraint, some little standard of ethical conduct. It might possibly have some little bit of restraint on the gag-rule Senators to have staring them in the face a resolution saying that efforts to amend the rules are going to be governed no matter when they are made, whether at the beginning of a session or otherwise, they are going to be governed by the same debate limitations as any other bills, resolutions, motions, or measures.

That is presently the rule, but it has not been spelled out with such clarity as this.

So, the gag-rule Senators prevented this amendment from coming up on yesterday. It will come up, it will be voted down after cloture has been invoked, but they did not want to run the risk of offending the free debate Senators who agreed with them on the compromise.

So the compromise is no good. It is just an appeasement a la Munich.

I thought of another parallel—when I use this parallel I mean no disparagement of the gag-rule Senators and am not likening them to this incident except that what has happened here reminds me of a situation that might take place in this fashion.

This compromise of this principle, that we have got to follow the rules when we amend the rules, we have got to follow the rules when we act here in the Senate, and the disregard of that principle by the gag-rule Senators and then the compromise by free-debate Senators with that unauthorized process, puts me in mind of—and I say I do not make any disparagement of the gag-rule Senators in drawing this parallel, just stating that I am reminded of this situation—is not too unlike a burglar who goes in the back door, shall I say—and this is a back-door approach that has been used by the gag-rule Senators—a burglar who goes in to relieve the occupant of the house of, shall we say, his wife's jewelry and the burglar is caught in the act—and these gag-rule Senators were caught in the act at the time.

There was a minirevolt here in the Senate, and the strong-arm tactics of the Vice President, and the gag-rule Senators then abandoned the management of that resolution and turned it over to the leadership, but they were caught in the act. It was getting a little too odoriferous, even for them, to proceed.

So a compromise was reached, just like a compromise might be reached with the burglar by the householder, and the agreement reached between the householder and the burglar, "Well, I am not going to give you all of the jewelry, but I will give you half of it provided you promise not to come back and get more later." The burglar says, "Oh, that is fine, I will not come back, just let me have half of what I was asking for."

That is what has happened here, Mr.

President. An effort made to proceed outside the rules. An effort to snatch up a rules change to provide for further steamroller tactics here in the Senate, caught in the act of proceeding outside the rules.

How can you compromise with any such effort as that? I say there cannot be any compromise where you retreat from a principle. That is the reason the Senator from Alabama did not go along with the compromise. It would have been surrendering a principle. It would have been putting the stamp of legitimacy on these efforts outside of the rules.

So that is the second reason why this debate, this discussion, must continue to the very last. The very last may come today; I do not know. We came in at 8:30, I assume in an effort to close out today. I suggested the other day that we might have a Saturday vote on this. It was suggested by a Member of the leadership that we would not have any Saturday vote. I do not know what to expect. All I know is that this assault on the rules must be fought to the limit.

Thus, we have the need for reform of rule XXII in areas other than those suggested by the Byrd amendment; we have the principle that we cannot compromise on any compromise that requires the surrender of principle; and, third, Mr. President, we have to serve notice on gag-rule Senators that any effort to make a further assault on the rules is going to be resisted right down the line. We are not going to roll over and play dead; we are not going to allow them to come in here one day, as they tried to on February 20, and ram through a rules change by majority vote, without debate, without amendment, without intervening motions. We have to serve notice that is not going to be allowed.

That is the reason the Senator from Alabama is fighting this issue.

I do not know what time the gavel will pound and the Senator from Alabama will be told that he cannot offer any more amendments, that he cannot be recognized any more. We are going to see. That effort will be made to force it over, I am sure.

I was somewhat amused the other day. We have had Senators presiding over the Senate who would not recognize the Senator from Alabama when he wanted to offer a motion and wanted to speak on his own motion. They would look right past him and recognize somebody else to table.

The other day another Senator was in the Chair. I expected pretty much the same type of treatment and was a little bit testy with him. After he had given another Senator, not the Senator from Alabama, an opportunity to be recognized, I told him I apologized for my doubt of him. I just supposed that he had been named for the day to carry on a similar policy to the policy which had been carried on.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. May I assure the Senator that, so far as I know, no Senator has been put in that Chair by the leadership to carry on the policy of the leadership.

Mr. ALLEN. I did not refer to the leadership, the Senator will recall.

Mr. President, notice has to be served that we are not going to permit an assault on the Senate rules without it being fought to the limit whenever an attempt of that sort is made.

There is another thing, Mr. President, on which I want to serve notice. I wish the distinguished Vice President were in the Chair. I have a parliamentary question to propound. I assume the present occupant of the Chair, after consulting with the Parliamentarian, could give the answer. I want to serve notice on the Chair and the Members of the Senate that we are going to use title I, section 5, of the Constitution today. It has been misused, misconstrued, misquoted, and misapplied here in the Chamber by gag-rule Senators. What it says is that a majority shall constitute a quorum for the transaction of business.

Mr. President, the Senator from Alabama is going to insist that we have this constitutional quorum here in the Senate at the time this matter comes up for debate under the cloture rule.

Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. ALLEN. Does the vote that will occur in the Senate within the next hour to cut off debate require a two-thirds vote in order to succeed?

The ACTING PRESIDENT pro tempore. Two-thirds of the Senators present and voting is required to invoke cloture.

Mr. ALLEN. The Senator from Alabama understands that. The question he asked was will the vote that will be put to the Senate—Is it the sense of the Senate that debate on the pending question shall end—that particular question, require a two-thirds vote of the Senators present and voting to carry?

The ACTING PRESIDENT pro tempore. That is the question stated in the cloture rule, and that does require two-thirds of the Senators present and voting.

Mr. ALLEN. Irrespective of whether we are operating under the cloture, I just asked the one question: Will the vote that is to be put to the Senate respecting limiting debate require a two-thirds vote of the Senators present and voting?

The ACTING PRESIDENT pro tempore. The Chair is advised that the Senate is operating under rule XXII and, therefore, the two-thirds requirements of the Senators present and voting is operative in this matter.

Mr. ALLEN. I thank the Chair. I will not comment on his statement that we are operating under rule XXII. I believe that is right. But this cloture vote that was held 2 days ago and this cloture vote to be held today are nothing more than shams or hollow shells because over this Chamber is the threat that if cloture is not delivered to the gag-rule Senators, we are going to go back to the majority cloture. That is the threat under which the Senate is operating. I, for one, do not like to operate under any such an implied threat.

Mr. President, I reserve the remainder of my time.

Mr. ROBERT C. BYRD. Mr. President, I suggest that absence of a quorum, the time to be taken out of my time.

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

The assistant legislative clerk proceeded to call the roll.

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

Mr. ALLEN. I object.

The PRESIDING OFFICER. Objection is heard.

The rollcall was resumed and concluded, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 16 Leg.]

Abourezk	Glenn	Montoya
Allen	Gravel	Morgan
Baker	Griffin	Moss
Bartlett	Hansen	Muskie
Bayh	Hart, Gary W.	Nelson
Beall	Hart, Philip A.	Nunn
Bellmon	Hartke	Packwood
Bentsen	Haskell	Pastore
Biden	Hatfield	Pearson
Brock	Hathaway	Pell
Brooke	Helms	Percy
Buckley	Hollings	Proxmire
Bumpers	Hruska	Randolph
Burdick	Huddleston	Roth
Byrd, Harry F., Jr.	Humphrey	Schweiker
Byrd, Robert C.	Inouye	Scott, Hugh
Cannon	Jackson	Scott, William L.
Case	Javits	Sparkman
Chiles	Johnston	Stafford
Church	Kennedy	Stennis
Clark	Laxalt	Stevens
Cranston	Leahy	Stevenson
Culver	Long	Stone
Curtis	Magnuson	Symington
Dole	Mansfield	Talmadge
Domenici	Mathias	Thurmond
Eastland	McClure	Tower
Fannin	McGee	Tunney
Fong	McGovern	Weicker
Ford	McIntyre	Williams
Garn	Metcalf	Young
	Mondale	

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. McCLELLAN), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Missouri (Mr. EAGLETON) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER) is necessarily absent.

I further announce that the Senator from Ohio (Mr. TAFT) is absent due to illness.

The PRESIDING OFFICER (Mr. BUMPERS). A quorum is present.

CLOTURE MOTION

The PRESIDING OFFICER. The Senate will come to order.

There being a quorum established, the

clerk will now state the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on S. Res. 4, as amended, amending Rule XXII of the Standing Rules of the Senate with respect to the limitation of debate:

Robert C. Byrd, Mike Mansfield, Jennings Randolph, Warren G. Magnuson, John O. Pastore, Walter F. Mondale, Quentin N. Burdick, James Abourezk, Frank E. Moss, Vance Hartke, Lee Metcalf, Walter D. Huddleston, Wendell H. Ford, Dale Bumpers, Claiborne Pell, William D. Hathaway, Abraham Ribicoff, Mark O. Hatfield, Floyd K. Haskell, Charles H. Percy.

CALL OF THE ROLL

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair now directs the clerk to call the roll to ascertain the presence of a quorum.

The second assistant legislative clerk called the roll and the following Senators answered to their names:

[Quorum No. 17 Leg.]

Abourezk	Glenn	Montoya
Allen	Gravel	Morgan
Baker	Griffin	Moss
Bartlett	Hansen	Muskie
Bayh	Hart, Gary W.	Nelson
Beall	Hart, Philip A.	Nunn
Bellmon	Hartke	Packwood
Bentsen	Haskell	Pastore
Biden	Hatfield	Pearson
Brock	Hathaway	Pell
Brooke	Helms	Percy
Buckley	Hollings	Proxmire
Bumpers	Hruska	Randolph
Burdick	Huddleston	Roth
Byrd, Harry F., Jr.	Humphrey	Schweiker
Byrd, Robert C.	Inouye	Scott, Hugh
Cannon	Jackson	Scott, William L.
Case	Javits	Sparkman
Chiles	Johnston	Stafford
Church	Kennedy	Stennis
Clark	Laxalt	Stevens
Cranston	Leahy	Stevenson
Culver	Long	Stone
Curtis	Magnuson	Symington
Dole	Mansfield	Talmadge
Domenici	Mathias	Thurmond
Eastland	McClure	Tower
Fannin	McGee	Tunney
Fong	McGovern	Weicker
Ford	McIntyre	Williams
Garn	Metcalf	Young
	Mondale	

The VICE PRESIDENT. A quorum is present.

The question is——

Mr. ALLEN. May we have order, Mr. President?

The VICE PRESIDENT. Order in the Senate, please.

A quorum is present.

The question is, Is it the sense of the Senate that debate on Senate Resolution 4, as amended, amending rule XXII of the Standing Rules of the Senate with respect to the limitation of debate, shall be brought to a close?

The yeas and nays are mandatory under the rule, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. McCLELLAN), the Senator from Missouri (Mr. EAGLETON), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that, if present and voting, the Senator from Connecticut (Mr. RIBICOFF) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER) is necessarily absent.

I further announce that the Senator from Ohio (Mr. TAFT) is absent due to illness.

I further announce that, if present and voting, the Senator from Ohio (Mr. TAFT) would vote "nay."

The yeas and nays resulted—yeas 73, nays 21, as follows:

[Rollcall Vote No. 45 Leg.]

YEAS—73

Abourezk	Hart, Philip A.	Moss
Bayh	Hartke	Muskie
Beall	Haskell	Nelson
Bentsen	Hatfield	Nunn
Biden	Hathaway	Packwood
Brooke	Hruska	Pastore
Bumpers	Huddleston	Pearson
Burdick	Humphrey	Pell
Byrd, Robert C.	Inouye	Percy
Cannon	Jackson	Proxmire
Case	Javits	Randolph
Chiles	Johnston	Roth
Church	Kennedy	Schweiker
Clark	Laxalt	Scott, Hugh
Cranston	Leahy	Stafford
Culver	Long	Stevens
Curtis	Magnuson	Stevenson
Dole	Mansfield	Stone
Domenici	Mathias	Symington
Ford	McGee	Tunney
Garn	McGovern	Weicker
Glenn	McIntyre	Williams
Gravel	Metcalf	Young
Griffin	Mondale	
Hart, Gary W.	Montoya	

NAYS—21

Allen	Eastland	Scott, William L.
Baker	Fannin	Sparkman
Bartlett	Fong	Stennis
Bellmon	Hansen	Talmadge
Brock	Helms	Thurmond
Buckley	Hollings	Tower
Byrd, Harry F., Jr.	McClure	
	Morgan	

NOT VOTING—5

Eagleton	McClellan	Taft
Goldwater	Ribicoff	

The VICE PRESIDENT. On this vote, the yeas are 73, the nays are 21. Two-thirds of the Senators present and voting having voted in the affirmative, the motion is agreed to.

The VICE PRESIDENT. The Senator from Montana.

Mr. MANSFIELD. Mr. President, I ask unanimous consent, if I am out of order, to proceed for not to exceed 5 minutes on my hour.

The VICE PRESIDENT. The Senator from Montana is recognized.

Mr. MANSFIELD. Mr. President, I wonder what the people of this Nation and what the students in our schools would think of the way the Senate of the United States has been conducting itself off and on for the past month and a half, and on for the past week or so. Here we have a group of grown men, mature men, our constituents think, and we have been acting like schoolchildren.

We have been accused of conducting a charade, and we have been. I think I can speak on this subject as one who has always been opposed to majority cloture, and always will be. But I do believe there comes a time when it becomes impossible for a Senator or a small group of Senators to hold up the legitimate business of the Senate. And may I say that I am glad that in such overwhelming numbers the Senate today, when it had a chance to face up to the situation in fact, agreed to invoke cloture. And the real total was not 73 to 21. If all Members had been present, it very likely would have been about 75 or 76 to 22 or 23. That is an awful lot of Senators, in this 100-man body.

But I would point out that the Senate has more important business to do than to be delayed day after day after day—and maybe we will be delayed still more for the next several days—than to engage in this charade. The Senate has made its wishes known, and three-quarters of the Senate is entitled to the consideration of the full Senate, including those who voted in the minority.

Speaking of the minority, I believe in the rights of the minority, and I believe the rights of the minority should be, must be, and will be protected. But I do not like to have the majority referred to as "the arrogant majority." I do not like to have aspersions cast on the Senate as a whole, and that is what that is, when we are referred to as "an arrogant majority" because there is disagreement among us.

It used to be that the filibuster was used for a specific purpose. Now it is used for any and all purposes. And I think that the way we have been conducting ourselves has denigrated that needed political weapon in this body.

I would hope that the Senate would act as a body of mature men representing separate States, recognizing that there are differences, that there are matters of principle, but that the Senate as an institution—an institution—must survive. We cannot allow a minority, a small group of Members, to grab the Senate by the throat and hold it there. It is about time, may I say to my colleagues in this body, that we recognize our responsibilities and live up to them, regardless of our particular feelings.

I hope that the civics lesson or lessons which this body has gone through over the past month-and-a-half will not be considered a model of this institution by the people of this Nation or by the children attending our schools. We have far more important things to do than to engage in charades, and when the Senate of the United States, by its expression this morning, has expressed itself, I would express the hope, in turn, that there would be nothing more in the way of dilatory or delaying tactics.

AMENDMENT NO. 53

The VICE PRESIDENT. The pending question is on agreeing to the amendment (No. 53) of the Senator from Alabama.

Mr. STENNIS. Mr. President, I seek recognition.

The VICE PRESIDENT. The Senator from Mississippi.

Mr. STENNIS. Mr. President, there is no one in the Senate who has done more than the Senator from Montana to uphold high standards for the Senate, not only in his representation as a Senator from Montana, but as our leader here;

and I think he is not only a leader for the majority as we use the term, but a very valuable leader to the entire Senate. I am not just trying to compliment him, but I think he has a splendid idea, too, of leadership in cooperation, when it is what he thinks is sound, with the executive branch of the Government, whether we have a President from one party or the other.

But when he touches on the idea of an individual Senator, in representing his own State or representing his own views of what he thinks is sound government, when he touches on that Senator refraining for any of the reasons given by the Senator from Montana, I would just have to, with deference and respect, disagree with his reasons and with his conclusions; and, as a humble Member of this body, I do not make any apologies, not any, to anyone, under my circumstances, for doing what little I can to keep the Senate a distinctive body.

Again the Senator from Montana has certainly played a great part in that field himself, not only in this vital effort, but over the years.

But coming back to the point that any Senator is compelled, on a matter as vital as the rules are, to stand up and be counted and speak out without any apology or explanation, and particularly, Mr. President, during a debate where the Presiding Officer of the Senate—and I do not attack his motives a bit, though I do attack his reasoning—particularly in debate where a Presiding Officer, just by one stroke of the pen—and he did not even have a pen; just by a few remarks in a ruling—struck down and totally destroyed a precedent of this body—of the Senate; and the Senate belongs to the people, not to us—struck down a well-established principle of this body that had been a prevailing, hard core of this institution for almost 200 years.

I have helped take the lead in everyone having his own views, in voting as he saw fit, on that ruling or any other ruling. I have no complaint. I have not even checked to see how anyone voted, except that I checked the absentees to see what chance there might be to pick up a vote or two.

I do not carry those things on my mind. But I do carry on my mind any kind of an insinuation that anyone who happens to delay the Senate beyond what some other Member may think is sound, of that Member of the Senate being chastised, restricted, or held up to the press or the people as being out of order or dilatory, or any other word that does not have a complimentary meaning.

I have on my mind—not just trying to take up time—what is happening here and what has happened already with reference to the change in the basic structure of this institution through the door having been opened—and I pray it will never be successfully used here, but having been opened—where a sitting Vice President, President pro tempore, the temporary occupant of the Chair, plus a bare majority of those present and voting that day, a majority of a quorum, can, in effect, hold that at the beginning of the session at least, as a constitutional matter, can change the rules contrary to the express letter and words of the Senate rules as they exist.

Now that, to me, is sacred ground that we are treading on; and to the Senator from Montana it is sacred ground, the idea of being dilatory here. He may think I am being dilatory, and that is sacred ground to him. But, to me, this institution is more than just a body of people.

There is nothing new now either, Mr. President, about some delay.

There has been a battle fought over these rules, and I remember distinctly three times where it was thought it was settled, and the rules were rewritten, and those of us who take the position in opposition to change of rule XXII did the conceding, and all wound up with handshakes and congratulations and warmth, and some kind of a feeling that fixed things for all time or for decades and decades ahead.

So this is not new. This ground has been plowed many times and, generally, before there has been agreement that both sides had gone far enough. But I see now due to this ruling to which I have already referred where it is an entirely new start, and I cannot forget that.

By the way—I do not want to compliment myself—but talking about wasting time, a young man here who works in the Capitol has just told me this morning that he enjoyed my speaking here the other day on this subject. He is not from the South, he is not a friend of mine. He says he had not been in the galleries for 4 years, but that something I said arrested his attention, and he said he had not thought about the thing that way before.

So, some of these seeds that are sown here in opposition may fall on stony ground, but some might fall where they can sprout and grow into ideas, as this gentleman related.

So, I do not know, but I think good comes from discussions anyway, and there has not been any overdebate on this matter so far. There has been some delay here on procedural matters.

Frankly, now, I do not know of any major legislation that relates to energy—there may be some bill that we are ready to take up—but I have learned a great deal here since we reconvened in January about this energy problem. I think we all have learned, and the people have learned and I think the thinking has shifted on the point that with respect to emergency action we must do something now immediately or everything is lost. Generally, it is conceded now that it is not so urgent.

The people outside, away from here, whom I have seen, who came in, many of them have told me that. Some are very strong for the President's plan. I just have an idea that the President—and he has not told me this—if he were reconsidering the matter now might recommend some different plan, a plan with some differences, at least, from his present plan. I believe that he, along with us, has more light on it.

I have never been prouder to be a Senator than I was at one of the caucuses we had here on this energy matter where the chairmen of the committees which had been working on these problems for years were there. This happened to be the majority caucus, but they were there with the fruits of the loom, and explained their facts and what they found, what their recommendations were that they had to make.

The same thing happened at a meeting of the chairmen sitting right here within reach of the Senator from West Virginia, and I had talked to him some, but we never had a chance to sit down and talk this thing over about energy—I am speaking about the Senator from West Virginia (Mr. RANDOLPH)—and his statement at that caucus was outstanding. It was very helpful to me.

The same thing is true about the Senator from Wisconsin (Mr. PROXMIRE). He and I are prone to disagree on many things, but he had an amazing analysis and statement at that caucus.

The Senator from Wisconsin (Mr. NELSON) is the same way. He is my authority on environmental matters and other matters, with his great information, and he, too, has been helpful.

This thing is fermenting. That is my point. I do not know of any of these bills that are ready to be taken up. I might have just slipped up on that, but I do not know of any of them.

There is a bill before the Finance Committee with reference to the rebating of taxes, and so forth. I understand that perhaps that is almost ready.

If there has been a veto message here with reference to the excise tax, if that has come in, it just shows how busy I have been this week maybe, but I have not heard about it.

Now, somebody is holding that up. Why can we not have that in a matter of a few minutes? The fellow who was talking to me about getting an education for his son talked as if he wanted it by 8 o'clock in the morning.

I am not calling for a veto message. Maybe it has not come in.

Mr. ROBERT C. BYRD. It is in the other body.

At this point Mr. BAKER assumed the chair.

Mr. STENNIS. It is pending in the House. Anyway it is not here. It has been delayed there, and that is a constitutional delay. The President had that constitutional time and perhaps it will come to us.

But I do not know, and that would be an urgent matter—I do not know of any other major legislation that is ready to be taken up here. Frankly, I am surprised—flattered, too—that so many here have waited for some reason—some might be waiting to hear what I was going to say. The other day I quoted Woodrow Wilson as having said when he prepared his message asking for a declaration of war with Germany in 1917—I do not know what others think about Woodrow Wilson, but he is my boyhood model of President of the United States—I notice that other Presidents have had his picture down in the Cabinet Room—but he said he wanted his friends and associates to know that even as he was asking for a declaration of war, he knew that our country would never be the same again and, of course, it has turned out that way, and I think the war had to be declared. That is not my point.

The point is that there was decisive depth.

Now, the Senate, unless this matter is stopped from proceeding in the way that our respected Vice President started it off the other day, is never going to be the same again.

Personnel can come and go, ideas and opinions and conclusions can vary, and will, but this body will never be the same parliamentary body again if this final step, this fateful step, is ever taken.

I do not know. We are blessed here with membership including former Members of the House of Representatives, former Governors of States, and others, most of whom have been performers, and successful performers to a degree, in other areas of Government.

There is a yearning and a distinctive feel about coming to the U.S. Senate and it has been true for many, many, many decades, and I hope it will be true for a thousand years.

But if we just make it a body now where the majority is going to control and can write the rules, or rewrite them, and majorities with all their virtues are impulsive at times, if we are going to make it into that kind of a body, we will take off something that has a great deal of attractiveness, a great many of the attractive features of being here.

I have a great respect for the House of Representatives and I am totally in accord with those special powers given them by the Constitution in the early days, and I think no man could have a greater honor than to serve with fidelity, and everything, in the House of Representatives. But at the same time, many men who have served there want to come on over here.

Why is that? I could not describe why, but I believe a part of it is that the membership in this body just cannot be pushed around, and that is what it amounts to, on subcommittees, on committees, here on the floor. They have that feature under this peculiar institution. I use that word "peculiar" deliberately, if someone wants to say we are peculiar, but under this distinctive feature, this is a body where men cannot be pushed around.

Perhaps those who have joined us lately have not yet had enough experience here to feel this quality that I am talking about, but wait until someone attempts to push them around, wait until they have experiences where they see, except for some protection here, rule XXII, they could have been pushed around and then they will get a better understanding of what I am trying to transmit to them, and in a very feeble way.

We call ourselves the deliberative body. That is a little more, I think a good deal more than a self-serving declaration, and that deliberative body, the fact that it is that kind of a body, has had tremendous influence in public affairs.

As a young lawyer, in the 1930's, I remember what has become known as the attempt to pack the Supreme Court and I remember my first impulse to the argument was so smooth and so plain and all, I said that maybe it is my duty to consider that further. Under the circumstances, it had some attraction to it, maybe.

But anyway, as I started reading and reading and looking and relooking and getting into the mores of our system, instantly it became clearer and clearer and clearer to me that that would be an awfully bad step, a nagging precedent, and a body blow that would, in effect, destroy that body, restrict and restrain it so.

I came here later and understood from men who were here—I could call names but I will not—but many of them said, and some of these were in favor of President Roosevelt's recommendation, that without a question, without a question, it was the influence of rule XXII looming as a possible roadblock that made it known one could not rush the plan through.

But it loomed larger and larger as an obstacle and gave time for discussion that was needed.

Finally, at the end, it never was voted on directly, as I recall, by either House, but there was a whale of a debate that went on all over this country. I know, because I was in my State and in contact with lawyers and groups, and everything, and that was true everywhere.

At the end, after many weeks of debate back and forth, the matter was settled without its ever even having come to a vote.

At that time, there was a large majority of the party of the late President Franklin Roosevelt in this body, to start with, that favored the plan.

So I have that as experience, more or less. I was not here, but I was aspiring to be here, maybe, and I got the feel of it, and I feel that I know the history there and what would have happened.

I do not think there are many who have been here long that could avoid saying, admitting and agreeing, that this was a downgrading of the Senate, to go to the rule of majority of those present and voting could change the rule and make it possible to cut off debate on a bare majority vote.

Now, back just one minute to the matter of filibustering and those charged with evil things just because they did filibuster.

I have been mixed up with them and associated with them when it was not just civil rights matters, and everything else, but it was filibuster carried on by some of the so-called liberals of that day and it was with the utmost satisfaction that they got some modifications.

I know, because I was with them on their stand. I agreed with them in that position, those modifications that they fought for and got.

I remember we had a long debate here with reference to the satellite bill, as it was known then, something far removed from the subject matter of many other filibusters about civil rights bills.

It is the nature of the thing that counts. It is the nature of the Senate, it is the prerogatives of Senators that is at stake.

I said the membership. Certainly, we could not mention the subject without mentioning also the States. The States still have some rights here.

We must not forget that there was a time when those who were writing the Constitution of the United States came to George Washington and said, in effect, that "It seems we have met obstacles that cannot be overcome." It was this very point about representation, whether by States or by the number of people. The proposal that was made to that matchless—and this is not just adulation; I have heard both sides of the argument about George Washington—was that "We get together on this vital matter. It is probable anyway that whatever we do here will not be accepted by the States. Therefore, we propose that we put something together—put something together—and adjourn and go home and submit that to the people."

There that man, that leader, this man without any formal education—virtually none at all—this man without any real military training until he went forth to battle with the British long before 1776, this man who has been called so many times the father of the country, told them at once, "No. No, we shall not do that." He said:

> I agree that it looks like now whatever we do here will be rejected by the people. But we cannot recommend to them something we cannot approve ourselves. How can we expect them to take it seriously? We will do the very best we can to submit a plan that we think is just—

and I have forgotten the other word he used—

> and then the event will be in the hands of God.

He sent them back to the drawing board, so to speak.

This is the vital part that rule XXII protects.

Within 10 days or 2 weeks later this same group of men came forth with this plan that, with only slight modification, was adopted.

That was the roadblock; that was the logjam. They adopted the plan, of course, with representation in the House by population and representation in the Senate by States. They moved on then to that eventful day when they concluded, by far from unanimous, with some of the greatest debates. The most momentous parts of our history were the debates that were at the State level as to whether or not the Constitution would be approved.

In the State of Virginia, and I have special reasons for loving the State of Virginia, the motion to approve the Constitution carried by the slim margin of only 10 votes.

There were something like 300 delegates, or close to that figure, but it carried by only 10 votes.

I am not trying to teach history, but I think these things have a meaning.

Men like Patrick Henry opposed it. You will remember he said it was a league with hell and a covenant with death.

I am talking about the Constitution of the United States.

George Mason, the man who wrote the first real Bill of Rights this Nation ever composed, a next door neighbor, so to speak, of George Washington, opposed it. He would not sign the Constitution. He

came back home and actively opposed it with that great mind that he had. There were many others.

I say, it carried by a slender margin. Ten votes is my recollection, but it might have been 15 votes.

Now it is almost 200 years later. As I say, with nothing but respect for the position of the occupant of the Chair, the Vice President has swept aside all of these precedents of this Senate. We find ourselves in this situation. Who would not squirm? Who would not exhaust himself? Who would not do everything he could to change that situation? Who would not do everything he could to make it hard that a thing like that would happen again?

Mr. President, it is said that even the worm will turn in self-defense.

I do not know what others may think, but I believe that those who try to rectify what I think was error, or make it more difficult that it might occur again, are rendering the Nation and this institution a service to try and preserve a large part of its lifeblood.

Mr. President, I must meet with the Rules Committee on a special mission of the Armed Services Committee. How much of my allotted time have I used, Mr. President?

The PRESIDING OFFICER. The Senator has used 36 minutes of his 60 minutes.

Mr. STENNIS. I thank the Chair very much.

Mr. President, I am ready to yield the floor.

Mr. ROBERT C. BYRD. Mr. President, some question was raised a little earlier by my distinguished friend from Mississippi (Mr. STENNIS), about measures that may or may not be awaiting action by the Senate. I call to the attention of all Senators the following measures on the Senate Calendar now awaiting Senate action: S. 326, Calendar Order No. 22, reported on February 24, 1975——

Mr. STENNIS. Will the Senator yield for a moment? I will not take 15 seconds.

Mr. ROBERT C. BYRD. I ask unanimous consent that I may yield for other than a question.

The PRESIDING OFFICER (Mr. GARY W. HART). Without objection it is so ordered.

Mr. STENNIS. Will the Senator excuse me from the Chamber under the circumstances that I must go to the Rules Committee to present the so-called money resolution. I am right on the spot about it for 11 o'clock. I will come back.

Mr. ROBERT C. BYRD. I may say to the distinguished Senator that there will be a motion to table within 5 minutes.

Mr. STENNIS. I will go to my other post of duty anyway.

Mr. ROBERT C. BYRD. Mr. President, continuing: Other measures on the calendar awaiting action are Calendar Order No. 25, Senate Resolution 23, a resolution disapproving the proposed deferral of budget authority to carry out the comprehensive planning grants program under section 701 of the Housing Act of 1954;

Calendar Order No. 26, H.R. 3260, an act to rescind certain budget authority recommended in the message of the President of November 26, 1974;

Calendar Order No. 27, S. 622, a bill to provide standby authority to assure that the essential energy needs of the United States are met;

Calendar Order No. 28, S. 7, a bill to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface coal mining operations;

Calendar Order No. 29, S. 66, a bill to amend title VIII of the Public Health Service Act to revise and extend the programs of assistance under that title for nurse training;

Calendar Order No. 30, S. Res. 61, a resolution disapproving the proposed deferral of budget authority to carry out the home ownership assistance program under section 235 of the National Housing Act.

So, Mr. President, there are several measures on the Senate Calendar awaiting action by the Senate. I would hope that the Senate would proceed without undue delay to dispose of the measure now before the Senate, so that the Senate can then turn its attention to those measures on the Calendar that are so needed to deal with the serious problems that confront this country.

Mr. President, I am going to move to table the pending amendment shortly. Debate was had on this amendment all day yesterday, following the special orders and routine morning business. As a matter of fact, this amendment really adds nothing to the present rule. The present rule was written by the greatest Senate Parliamentarian of my 17 years in the Senate, a man who knew more about the rules and the precedents of this body than any man I have had the honor of serving with, the late Senator Richard B. Russell. He was the author of paragraph 2 of rule XXXII of the Standing Rules of the Senate.

Paragraph 2 reads:

The rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules.

Mr. President, there is a great deal to be said for clarity and brevity. I do not see how paragraph 2 of rule XXXII could possibly be written with greater clarity or brevity. The amendment that is now pending before the Senate, offered by my distinguished and able friend, the Senator from Alabama (Mr. ALLEN), would add nothing to that rule. I move to table Mr. ALLEN's amendment.

Mr. ALLEN addressed the Chair.

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

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

The motion is not debatable.

Mr. ALLEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. ROBERT C. BYRD. Mr. President, I understand that the Senator from Maine has an amendment he wishes to offer.

The PRESIDING OFFICER. The Chair recognizes the Senator from Maine.

AMENDMENT NO. 32

Mr. HATHAWAY. Mr. President, I call up my printed amendment, which is at the desk. It is amendment No. 32.

The PRESIDING OFFICER (Mr. LEAHY). The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maine (Mr. HATHAWAY) proposes an amendment numbered 32.

Mr. HATHAWAY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with and that the amendment be printed in the RECORD.

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

The amendment is as follows:

On page 2, line 16, beginning with "shall", strike out all through line 22, and insert the following: ", upon the ascertainment that a quorum is present, shall at once state the motion to the Senate.

"Thereafter, the motion to close debate shall be the unfinished business to the exclusion of all other business until disposed of. Every Senator shall be entitled to speak a maximum of thirty minutes upon the motion, except that a Senator may relinquish all or part of his time, or may yield all or part of his time to another Senator. It shall be the duty of the Presiding Officer to keep the time.

"When all time has been used or relinquished, the Presiding Officer shall lay the cloture motion before the Senate and direct that the Secretary call the roll, and upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question:".

On page 3, line 7, strike out "one hour" and substitute "thirty minutes".

On page 3, line 24, beginning with "shall" strike out all through line 5 on page 4, and insert the following: ", upon the ascertainment that a quorum is present, shall at once state the motion to the Senate.

"Thereafter, the motion to close debate shall be the unfinished business to the exclusion of all other business until disposed of. Every Senator shall be entitled to speak a maximum of thirty minutes upon the motion, except that a Senator may relinquish all or part of his time, or may yield all or part of his time to another Senator. It shall be the duty of the Presiding Officer to keep the time.

"When all time has been used or relinquished, the Presiding Officer shall lay the cloture motion before the Senate and direct that the Secretary call the roll, and upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question:".

On page 4, line 14, strike out "one hour" and substitute "thirty minutes".

Mr. HATHAWAY. Mr. President, I have some misgivings about altering the cloture rule from two-thirds to three-fifths. Although I would have been willing to go along without offering any amendment if the proposed three-fifths rule were going to be in effect for only a 2-year period on an experimental basis, in view of the fact that the matter before us now is going to be in the rules permanently, unless changed at a subsequent

date, I feel obligated to offer my amendment.

Although I agree with the proponents of the change that the two-thirds rule is a burdensome rule that has led to a lot of delays in considering important legislation—indeed it has led to the demise of some very important legislation before the Senate has had an opportunity to vote on it—I am afraid that if we reduce the two-thirds to three-fifths, even though it is a constitutional three-fifths, we are approaching closer to a majority cloture, against which I am firmly opposed. And even with the constitutional three-fifths, the propensity to offer cloture motions at a very early stage of debate is going to be much greater than that propensity or inclination has been under the two-thirds vote.

I do not want to see a situation in which a bill is brought up on 1 day and cloture motion is filed on the same day, and 2 days later we are voting to close off debate, without giving the Members of this body an adequate opportunity to debate. For that reason, I have offered my amendment to guarante, prior to the time that cloture is being voted upon, that every Member would have one-half hour of debate, and that that Member could yield that time or any portion of that time to any other Member. This would guarantee a maximum of 50 hours of debate prior to the time cloture is voted upon. If cloture is invoked, then an additional 50 hours would be granted thereafter.

This would mean that the rule, as it is now proposed, would not be altered substantially, because under the present rule there is a provision for every Member to have 1 hour of debate after cloture is invoked, and the total time under my amendment amounts to the same 100 hours.

This amendment, as I have mentioned, guarantees that there is going to be precloture debate and that it will be distributed among all the Members who wish to take advantage of it.

I suppose some can argue that under the present system, in view of the fact that the cloture motion is filed while the matter in question is the pending business and that the cloture motion cannot be voted on until 2 days later, this also guarantees a certain number of hours of debate. Unfortunately, all that time could be occupied by one Senator or possibly two Senators. But certainly it is no guarantee to every Member of this body that he or she is going to have his or her say prior to the time that the cloture motion is voted upon.

Some may say, "What difference does it make whether we have 50 hours before and 50 hours after, so long as you are guaranteed that you have 1 hour of debate after cloture is invoked and the total amount of time is 100 hours?"

Mr. President, I think it is crucial that we allot the 50 hours prior to the time the cloture motion is voted upon, so that the minority can have a chance to persuade the Members not to vote for cloture. No Members can be persuaded after cloture is invoked, during the 100-hour period. If there is no opportunity prior to that time, one is precluded from making that argument.

Of course, there is this very practical argument: We know that in the past, after cloture has been invoked, Members have felt that that was the end of the ball game, and not many Senators were on the floor to listen to the debate. Members feel that the matter will be coming up for final passage in a relatively short period of time. So that actually the 100-hour provision does not guarantee to the Members any real opportunity to persuade other Members on the merits of the legislation.

Without further ado, Mr. President, for the reasons that I have outlined in my remarks, I hope that the Senate will go along with this amendment. It is a minimal guarantee. It guarantees only one-half hour. I should have liked to make it longer, but I do not think, as a practical matter, that I would have much of a chance of getting such an amendment through if I did make it longer. There may be Members who have legitimate amendments to a bill that they want to get in prior to any cloture vote, and if a Member had three or four amendments, a half hour would be grossly insufficient time to press for those amendments. Nevertheless, I am willing to give up that opportunity. Hopefully, where a Member could relinquish or yield his time, he could get together with others who are in support of his amendments and collectively, they would probably have enough time to talk on a reasonable number of alterations that they might like to make to the pending legislation.

Mr. President, I reserve the remainder of my time.

Mr. ROBERT C. BYRD. Mr. President——

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, the purpose of the cloture rule is to bring an early close to the debate on a given matter or measure pending before the Senate. With all proper respect, and I have the highest respect for my very able friend from Maine, his amendment would go exactly counter to the purpose of the cloture rule and, instead of expediting the debate on any matter before the Senate, as a result of his amendment, if it were to be adopted, the debate would be prolonged.

Mr. President, I move to table the amendment.

Mr. ALLEN. I call for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. ALLEN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Mr. ALLEN. I object.

The assistant legislative clerk resumed the call of the roll.

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of the absentees.

The assistant legislative clerk called the roll and the following Senators entered the Chamber and answered to their names:

[Quorum No. 18 Leg.]

Allen	Glenn	Mondale
Baker	Hart, Gary W.	Morgan
Burdick	Haskell	Moss
Byrd, Harry F., Jr.	Hathaway	Pastore
Byrd, Robert C.	Kennedy	Proxmire
Clark	Leahy	Scott, William L.
Ford	Magnuson	Stone
Garn	Mansfield	Talmadge
	McClure	

The PRESIDING OFFICER. A quorum is not present.

Mr. MANSFIELD. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER. The question is on 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.

Pending the execution of the order, the following Senators entered the Chamber and answered to their names:

Abourezk	Gravel	Nelson
Bartlett	Griffin	Nunn
Bayh	Hansen	Packwood
Beall	Hart, Philip A.	Pearson
Bellmon	Hartke	Pell
Bentsen	Hatfield	Percy
Biden	Helms	Randolph
Brock	Hollings	Roth
Brooke	Hruska	Scott, Hugh
Buckley	Huddleston	Sparkman
Bumpers	Humphrey	Stafford
Cannon	Inouye	Stevens
Case	Javits	Stevenson
Chiles	Johnston	Symington
Church	Laxalt	Thurmond
Cranston	Long	Tower
Culver	Mathias	Tunney
Curtis	McGee	Weicker
Domenici	McGovern	Williams
Eastland	McIntyre	Young
Fannin	Metcalf	
Fong	Muskie	

The PRESIDING OFFICER. A quorum is present.

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

I further announce that the Senator from Ohio (Mr. TAFT), is absent due to illness.

I further announce that, if present and voting, the Senator from Ohio (Mr. TAFT), would vote "nay."

The result was announced—yeas 57, nays 33, as follows:

[Rollcall Vote No. 46 Leg.]

YEAS—57

Abourezk	Griffin	McGee
Bayh	Hart, Gary W.	McGovern
Beall	Hart, Philip A.	McIntyre
Bentsen	Hartke	Metcalf
Biden	Haskell	Mondale
Brooke	Hatfield	Moss
Bumpers	Helms	Nelson
Burdick	Hollings	Pastore
Byrd, Robert C.	Huddleston	Pearson
Cannon	Humphrey	Percy
Case	Inouye	Randolph
Church	Jackson	Roth
Clark	Javits	Scott, Hugh
Cranston	Johnston	Stafford
Culver	Leahy	Stevens
Curtis	Long	Symington
Fong	Magnuson	Talmadge
Ford	Mansfield	Williams
Glenn	Mathias	Young

NAYS—33

Allen	Garn	Proxmire
Baker	Gravel	Scott, William L.
Bartlett	Hansen	Sparkman
Bellmon	Hathaway	Stennis
Brock	Hruska	Stevenson
Buckley	Laxalt	Stone
Byrd, Harry F., Jr.	McClure	Thurmond
Chiles	Morgan	Tower
Domenici	Muskie	Tunney
Eastland	Nunn	Weicker
Fannin	Packwood	
	Pell	

NOT VOTING—9

Dole	Kennedy	Ribicoff
Eagleton	McClellan	Schweiker
Goldwater	Montoya	Taft

So the motion to lay Mr. HATHAWAY'S amendment on the table was agreed to.

Mr. HELMS. Mr. President, I move to reconsider.

Mr. ROBERT C. BYRD. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Indiana (Mr. HARTKE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Pennsylvania (Mr. SCHWEIKER), and the Senator from Pennsylvania (Mr. HUGH SCOTT) are necessarily absent.

I further announce that the Senator from Ohio (Mr. TAFT) is absent due to illness.

On this vote, the Senator from Pennsylvania (Mr. HUGH SCOTT) is paired with the Senator from Ohio (Mr. TAFT).

If present and voting, the Senator from Ohio would vote "yea" and the Senator from Pennsylvania would vote "nay."

The result was announced—yeas 30, nays 58, as follows:

[Rollcall Vote No. 47 Leg.]

YEAS—30

Allen	Byrd, Harry F., Jr.	Hansen
Baker	Dole	Hathaway
Bartlett	Eastland	Helms
Bellmon	Fannin	Hruska
Biden	Garn	Laxalt
Brock		McClure
Muskie	Roth	Thurmond
Nunn	Scott, William L.	Tower
Packwood	Stone	Tunney
Pell	Talmadge	Weicker
Proxmire		

NAYS—58

Abourezk	Gravel	McIntyre
Bayh	Griffin	Metcalf
Beall	Hart, Gary W.	Mondale
Bentsen	Hart, Philip A.	Morgan
Buckley	Haskell	Moss
Bumpers	Hatfield	Nelson
Burdick	Hollings	Pastore
Byrd, Robert C.	Huddleston	Pearson
Cannon	Humphrey	Percy
Case	Inouye	Randolph
Chiles	Jackson	Sparkman
Church	Javits	Stafford
Clark	Johnston	Stennis
Cranston	Leahy	Stevens
Culver	Long	Stevenson
Curtis	Magnuson	Symington
Domenici	Mansfield	Williams
Fong	Mathias	Young
Ford	McGee	
Glenn	McGovern	

NOT VOTING—11

Brooke	Kennedy	Schweiker
Eagleton	McClellan	Scott, Hugh
Goldwater	Montoya	Taft
Hartke	Ribicoff	

So the motion to reconsider was rejected.

Mr. HARRY F. BYRD, JR. Mr. President, I—may we have order, Mr. President?

The PRESIDING OFFICER (Mr. INOUYE). The Senate will be in order. The Senator from Virginia may proceed.

Mr. HARRY F. BYRD, JR. Mr. President, I rise to support the position enunciated just a short time ago by the able Senator from Mississippi (Mr. STENNIS). He put in perspective the dilemma and the problem facing the Senate of the United States in regard to the proposed change in the rules. I cannot speak with the eloquence of the distinguished Senator from Mississippi, but I do support his arguments and associate myself with the splendid remarks which he made earlier.

Mr. President, rule XXII came into being in March of 1917. Up to that time there was no way that debate in the Senate could be shut off.

But just prior to World War I, the then majority leader of the Senate of the United States, one who then occupied the office now held by the Senator from Virginia, the late Thomas S. Martin of Charlottesville, Va., presented to the Senate what in essence is now rule XXII.

Senator Martin's proposal has stood the test of time.

It has served the Senate well. It has served well the people of these United States.

Whenever 16 Senators file a cloture motion, that motion shall be voted on the next calendar day save one, and if two-thirds of the Senators so decide, debate shall be brought to a close.

It seems to me that is a fair proposition, that gives reasonable protection to the rights of a minority, and yet it permits the Senate, when it wishes to do so, to shut off debate and bring the issue to a close.

To indicate that it does not present great difficulty in achieving cloture under the existing rules, I cite the fact that this past December, on three separate occasions, the Senate voted cloture. I also cite the fact that three times within the past 10 days the Senate has voted cloture.

The Senate is now operating under the cloture provisions of the rule. I support that rule.

While I voted against cloture earlier today, I recognize that cloture was brought about under the rules of the Senate, in a proper way.

So I support that rule, and we are operating under it now. I am allowed, under the rules of the Senate, after cloture has been invoked, 1 hour to state my position on the pending legislation, just as is every other Member of the Senate.

Besides opposing the change in the rule which permits debate be brought to a close by a two-thirds vote of the Members of the Senate present and voting—while I oppose that change because I think that rule has served us well, I have an additional concern. I refer to a ruling from the Chair that would permit cloture to be sustained by a majority vote.

The able Senator from Mississippi, in his remarks, said that the Vice President, when he so ruled, cast aside nearly 200 years of precedent.

What has happened during this debate, which has been going on for quite a while now, and I think properly so, is that the Senate went far beyond what I believe even a majority of the Senators intended. As indicative of the accuracy of that statement, I point to the fact that earlier this week the Senate took the unusual procedure—and I believe under a unanimous-consent agreement—of reconsidering action which it had taken the previous week. The purpose of that was to try to ease what apparently is considered by even a majority of the Senate to be a very bad ruling by the Vice President. Such a ruling could lead to cloture by a simple majority of the Senate, if that majority has a favorable Vice President in the Presiding Officer's chair.

If the Senate should ever go to majority cloture—and we are heading in that direction, Mr. President, and that is why I am forced to oppose the so-called compromise—I submit the Senate as we have known it will no longer exist. So, as I judge this situation, the issue is far broader and far more important than whether the rules be changed to provide for a two-thirds vote to shut off debate or a three-fifths vote to shut off debate.

I think, although the able Senator from Alabama does not fully agree with me, that the Senate has gone a long way to erase the ruling made by the Vice President a week or so ago under which cloture could be invoked by majority cloture.

When we talk about majority cloture, we are talking about a simple majority plus a sympathetic Presiding Officer. When we permit a simple majority, plus a sympathetic Presiding Officer, to shut off debate and silence everyone else, I submit we are getting into very dangerous ground; we are changing radically the purpose of the U.S. Senate as envisioned by the Constitution.

The majority is not always right, not by any means. All history tells us that, and that is why I would hope that an amend-

ment could be added to the pending legislation to make clear that at no future time shall debate be shut off by a majority of the Senators present and voting.

I have no quarrel with how anyone votes on these issues, of course. I do think it important for the RECORD to show, however, that the present rule XXII has served the Senate well, and that under that rule cloture has been invoked many, many times; three times within the last 10 days, and three times this past December, just to use the most recent history.

At this point, Mr. HATHAWAY assumed the chair.

Mr. HARRY F. BYRD, JR. It may be, Mr. President, that the long struggle over what to do about the Senate rules will serve a useful purpose. It will if it brings about a realization on the part of many of us in the Senate as to just how dangerous it would be to the rights of all if majority cloture, the shuting off of debate by a single vote majority, is ever to prevail in the future.

Mr. President, may I ask how much time I have used?

The PRESIDING OFFICER. The Senator has used 16 minutes.

Mr. HARRY F. BYRD, JR. Mr. President, I reserve the remainder of my time.

Mr. WILLIAM L. SCOTT. Mr. President, I listened to the majority leader with great care an hour or so ago, and felt he was very persuasive. I believe his arguments were quite logical and would agree that he certainly attempts to protect the rights of the minority. Frequently he also attempts to protect the rights of the individual Senators. Of course, he attempts to do this consistent with his responsibility as majority leader, and I have considerable respect for the majority leader of the Senate. In my opinion he discussed the concerns of the day, the delay in considering what he believes to be important legislation. I do not quarrel with his conclusions in this respect.

Yet there are some important and lasting principles that are involved in the proposal to change rule XXII. I believe the debate has been an enlightening matter and indicates principles are involved that go beyond the importance of the issues of the day.

There may be other majority leaders in the future who may not be as sympathetic to the rights of the minority as the present leader is. The majority leader of the future may be of either of our major political parties and we need to look beyond the present leadership.

I believe that we are considering a change in the permanent rules of the Senate. A change in rule XXII, which now permits 16 Senators to file a motion to invoke cloture where cloture was not permitted to be imposed prior to the adoption of rule XXII. The present rule states, in part:

> Notwithstanding the provisions of rule III or rule VI or any other rule of the Senate, at any time a motion signed by sixteen Senators, to bring to a close the debate upon any measure, motion, or other matter pending before the Senate, or the unfinished business, is presented to the Senate, the Presiding Office shall at once state the motion to the Senate, and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question:
>
> "Is it the sense of the Senate that the debate shall be brought to a close?"

Now, present rule XXII requires an affirmative vote by two-thirds of the Senators present and voting.

As I understand it, Mr. President, Senate Resolution 4, the proposal that is before us, would permit the termination of debate, cloture by three-fifths of the Senate present and voting, or 60 percent rather than 66⅔ percent.

A number of amendments to that proposal have been offered. I favored the amendment offered by the distinguished Senator from Maine (Mr. HATHAWAY), who is now occupying the Chair. It was a more reasonable amendment, because it indicated that each Senator could speak for 30 minutes after the cloture motion was filed, but before a vote on whether to impose cloture.

There is doubt as to the effectiveness of debate under the 1-hour rule after cloture has been imposed and I believe that the Senator from Maine was getting at that in permitting half of the time to be utilized before the vote on cloture.

It appeared to be a good amendment. Unfortunately, it was tabled.

The proposal offered by the distinguished majority whip (Mr. ROBERT C. BYRD) is in the nature of a substitute. His suggestion is that we have 60 percent of the membership of the Senate, not those present and voting. There actually would have to be 60 Senators on the floor and voting to impose cloture.

But, Mr. President, I am concerned that this may be an erosion of the rights of the minority. I am fearful that, when we reduce the two-thirds vote by any extent, it may be setting a precedent for a further reduction. It could lead to cutting off debate by a simple majority.

In fact, it could lead to a further amendment that would cut off debate if 40 percent of the Senators wanted to immediately vote, or any lesser percentage that a majority might agree to. From a more practical point of view, it could lead to cutting off debate by a simple majority.

We have before us, Mr. President, a report by the Committee on Rules and Administration entitled "Limitation of Debate in the Congress of the United States." It relates to the Senate's cloture rule and was prepared by the Congressional Research Service of the Library of Congress. On page 55 there are a number of arguments for a filibuster.

Now, that is the common word used when we speak of the right of unlimited debate unless cloture is imposed under rule XXII of the Senate rules.

These arguments say that—

> Minorities have rights which no majority should override. Government is constituted to protect minorities against majorities. Obstruction is justifiable as a means of preventing a majority from trampling upon minority rights until a broad political consensus has developed.

Now, Mr. President, I am a member of the Republican Party. That is a minority in the Senate of the United States. My philosophy is generally conservative. That is a majority, I believe at this time, in the Senate of the United States.

We could be talking about minorities within the political party or minorities as to philosophy. Perhaps issues will arise that need thorough review on various matters and any Member of this body could find himself in a minority in a given situation.

There may be times when any one of us would want a thorough discussion. I would hope that the present proposal will not eliminate the right, the opportunity of Members of the Senate to thoroughly discuss any proposal that comes before the Senate:

> A Senate majority does not necessarily represent a consensus of the people or even of the states. Frequently popular opinion upon a question has not been formulated or, if it has been, it is often not effectively expressed. Prolonged debate may prevent hasty majority action which would be out of harmony with genuine popular consensus.

Another argument that is made in the committee report:

> It is the special duty of the Senate, sitting in an appellate capacity, carefully to inspect proposed legislation, a duty not readily performed without freedom of debate. In our system of government, where legislation can be gaveled through the House of Representatives at breakneck speed with only scanty debate under special rules framed by a partisan committee, it is essential that one place be left for thorough-going debate.

Now, we know, Mr. President, in the House of Representatives sometimes amendments are offered and under the rules of the House the proponent of an amendment may only have 5 minutes to discuss his amendment, and sometimes that is not time enough.

I feel that this body offers the opportunity as suggested in the report of the Committee on Rules and Administration of a more thorough review of proposals than that extended in the House of Representatives.

The committee report reads further:

> Filibusters really do not prevent needed legislation, because nearly every important measure defeated by filibuster has been enacted later. With rare exception no really meritorious measure has been permanently defeated and some vicious proposals have been killed. The filibuster has killed more bad bills than good ones.
>
> It is the unique function of the Senate to act as a check upon the Executive, a responsibility it could not perform without full freedom of debate. Unrestricted debate in the Senate is the only check upon presidential and party autocracy. It is justified by the nature of our government system of separated powers.
>
> The constitutional requirement for recording the yeas and nays is a protection of dilatory tactics. The provision of the Constitution which requires the yeas and nays to be recorded in the Journal at the desire of one-fifth of the Members present is an intentional safeguard allowing the minority to delay proceedings.
>
> Majority cloture in the Senate would destroy its deliberate function and make it a mere annex of the House of Representatives.
>
> Simple majority cloture would have brought many a decision which would have accorded ill with the sober second thought of the American people.
>
> The Senate, without majority cloture, actually passes a larger percentage of bills introduced in that body than does the House of Representatives, with cloture.

To enforce cloture by vote of a chance majority in the Senate might bring greater loss than gain.

Filibusters are justifiable whenever a great, vital, fundamental, constitutional question is presented and a majority is trying to override the organic law of the United States. Under such circumstances, Senators "as ambassadors of the states" in Congress have a duty to protect the rights of the states.

Mr. President, a few minutes ago I indicated a feeling that our distinguished majority leader had been very persuasive, had been very logical, in the remarks that he made to this body. I was almost persuaded. Then we had the distinguished Senator from Mississippi (Mr. STENNIS) take the floor and rebut, at least to an extent, the statement that was made by the Senator from Montana.

I felt that Senator STENNIS also made a very logical and a very reasonable statement with regard to the cloture rules. Reasonable people can disagree on a given issue and this underscores the need for a thorough discussion.

Mr. President, we have a book on Senate procedure that was prepared last year by the then Parliamentarian, Dr. Floyd M. Riddick. Dr. Riddick, a longtime Parliamentarian of the Senate, and a well-recognized authority on the subject, discusses cloture procedure on page 207.

I believe this whole section with regard to cloture is worthy of consideration by the membership of the Senate. I feel that cloture is something that does perhaps give us time to think a bit before it is imposed. Rule XXII has to do with the method by which we can impose cloture. Sometimes a thoughtful discussion can result in a more reasonable or better decision, in better laws than if a vote were taken without a thorough discussion:

The Cloture Rule is designed to bring debate on a pending proposal to a close. It provides that sixteen Senators may at any time sign a motion "to close the debate" and present it to the Presiding Officer, who is required to state the motion to the Senate immediately. The motion may be presented to the Senate over the objection of any Senator who has the floor. This does not take that Senator's right to the floor away from him, but merely suspends it during the time necessary for calling the membership's attention to the motion. Following such notification to the Senate, debate can be continued just as if nothing had happened until 1 hour after the Senate convenes on the following calendar day "but one" (2 days later) that it is in session. At that time the Presiding Officer "shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that a quorum is present" he shall "without debate, submit to the Senate by a yea-and-nay vote" the question: "Is it the sense of the Senate that the debate shall be brought to a close?"

Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. WILLIAM L. SCOTT. Continuing:

The vote on the motion, according to a decision on July 29, 1946, will be had at the hour required by the rule, even though the bill may have been displaced in the meantime, unless the rule is suspended by a two-thirds vote or unless by unanimous consent the Senate determines otherwise.

A two-thirds affirmative vote, a quorum being present, is required to invoke cloture, which makes the pending question "the unfinished business to the exclusion of all other business until disposed of." If a two-thirds vote is not forthcoming, the attempt fails and the debate remains unrestrained.

When cloture is invoked, no Senator may speak more than one hour "on the pending measure, the amendments thereto, and motions affecting the same." The Presiding Officer, or someone designated by him with the consent of the Senate, keeps the time of each Senator who speaks. The rule and decisions of the Chair in pursuance thereof prohibit the offering of any amendment after the vote "unless the same has been presented and read prior to that time," except by unanimous consent. "No dilatory motion, or dilatory amendment, or amendment not germane shall be in order." Hence, any amendment offered to a bill on which cloture has been invoked must meet the acid test of being germane, and if it is not, a point of order, if sustained, prohibits its consideration. All questions of procedure—"points of order, including questions of relevancy, and appeals from the decisions of the Presiding Officer"—shall be decided without debate.

The application of the rule extends to any measure, motion, or other matter pending before the Senate.

Mr. President, I note that our distinguished majority leader is now in the Chamber, and I again commend him for the splendid statement he made right after the vote on cloture earlier today.

It was a very persuasive, a very logical statement that the majority leader made, if it was only addressed to the issues of the day, and did not relate to procedure to be followed in future years.

We have the permanent rules of the Senate, however, that we are now considering. I do not feel that it is in the interest of the minority party, I do not feel that it is in the interest of those with a minority philosophical view, I do not feel that it is in the interest of an individual Senator, any Members of the Senate, or in the interest of the country, to change the rules of the Senate which now require a two-thirds vote to cut off debate and provide that it can be done by a three-fifths vote, as suggested by the Senator from Kansas, who is in the Chamber at this time, and by the Senator from Minnesota, who has cosponsored this proposal with him.

I hope we will not vote to change the present rule in any way. I feel that cloture can be imposed under our present rules. Debate can be cut off. It has been done on various occasions during my short tenure in the Senate. I feel that it should be retained exactly as it is. It is a compromise now between the unlimited right of debate that existed in the Senate prior to the adoption of rule XXII. But if we are going to have any change, I would hope that we would adopt the amendment by the Senator from West Virginia (Mr. ROBERT C. BYRD), which would preserve the two-thirds requirement for the changing of the rules of the Senate and would provide that 60 Senators would actually have to be on the floor of the Senate and vote to impose cloture.

Mr. President, how much time have I consumed?

The PRESIDING OFFICER. The Senator has consumed 27 minutes.

Mr. WILLIAM L. SCOTT. Mr. President, I reserve the remainder of my time.

AMENDMENT NO. 66

Mr. ALLEN. Mr. President, I call up amendment No. 66 and call for a division of the question.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN) proposes amendment numbered 66.

Mr. ROBERT C. BYRD. Mr. President——

Mr. ALLEN. The amendment has not been stated.

The PRESIDING OFFICER. The amendment is to strike out and insert. It is not subject to division.

The clerk will continue to state the amendment.

The assistant legislative clerk read as follows:

On page 2, line 16, beginning with "shall", strike out all through line 22, and insert the following:

", upon the ascertainment that a quorum is present, shall at once state the motion to the Senate.

"Thereafter, the motion to close debate shall be the unfinished business to the exclusion of all other business until disposed of. Every Senator shall be entitled to speak a maximum of one hour upon the motion, except that a Senator may relinquish all or part of his time, or may yield all or part of his time to another Senator. It shall be the duty of the Presiding Officer to keep the time.

"When all time has been used or relinquished, the Presiding Officer shall lay the cloture motion before the Senate and direct that the Secretary call the roll, and upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question:

On page 3, line 7, strike out "one hour" and substitute "two hours.".

On page 3, line 24, beginning with "shall", strike out all through line 5 on page 4, and insert the following:

", upon the ascertainment that a quorum is present, shall at once state the motion to the Senate.

"Thereafter, the motion to close debate shall be the unfinished business to the exclusion of all other business until disposed of. Every Senator shall be entitled to speak a maximum of one hour upon the motion, except that a Senator may relinquish all or part of his time, or may yield all or part of his time to another Senator. It shall be the duty of the Presiding Officer to keep the time.

"When all time has been used or relinquished, the Presiding Officer shall lay the cloture motion before the Senate and direct that the Secretary call the roll, and upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question:

On page 4, line 14, strike out "one hour" and substitute "two hours".

Mr. ROBERT C. BYRD. Mr. President, this is a modified version of the amendment that was previously offered by Mr. HATHAWAY and tabled. I move to table—Mr. President, I withhold the motion just a moment. Let the clock run on my time.

Mr. President, while I am waiting, I understand that the word has gone out that this matter should be put over to Monday. There is no question in my mind that one Senator, using the rules,

can delay this, possibly until Monday or later. But there comes a time with respect to those who play hard ball—and who have been playing hard ball—when the responsibility is on the leadership also to play hard ball.

So I just want Senators to know that that is the game plan of the opposition now—to lay this matter over until Monday. Of course, when Monday comes, I suppose the game plan will be to put it over to Tuesday and as long thereafter as the rules can be utilized to the advantage of a Senator who may wish to delay the Senate from working its will.

As I indicated yesterday, the rules are structured to protect the minority. The rules are also so structured that any one Senator, by using dilatory motions, dilatory amendments, dilatory points of order, dilatory appeals, and by putting in dilatory quorums, can delay and delay and delay.

It is much easier, under the Senate rules, to obstruct action than it is to force action. Of course, under rule XXII, dilatory amendments and dilatory motions are not in order, and appeals are not debatable. But delaying tactics are still possible.

We have witnessed over the past 2 weeks, actions taken under the rules—certainly within the rights of any Senator—which have unduly delayed the Senate. I would hope that Senators who are backing the substitute would be prepared to stay on the floor of the Senate throughout the day so that action can be expedited as fast as it can be expedited, which at best is going to be very slow, at the rate we are moving. Advantage is taken of the fact that not enough Senators are on the floor to support the demands for the yeas and nays, and that opens the way for quorum calls. Senators are in committee meetings and in their offices transacting business, all of which lengthens the quorum calls that are then made and not allowed to be called off. I just want Senators to be on notice that the game plan of the opposition is not to complete the action on this measure this weekend, even though cloture has now been invoked on it. I hope that Senators who support the compromise will stay as closely to the floor as possible. This would help to bring matters to an earlier conclusion.

Mr. President, I ask for the yeas and nays on my motion to table the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered, and the clerk will call the roll.

Mr. ALLEN. A point of order, Mr. President.

The Senator from Alabama, in submitting his amendment, requested a division of the question, and the motion to table will have to be confined to the first part of the question.

The PRESIDING OFFICER. The Chair has already ruled that the amendment is not divisible. Under rule XVIII, if the question in debate contains several propositions, any Senator may have the same divided, except a motion to strike out and insert, which shall not be divided.

The Senator's amendment is not divisible.

Mr. ALLEN. I appeal from the ruling of the Chair and ask for the yeas and nays.

Mr. ROBERT C. BYRD. I move to table the appeal and I call for the yeas and nays on the motion to table the appeal.

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 assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from New Mexico (Mr. MONTOYA), the Senator from North Carolina (Mr. MORGAN), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) and the Senator from Rhode Island (Mr. PASTORE) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

I further announce that the Senator from Ohio (Mr. TAFT) is absent due to illness.

I further announce that, if present and voting, the Senator from Ohio (Mr. TAFT) would vote "nay."

The result was announced—yeas 73, nays 14, as follows:

[Rollcall Vote No. 48 Leg.]

YEAS—73

Abourezk	Glenn	Mondale
Bartlett	Gravel	Moss
Bayh	Griffin	Muskie
Beall	Hart, Gary W.	Nelson
Bentsen	Hart, Philip A.	Nunn
Biden	Hartke	Packwood
Brock	Haskell	Pearson
Brooke	Hatfield	Pell
Buckley	Hathaway	Percy
Bumpers	Hruska	Proxmire
Burdick	Huddleston	Randolph
Byrd, Harry F., Jr.	Inouye	Roth
Byrd, Robert C.	Jackson	Scott, Hugh
Cannon	Javits	Stafford
Case	Johnston	Stevens
Chiles	Laxalt	Stevenson
Church	Leahy	Stone
Clark	Long	Symington
Cranston	Magnuson	Talmadge
Culver	Mansfield	Tower
Dole	Mathias	Tunney
Domenici	McGee	Weicker
Ford	McGovern	Williams
Garn	McIntyre	Young
	Metcalf	

NAYS—14

Allen	Fong	Scott, William L.
Baker	Hansen	Sparkman
Curtis	Helms	Stennis
Eastland	Hollings	Thurmond
Fannin	McClure	

NOT VOTING—12

Bellmon	Kennedy	Pastore
Eagleton	McClellan	Ribicoff
Goldwater	Montoya	Schweiker
Humphrey	Morgan	Taft

So the motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. STAFFORD). The question now recurs on agreeing to the motion of the Senator from West Virginia (Mr. ROBERT C. BYRD) to lay on the table the amendment (No. 66) of the Senator from Alabama (Mr. ALLEN).

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from New Mexico (Mr. MONTOYA), the Senator from North Carolina (Mr. MORGAN), the Senator from Rhode Island (Mr. PASTORE), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Mississippi (Mr. STENNIS), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), the Senator from Illinois (Mr. STEVENSON), and the Senator from Rhode Island (Mr. PASTORE) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

I further announce that the Senator from Ohio (Mr. TAFT) is absent due to illness.

I further announce that, if present and voting, the Senator from Ohio (Mr. TAFT) would vote "nay."

The result was announced—yeas 66, nays 18, as follows:

[Rollcall Vote No. 49 Leg.]

YEAS—66

Abourezk	Glenn	McGovern
Bayh	Gravel	McIntyre
Beall	Griffin	Metcalf
Bentsen	Hart, Gary W.	Mondale
Biden	Hart, Philip A.	Moss
Brock	Hartke	Muskie
Brooke	Haskell	Nelson
Buckley	Hatfield	Pearson
Bumpers	Helms	Pell
Burdick	Hruska	Percy
Byrd, Robert C.	Huddleston	Proxmire
Cannon	Inouye	Randolph
Case	Jackson	Roth
Church	Javits	Scott, Hugh
Clark	Johnston	Stafford
Cranston	Laxalt	Stevens
Culver	Leahy	Stone
Dole	Long	Symington
Domenici	Magnuson	Tunney
Fong	Mansfield	Weicker
Ford	Mathias	Williams
Garn	McGee	Young

NAYS—18

Allen	Byrd, Harry F., Jr.	Curtis
Baker	Chiles	Eastland
Bartlett		Fannin

Hansen	Nunn	Talmadge
Hathaway	Scott, William L.	Thurmond
Hollings	Sparkman	Tower
McClure		

NOT VOTING—15

Bellmon	McClellan	Ribicoff
Eagleton	Montoya	Schweiker
Goldwater	Morgan	Stennis
Humphrey	Packwood	Stevenson
Kennedy	Pastore	Taft

So the motion to lay Mr. ALLEN's amendment on the table was agreed to.

Mr. HELMS. Mr. President, I move to reconsider.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from New Mexico (Mr. MONTOYA), the Senator from North Carolina (Mr. MORGAN), the Senator from Rhode Island (Mr. PASTORE), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Illinois (Mr. STEVENSON) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

I further announce that the Senator from Ohio (Mr. TAFT) is absent due to illness.

I further announce that, if present and voting, the Senator from Ohio (Mr. TAFT) would vote "nay."

The vote was announced—yeas 71, nays 16, as follows:

[Rollcall Vote No. 50 Leg.]

YEAS—71

Abourezk	Ford	Metcalf
Bartlett	Garn	Mondale
Bayh	Glenn	Moss
Beall	Gravel	Muskie
Bellmon	Griffin	Nelson
Bentsen	Hart, Gary W.	Packwood
Biden	Hart, Philip A.	Pearson
Brock	Hartke	Pell
Brooke	Haskell	Percy
Buckley	Hatfield	Proxmire
Bumpers	Hruska	Randolph
Burdick	Huddleston	Roth
Byrd, Robert C.	Inouye	Scott, Hugh
Cannon	Jackson	Stafford
Case	Javits	Stevens
Chiles	Laxalt	Stone
Church	Leahy	Symington
Clark	Long	Talmadge
Cranston	Magnuson	Tower
Culver	Mansfield	Tunney
Curtis	Mathias	Weicker
Dole	McGee	Williams
Domenici	McGovern	Young
Fong	McIntyre	

NAYS—16

Allen	Hansen	Nunn
Baker	Hathaway	Scott, William L.
Byrd, Harry F., Jr.	Helms	Sparkman
Eastland	Hollings	Stennis
Fannin	Johnston	Thurmond
	McClure	

NOT VOTING—12

Eagleton	McClellan	Ribicoff
Goldwater	Montoya	Schweiker
Humphrey	Morgan	Stevenson
Kennedy	Pastore	Taft

So the motion to lay on the table Mr. HELMS' motion to reconsider was agreed to.

AMENDMENT NO. 51

Mr. ALLEN addressed the Chair.

The PRESIDING OFFICER (Mr. LAXALT). The Senator from Alabama.

Mr. ALLEN. I yield myself 5 seconds to call up amendment No. 51.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN) proposes amendment numbered 51.

The amendment is as follows:

Amend S. Res. 4 as amended by Byrd substitute in following manner: At the end add the following new section:

"SEC. —. Not more than a total of three cloture motions can be filed with respect to any Senate bill or its companion House bill in any one Congress.".

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

Mr. ALLEN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient number? There is a sufficient number.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Mew Mexico (Mr. MONTOYA), the Senator from North Carolina (Mr. MORGAN), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) and the Senator from Rhode Island (Mr. PASTORE) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER), and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

I further announce that the Senator from Ohio (Mr. TAFT) is absent due to illness.

I further announce that, if present and voting, the Senator from Ohio (Mr. TAFT) would vote "nay."

The result was announced—yeas 67, nays 21, as follows:

[Rollcall Vote No. 51 Leg.]

YEAS—67

Abourezk	Church	Haskell
Bayh	Clark	Hatfield
Beall	Cranston	Hathaway
Bellmon	Culver	Helms
Bentsen	Domenici	Huddleston
Biden	Fong	Inouye
Brooke	Ford	Jackson
Buckley	Garn	Javits
Bumpers	Glenn	Johnston
Burdick	Gravel	Laxalt
Byrd, Robert C.	Griffin	Leahy
Cannon	Hart, Gary W.	Long
Case	Hart, Philip A.	Magnuson
Chiles	Hartke	Mansfield
Mathias	Packwood	Stevenson
McGee	Pearson	Symington
McGovern	Pell	Tower
McIntyre	Percy	Tunney
Metcalf	Randolph	Weicker
Mondale	Roth	Williams
Moss	Scott, Hugh	Young
Muskie	Stafford	
Nelson	Stevens	

NAYS—21

Allen	Eastland	Scott, William L.
Baker	Fannin	Sparkman
Bartlett	Hansen	Stennis
Brock	Hollings	Stone
Byrd, Harry F., Jr.	Hruska	Talmadge
Curtis	McClure	Thurmond
Dole	Nunn	
	Proxmire	

NOT VOTING—11

Eagleton	McClellan	Ribicoff
Goldwater	Montoya	Schweiker
Humphrey	Morgan	Taft
Kennedy	Pastore	

So the motion to table was agreed to.

Mr. HELMS. Mr. President, I move to reconsider.

Mr. ROBERT C. BYRD. Mr. President.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, it is obvious that this exercise in futility is getting nowhere fast. The die is cast. The Senate has made up its mind and, repeatedly, it has shown where it stands and where it will stand, I think, when this battle is over. The leadership wishes to alert Senators that the Senate will be in not only through the evening, but throughout the night, if necessary, to bring this matter to a close this weekend.

I move to lay the motion to reconsider on the table.

Mr. HELMS. I ask for yeas and nays, Mr. President.

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 called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from New Mexico (Mr. MONTOYA), the Senator from North Carolina (Mr. MORGAN), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) and the Senator from Illinois (Mr. STEVENSON) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

I further announce that the Senator from Ohio (Mr. TAFT) is absent due to illness.

I further announce that, if present and voting, the Senator from Ohio (Mr. Taft) would vote "nay."

The result was announced—yeas 72, nays 16, as follows:

[Rollcall Vote No. 52 Leg.]

YEAS—72

Abourezk	Glenn	McIntyre
Bayh	Gravel	Metcalf
Beall	Griffin	Mondale
Bellmon	Hart, Gary W.	Moss
Bentsen	Hart, Philip A.	Muskie
Biden	Hartke	Nelson
Brock	Haskell	Nunn
Brooke	Hatfield	Packwood
Buckley	Hathaway	Pastore
Bumpers	Hollings	Pearson
Burdick	Hruska	Pell
Byrd, Robert C.	Huddleston	Percy
Cannon	Inouye	Randolph
Case	Jackson	Roth
Chiles	Javits	Scott, Hugh
Church	Johnston	Stafford
Clark	Laxalt	Stevens
Cranston	Leahy	Symington
Culver	Long	Talmadge
Dole	Magnuson	Tower
Domenici	Mansfield	Tunney
Fong	Mathias	Weicker
Ford	McGee	Williams
Garn	McGovern	Young

NAYS—16

Allen	Eastland	Scott,
Baker	Fannin	William L.
Bartlett	Hansen	Sparkman
Byrd,	Helms	Stennis
Harry F., Jr.	McClure	Stone
Curtis	Proxmire	Thurmond

NOT VOTING—11

Eagleton	McClellan	Schweiker
Goldwater	Montoya	Stevenson
Humphrey	Morgan	Taft
Kennedy	Ribicoff	

So the motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. THURMOND). The question is on the resolution.

Mr. ALLEN. Mr. President, I yield to the distinguished Senator from Wyoming.

Mr. HANSEN. Mr. President, these are disturbing times for many Americans. They have worries—and with cause—about the Nation's economy, the Nation's energy supply, the world balance of power and the prospect of the United States becoming a No. 2 nation. They know that a No. 2 nation militarily is no better off than a No. 3 nation, or perhaps even a No. 10 nation.

Those are some of the bigger worries of many Americans. But they have other concerns, and many of them. One is what they see as the steady erosion of their traditional values.

One of the most prized of America's traditional values is the right of a minority in this country to be heard—to be heard and to have their views considered.

Yet we see in this body, which has earned the reputation as the world's greatest deliberative body, those who profess to be concerned about minority rights stand and vote to shut off the minority—to muzzle any opposition that a minority might seek to present for their consideration.

Rule XXII is the authority for minority's right to be heard in the Senate of the United States. To amend it—to tear away its requirement that a two-thirds vote be required to end a minority's right to present its views—is to restrict the opportunity to hear the views that reflect the thinking of millions of Americans, or that given time and forum even could become the views of 200 million Americans, and perhaps even a majority of the Senate of the United States.

We teach our young in America to be ever openminded and to take every opportunity to acquire new knowledge and information. Yet by amending rule XXII, we do the very opposite by enhancing the opportunity for an impassioned majority to ride roughshod over the minority without even bothering to hear and consider their views.

In his February 17, 1971, column in the Washington Post, Nicholas von Hoffman observed that with the support of then President Nixon "Senate liberals will have another go at making it easier to kill off a filibuster." Mr. von Hoffman opined that President Nixon favored weakening the filibuster because he was concerned with getting passed by the Senate such legislation as the antiballistic missile, the draft, and the supersonic transport.

A key point by Mr. von Hoffman was that in regard to the filibuster.

> A Northern liberal can use the device as well as a Southern reactionary, and in the next couple of years the Northerners are going to need it more than the Southerners.

Presumably he had the busing issue in mind when he made that observation. I would like to read Mr. von Hoffman's entire column, as many here today may have forgotten his commentary, and some now in the Senate may have lived in areas where newspapers do not subscribe to Mr. von Hoffman's column.

Mr. ALLEN. Mr. President, will the Senator yield while the Senator from Alabama suggests the absence of a quorum? There is no quorum here, and I know the Senator would like to have a quorum of the Senators here to listen to his statements.

Mr. HANSEN. I yield for that purpose.

Mr. ALLEN. 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.

Mr. ALLEN. I object.

The PRESIDING OFFICER (Mr. THURMOND). Objection is heard.

Mr. FORD. Point of information, Mr. President.

The PRESIDING OFFICER. There is no debate in order.

The legislative clerk resumed the call of the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 19 Leg.]

Abourezk	Case	Hart, Gary W.
Allen	Chiles	Hart, Philip A.
Baker	Church	Hartke
Bartlett	Clark	Haskell
Bayh	Cranston	Hatfield
Beall	Culver	Hathaway
Bellmon	Curtis	Helms
Bentsen	Dole	Hollings
Biden	Domenici	Hruska
Brock	Eastland	Huddleston
Brooke	Fannin	Inouye
Buckley	Fong	Jackson
Bumpers	Ford	Javits
Burdick	Garn	Johnston
Byrd,	Glenn	Laxalt
Harry F., Jr.	Gravel	Leahy
Byrd, Robert C.	Griffin	Long
Cannon	Hansen	Magnuson
Mansfield	Packwood	Stafford
Mathias	Pastore	Stennis
McClure	Pearson	Stevens
McGee	Pell	Stone
McGovern	Percy	Symington
McIntyre	Proxmire	Talmadge
Metcalf	Randolph	Thurmond
Mondale	Roth	Tower
Moss	Scott, Hugh	Tunney
Muskie	Scott,	Weicker
Nelson	William L.	Williams
Nunn	Sparkman	Young

The PRESIDING OFFICER. A quorum is present.

Mr. HANSEN. Mr. President——

Mr. ALLEN. Mr. President——

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. HANSEN. Am I recognized?

The PRESIDING OFFICER. I recognized the Senator from Wyoming.

Mr. HANSEN. Mr. President, I would be happy to yield, without losing my right to the floor, to the distinguished Senator who seeks recognition.

Mr. ROBERT C. BYRD. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HANSEN. Mr. President, I ask unanimous consent that, Mr. Sam Marler, a member of my staff, be allowed the privilege of the floor during this debate.

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

Mr. HANSEN. Mr. President, to continue the article by Nicholas von Hoffman written February 17, 1971:

> Tomorrow the Senate liberals will have another go at making it easier to kill off a filibuster. They've been trying for 20 years, but they may get it this time because the President is on their side, and that ought to make them wonder how good an idea knocking out the old filibuster is.
>
> The White House contends that without the filibuster the Senate can do its work "more promptly and expeditiously." Congress, and especially the Senate has of late been much taxed with being inefficient and old-fashioned, a thick-sapped institution in an age of speed and transistorized judgments.
>
> The Senate's job isn't speed or neat dispatch, but wisdom, and these elements don't always go together. In legislation part of wisdom is delay and procrastination, knowing how not to get swept off your feet, how to temporize because it's better to be late than sorry.
>
> Stalling around and pulling on its beard and not being hasty is an aspect of the Senate that pre-dates its coming into existence. During the Constitutional Convention of 1787, James Madison argued on the floor that the first purpose of the Senate was "to protect the people against their rulers; secondly to protect the people against the transient impressions into which they themselves might be led . . . They themselves, as well as a numerous body of Representatives, were liable to err also, from fickleness and passion. A necessary fence against this danger would be to select a portion of enlightened citizens, whose limited number, and firmness might seasonably interpose against impetuous counsels . . . How is the danger in all cases of interested coalitions to oppress the minority to be guarded against? Among other means by the establishment of a body in the government sufficiently respectable for its wisdom and virtue, to aid on such emergencies, the preponderance of justice by throwing its weight into that scale."
>
> The Senate hasn't often lived up to Madison's hopes for it, but it has sometimes, and one of the ways it does is through the filibuster. A lone, filibustering senator, if he's

got the guts, may be able to make the whole country think twice before it's carried off by enthusiasm or hysteria.

Because of the South's use of the device to fight down civil rights legislation the filibuster may now have too bad a name to save it. People forget that the filibuster didn't prevent the passage of the great civil rights acts legislation of the '60s. It delayed them. In this way it acted like the temporary veto in the English House of Lords; in effect the filibuster asked the country, "Hey, did you really mean it with this civil rights legislation?"

That angered a lot of people who wanted the civil rights laws on the books immediately, people who had no patience with the Southern contention that much of this legislation was unconstitutional. Since then the courts have said they are constitutional, but even so they were a sharp departure from past practice . . . such things as taking away the freedom to refuse to rent, sell or service people because of their race or religion.

These aren't the kind of laws that should be passed with a 51 per cent majority. They are too important to slip into passage by seven or eight votes. The Senate's famous rule XXII requires a two-thirds vote to break a filibuster, and that's the kind of numbers needed to ensure such important laws have a chance of being enforced. The Reconstruction Congress passed all kinds of civil rights legislation that was not only ignored but literally forgotten. There just wasn't enough steam behind them to do more than pass them so that they became a kind of legislative tokenism.

But the filibuster and civil rights is history. Nixon certainly doesn't want to weaken the filibuster in order to pass a new civil rights act. He's concerned about such matters as the anti-ballistic missile, the draft and the SST. A Northern liberal can use the device as well as a Southern reactionary, and in the next couple of years the Northerners are going to need it more than the Southerners.

The big winner in the cutting down of the filibuster will be the White House, which will need to twist fewer senatorial arms to get what it wants passed. That's why Nixon's for it, and it's why everyone who wants to see congressional power diminished should be for it.

Killing the filibuster is presented as a reform measure. Words like modernize and expedite are used when talking about it. As if the Senate is old-fashioned because the senators talk too much. The problem is that half the time the senators don't know what they're talking about, and eliminating the filibuster isn't going to cure that. What might help, what might be a true modernization would be if the congressional research and information gathering facilities were significantly enlarged. The legislative branch is dangerously dependent on the executive for too much of what it knows.

Minor mechanical adjustment in the rules isn't going to make a better Congress. This is so of the filibuster, and of the furor over the seniority system. Those old coots run things, not because of the rules, but because the good guys don't have enough votes. When they do have the votes seniority doesn't matter.

You can see that in the case of Congressman John L. McMillan, the superannuatedly impossible gent from South Carolina who chairs the House District of Columbia Committee. The liberals had a chance to vote him out but they didn't have the numbers; then later, they were able to clip his power in the committee because they constitute a majority.

The last 50 years ought to have schooled us to watch out for reforms that promise us business-like procedures by strengthening centralized power. The problem isn't to get Congress to shut up but to get them to shout back.

I think Mr. von Hoffman's column is very interesting because he is not known as the most conservative of the writers, and I oftentimes do not agree with him. But I must say in this instance it seems to me that he perceived very clearly what may yet come into the awareness of some Members of this body.

Mr. President, in that year about which Mr. von Hoffman wrote, the Senate defeated the repeated attempts at modification of the filibuster rule.

Congressional Quarterly on March 5, 1971, described the Senate's defeat of the third attempt to modify the filibuster rule. The publication noted that the former chairman of the Committee on Foreign Relations, Senator Fulbright, during the debate on the matter pointed out that the Gulf of Tonkin resolution might not have been adopted if it had been thoroughly debated under the authority granted by the filibuster rule. I was not in the Senate when the Gulf of Tonkin resolution was adopted, but I believe that observation by Senator Fulbright is worthy of our consideration today when we consider the American lives lost in Southeast Asia, the maimed from that war, and the loss of national treasure—not to mention the trouble in the streets and the bitter memories from the sixties that many Americans have.

Mr. Fulbright stated in 1971 that had the issue been debated under the filibuster rule—in his words:

> I could have delayed that vote. The vehicle was there, the power was there. I failed to have the wisdom to use it, as did every other Member of this body.

I believe in those words, Mr. Fulbright reflected his personal agony over a mistake that many in America shared in—and many share his mental anguish over that war and whatever role they may have had in it or failed to have in it.

The Congressional Quarterly described the filibuster rule modification failure that year, this way:

> Opponents of a modification of the existing Senate filibuster rule March 2 defeated a third attempt in as many weeks to limit debate on a motion to consider an amendment (S Res 9) to Rule 22.
>
> The vote was 48-36—eight votes short of the two-thirds majority required to end a filibuster (invoke cloture). With 84 Senators voting, 56 votes would have been needed by proponents of a rules change.
>
> No Senator changed his position on the third vote. On the three cloture votes (Feb. 18, Feb. 23 and March 2) already taken this session, the position of all 100 Senators has been recorded. By including those Senators paired for and against cloture as well as those present and voting, the results of all three votes would be the same: 58-42 for ending the filibuster—nine votes short of the two-thirds majority. Thus Senate reformers have failed to pick up a single vote since the first cloture attempt.
>
> S Res 9, cosponsored by Senators James B. Pearson (R Kan.) and Frank Church (D Idaho), would allow a three-fifths vote rather than a two-thirds vote of Senators present and voting to limit debate.
>
> Senate reformers had predicted that they would add significant strength to their effort on the third vote, but the result indicated that proponents of a change in the filibuster rule had not been successful in moving toward the necessary two-thirds majority.
>
> After the vote, Church requested that Majority Leader Mike Mansfield (D Mont.) allow a fourth vote. "I confess there is not much life left in this proposition, but there is some. Give us another week."
>
> Mansfield scheduled another vote for March 9, but emphasized that it would be the final test on the matter.
>
> Sen. John O. Pastore (D R.I.) questioned the need for another vote, saying it was highly unlikely that the necessary support could be obtained. "We find ourselves in the very difficult position that we need a two-thirds vote in order to create a three-fifths shutoff. I do not think that is ever going to happen."
>
> In another development, Sen. Jacob K. Javits (R. N.Y.) said if the fourth vote was unsuccessful, he would raise the constitutional argument that the Senate, at the beginning of a new Congress, could break off a filibuster and adopt new rules by a simple majority. Both Mansfield and Church said they would oppose such a contention.
>
> ALTERNATIVE CLOTURE PROPOSALS
>
> Various alternatives have been suggested to the three-fifths proposal for modifying Rule 22. All alternative plans previously had been rejected by Church and Pearson.
>
> Some alternative proposals that may be considered if a compromise is initiated include:
>
> A resolution (S Res 14) introduced by Jack Miller (R Iowa) to assure bipartisanship in debate cutoff. It would reduce the cloture requirement to three-fifths but make the three-fifths include a majority of each party. In the eight successful attempts to limit debate since Rule 22 was adopted in 1917, a majority of Senators from both major parties voted for cloture.
>
> A resolution (S Res 50) introduced by Robert Dole (R Kan.) providing that the first cloture vote on a motion start with a two-thirds requirement, and that the requirement be reduced by one vote on each successive vote until, after eight attempts, it dropped to a three-fifths requirement.
>
> A proposal first made in previous years that would leave the debate cutoff figure at two-thirds for the first three weeks of debate on any issue, then reduce it to three-fifths.
>
> A proposal that would install the three-fifths cutoff for filibusters against everything but further rules changes, for which the two-thirds requirement would be retained.
>
> Since S Res 9 was introduced Jan. 25 with 51 Senators as cosponsors, a filibuster conducted primarily by southern Senators has been waged against bringing the resolution to a vote.
>
> Tactics used in 1971 by the Senators opposed to a change in Rule 22 have varied somewhat from those used in previous debates on attempts to modify the two-thirds requirement. The new arguments have as their basis the following points:
>
> During the 1960s, the filibuster was used primarily against civil rights legislation. Virtually all of the major civil rights bills eventually passed, although they were substantially improved because of the delay provided by extended debate. Thus, the pressure for altering Rule 22 has abated greatly.
>
> Possible conservative trends in political philosophy could make the filibuster a necessary tool of liberal Senators in working against "repressive" or "reactionary" legislation.
>
> The power of the Executive Branch has outgrown that of the Legislative Branch, particularly regarding war-making and foreign policy decisions. Congressional power will be diminished if the influence of the filibuster is weakened.
>
> A key Senator among those favoring retention of the two-thirds requirement was John

Sherman Cooper (R Ky.), who in past years had supported an easing of the anti-filibuster requirement. In a floor speech Feb. 18, Cooper said he had introduced legislation in 1957 and 1959 to reduce the number of Senators required to secure cloture from two-thirds to three-fifths of those present and voting. "I do not hold that position now," he said.

Cooper said he supported a rules change in previous years because he felt the two-thirds rule was hindering enactment of civil rights legislation. He changed his position, he said, after it became clear that such legislation would be cleared by Congress despite the present cloture requirement.

"These last 20 years have shown that if there is an issue before this body, one which has been reasoned out and is believed in this body and in the country, it will prevail, and that to me is much better than the idea that . . . speed is needed. . . ."

In a colloquy Feb. 24 between John Sparkman (D Ala.) and John Stennis (D Miss.), Sparkman referred to an article in the Feb. 20, 1971, issue of the *New Republic* magazine which opposed a change in Rule 22, Sparkman asked if the article "made a pretty good warning to the so-called liberals as to the disaster they might be courting by trying to cut down the requirements of Rule 22."

Stennis agreed, saying, "Many people are having second thoughts. I have noticed the proponents in this struggle that we are having are not as vociferous, not as vigorous as in years heretofore. I think some of the wind has been taken out of their sails. . . ."

Stennis warned of "increased executive pressure, increased executive dominance" over Congress. "There must be some kind of safeguard or slowdown in these legislative processes that will not permit just a bare minority to run over and prevail here. There must be a checkrein," he said. "The easier it becomes to close off debate by cloture, the harder it is to perform one of our prime missions—the protection of the rights of the states."

J. W. Fulbright (D Ark.), a leading critic of the war in Indochina and an opponent of any change in Rule 22, suggested Feb. 25 that the Gulf of Tonkin resolution might not have been adopted if it had been thoroughly debated under the authority granted by the rule.

"I could have delayed that vote. The vehicle was there, the power was there. I failed to have the wisdom to use it, as did every other member of this body," Fulbright said.

Fulbright said the United States has been ". . . in a state of war or a near state of war since World War II, some 25 years" and that the power of the Presidency "inevitably" grows as a result of wartime conditions.

"We have to be extremely careful not to give up what few powers the legislative branch has, and to resist this enormous increase in the power of the executive, and to keep balance within our constitutional system. To that end I think Rule 22 is an extremely important element."

Mr. President, the distinguished minority leader, who was the leader in 1971 also, of course, received a March 2 letter from President Nixon relating to the filibuster modification debate. Congressional Quarterly reported that also, as follows:

NIXON ON FILIBUSTER

In a March 2 letter to Senate Minority Leader Hugh Scott (R Pa.), President Nixon reaffirmed his position favoring an easing of Rule 22. Text of the letter follows:

"Dear Hugh: Thank you for your recent letter and enclosures regarding the Senate debate on Rule 22 and requesting my assistance in efforts to change the cloture rule.

"My record as Vice President in support of the Senate changing its rules by majority vote, and my current views recently expressed by my press secretary are well known.

"Nevertheless, I feel that specific changes in congressional rules are matters properly to be determined by the Senate and House of Representatives, and it would be inappropriate for the President to suggest how the Senate should proceed in considering its rules or to attempt to influence individuals. I trust you will agree with the wisdom in this approach.

"With cordial regards, sincerely,

RICHARD NIXON."

Mr. FORD. Mr. President, I ask unanimous consent that the time for the quorum call be taken from the Senator's speaking time.

Mr. ALLEN. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. HANSEN. Mr. President:

Mr. Nixon said Feb. 12 through Press Secretary Ronald Ziegler that he endorsed any move by the Senate "to reform or to adjust its work procedures and schedules in a way that allow them to deal with business more promptly and expeditiously." (*Weekly Report p. 416*)

As Vice President, Mr. Nixon Jan. 4, 1957, rendered an advisory opinion which stated in part:

"It is the opinion of the chair that while the rules of the Senate have been continued from one Congress to another, the right of a current majority of the Senate at the beginning of a new Congress to adopt its own rules, stemming as it does from the Constitution itself, cannot be restricted or limited by rules adopted by a majority of the Senate in a previous Congress." (*Congress and the Nation Vol. I, p. 1427*)

Vice President Agnew has refused to make a similar ruling in the current debate on Rule 22. (*Weekly Report p. 450*)

Mr. President, I would like to believe that the Senate of the United States has benefited from the wisdom of some of the great men who have served in this body.

Former Senator Sam Ervin is such a man, and I would remind my colleagues of his solid position against the proposals to weaken rule 22. Senator Ervin—or good old "Uncle Sam" as his millions of admirers throughout the Nation liked to call him at a time when they were acutely aware that America's traditional values needed protection and viewed him as their protector—gave me in 1971, some quotations that he believed helped bring a degree of intelligence into any consideration of rule 22. These are the quotations my friend, Sam Ervin, gave me, and I want again to share them with my colleagues, and bring them to the attention of new Senators, who were so unfortunate as to not have the opportunity to serve with Sam Ervin:

These are Sam Ervin's observations:

The filibuster under the present rules of the Senate conforms with the essential spirit of the American Constitution, and it is one of the very strongest practical guarantees we have for preserving the rights which are in the Constitution. (Walter Lippmann "The Essential Lippmann.")

Of those who clamor against the Senate, and its methods of procedure, it may truly be said: "They know not what they do." In this chamber alone are preserved, without restraint, two essentials of wise legislation and of good government—the right of amendment and of debate. Great evils often result from hasty legislation; rarely from the delay which follows full discussion and deliberation. In my humble judgment, the historic Senate—preserving the unrestricted right of amendment and of debate, maintaining intact the time-honored parliamentary methods and amenities which unfailingly secure action after deliberation—possesses in our scheme of government a value which cannot be measured by words. (Adlai E. Stevenson, Vice President of the United States, speech upon leaving office).

Unlimited debate is a rarity among national legislatures, and the glory of the United States Senate. (Prof. Raymond Wolfinger, "Readings on Congress").

As the much vaunted separation of powers now exists, unrestricted debate in the Senate is the only check upon presidential and party autocracy. The devices that the framers of the Constitution so meticulously set up would be ineffective without the safeguard of senatorial minority action . . . Abolish cloture and the Senate will gradually sink to the level of the House of Representatives where there is less deliberation and debate than in any other legislative assembly. (Prof. Lindsay Rodgers, "The American Senate".)

Obviously, the Senators, who are 100 well-educated, well-informed, and rather "liberal" men . . . see something exceedingly valuable to their corporate and individual status in the privilege of unrestrained debate. That value is the right to resist in a most public manner policies that a President desires. . . . (In the Senate) the notorious filibuster stands as an insufferable bar to presidential ambitions. (Prof. Alfred de Grazia, "Republic in Crisis.")

The Senate's opportunity for open and unrestricted discussion and its simple comparatively unencumbered forms of procedure, unquestionably enable it to fulfill with very considerable success its high functions as a chamber of revision. (Woodrow Wilson, in his doctoral thesis "Congressional Government," written impartially before he was stricken by "presidential ambitions").

And those who mock the Institution . . . might recall that the public is not always right all at once and that it is perhaps not too bad to have one place in which matters can be examined at leisure, even if a leisure uncomfortably prolonged. Those who denounce the filibuster . . . might recall that the weapon has more than one blade and that today's pleading minority could become tomorrow's arrogant majority. (William S. White, "Citadel").

If I were to teach again a course in government, I would say if you really want to know the kind of manners and rules of conduct that you ought to have to assure the meaning of the First Amendment, particularly, as it comes to free speech, and the rights to redress for your grievances, the freedom of the press, the freedom to assemble . . . the Senate of the United States represents that in its fullest measure. And in that alone, it's worthwhile. If nothing else, that would make it a very worthwhile American institution. (Hubert Humphrey, U.S. Senator and Former Vice President NBC-TV Interview, January, 1971).

Many of the wise men who have served in the Senate have come to believe that it is important that there should be one place in the legislative journey where the opportunity for discussion is unfettered. They have found that this has not in the end prevented any decisions persistently wanted by the people, but on the other hand stood in the way of much action that the country has come to conclude would have been unwise. (Hon. Robert Luce, "Congress: An Explanation").

The ability of any Senator to speak for as long as he chooses is one of the most sacred of the institutions of the Senate and distinguishes it quite sharply from the House of Representatives, or, indeed, any other legis-

lative body in the world. (Prof. Lewis Froman, Jr., "The Congressional Process").

If ever the free institutions of America are destroyed, that event may be attributed to the omnipotence of the majority. . . . Of all the political institutions, the legislature is the one that is most easily swayed by the will of the majority. . . . I am not so much alarmed at the excessive liberty which reigns in that country as at the inadequate securities which one finds there against tyranny. (Alexis De Tocqueville, "Democracy in America").

His book was written more than 100 years ago.

Mr. President, I have one additional quotation:

The most significant difference . . . between the House of Representatives and the Senate is to be found in the provisions of limited debate in the House and unlimited debate in the Senate. (Prof. Ernst Fraenkel, Free University of Berlin "American System of Government.")

Mr. President, like many Senators who do not enjoy the privilege of maintaining large office staffs, I have found is necessary from time to time to call upon the Library of Congress to do some of my research, and to provide the facts on some subjects. The staff of the Library of Congress does a magnificent job. The Library of Congress staff has done a lot to help give many Senators the reputation for being knowledgeable in many fields.

One area that the Library has researched at length and in depth for many Senators is the area of Senate rules, and the Library of Congress has not ignored rule XXII in this respect. The Library of Congress has provided powerful and persuasive arguments against any weakening of rule XXII. But I do not intend today to advise my colleagues of all the arguments that the Library of Congress has provided against tampering with this long-time tradition of the Senate of the United States. The Library boiled down many of the arguments against modification of the rule into 11 points, which I gladly pass on to my distinguished colleagues:

ARGUMENTS FOR FILIBUSTERING

1. Minorities have rights which no majority should override. Government is constituted to protect minorities against majorities. Obstruction is justifiable as a means of preventing a majority from trampling upon minority rights until a broad political consensus has developed.

2. A Senate majority does not necessarily represent a consensus of the people or even of the states. Frequently popular opinion upon a question has not been formulated or, if it has been, it is often not effectively expressed. Prolonged debate may prevent hasty majority action which would be out of harmony with genuine popular consensus.

3. It is the special duty of the Senate, sitting in an appellate capacity carefully to inspect proposed legislation, a duty not readily performed without freedom of debate. In our system of government, where legislation can be gaveled through the House of Representatives at breakneck speed with only scanty debate under special rules framed by a partisan committee, it is essential that one place be left for thorough-going debate.

4. Filibusters really do not prevent needed legislation, because nearly every important measure defeated by filibuster has been enacted later. With rare exception no really meritorious measure has been permanently defeated and some vicious proposals have been killed. The filibuster has killed more bad bills than good ones.

5. It is the unique function of the Senate to act as a check upon the Executive, a responsibility it could not perform without full freedom of debate. Unrestricted debate in the Senate is the only check upon presidential and party autocracy. It is justified by the nature of our governmental system of separated powers.

6. The constitutional requirement for recording the yeas and nays is a protection of dilatory tactics. The provision of the Constitution which requires the yeas and nays to be recorded in the Journal at the desire of one-fifth of the Members present is an intentional safeguard allowing the minority to delay proceedings.

7. Majority cloture in the Senate would destroy its deliberative function and make it a mere annex of the House of Representatives.

8. Simple majority cloture would have brought many a decision which would have accorded ill with the sober second thought of the American people.

9. The Senate, without majority cloture, actually passes a larger percentage of bills introduced in that body than does the House of Representatives, with cloture.

10. To enforce cloture by vote of a chance majority in the Senate might bring greater loss than gain.

11. Filibusters are justifiable whenever a great, vital, fundamental, constitutional question is presented and a majority is trying to override the organic law of the United States. Under such circumstances, Senators as ambassadors of the states in Congress, have a duty to protect the rights of the states.

Under such circumstances Senators as ambassadors of the States in Congress have a duty to protect the rights of States.

Mr. President, the office buildings of U.S. Senators are named after two great Americans, now deceased. I refer, of course to Senator Richard Russell, a distinguished Democrat from the State of Georgia, for whom the Russell Building is named; and to Senator Everett Dirksen, a distinguished Republican from the State of Illinois, for whom the Dirksen Building is named. These are two famous names that surely come to mind whenever an American thinks proudly of men who have served this country.

Senators Russell and Dirksen both observed—keeping in mind their long years of experience in the Congress—that they knew of no instance in the history of the United States that rule XXII had prevented passage of a piece of legislation when the time had come in our history for passage of that legislation. Their meaning was clear. When the people want a law—an important law—it will not be blocked by rule XXII—it will have overwhelming support of the Senate, not just bare majority support.

These two distinguished Senators noted that they could cite many examples of instances in which a law that was proposed received careful study and was the subject of great deliberation, and benefited—from foot dragging, if you will—and was amended, thereby becoming a far better piece of legislation than its original form.

And Senators Russell and Dirksen attributed much of improvement in these amended proposals to the existence of rule 22, our valuable rule that provides there shall be unlimited debate until at least two-thirds of the Members of the Senate decide to end that debate.

Mr. President, one-third of the membership of the Senate is elected every 2 years. The Senate is therefore considered to be a continuing body of Government with two-thirds of the Members assured, God willing, of continuing in office—unless recalled—during any given election.

The Senate has continued to operate as a continuing body on the principle that a two-thirds vote is required to invoke cloture should there be a debate over a proposed rule change.

The cloture provision of rule 22, it is my understanding, was adopted in 1917. The rollcall vote resulting in adoption of that provision was 76 to 3. It is my understanding adoption of the provision came on the heels of great agitation in the Senate over the failure of the Senate before U.S. entry into World War I to arm American merchant ships. Prior to that time, there was no precedent for shutting off debate, for muzzling the views of a colleague, of a State, or of an entire region of the United States.

The right to extended debate, according to an article in the Congressional Quarterly in 1971, was established in the 18th and 19th centuries. According to the publication, the purpose of extended debate—a cherished tradition of the American people, and considered a fundamental right in most parts of this great country—is "to afford full and fair hearings on public issues from all geographical and political viewpoints."

Mr. President, the distinguished senior Senator from Wyoming (Mr. McGEE) and I represent to the best of our ability the geographical and political viewpoints of the State of Wyoming—the people of Wyoming.

Those of us from Wyoming are not only a minority in number, and there are less than 350,000 Wyomingites; but we are part of a minority of States in this country that because of God's blessing on the lands within our borders are at the center of the solution to one of the biggest problems of the entire Nation in this century. I refer to the energy shortage. Wyoming is one of the so-labeled energy-producing States. The State has vast treasures of oil and gas, coal, uranium, and oil shale. Wyoming has other mineral wealth as well, but these are the main ones pertinent to the energy crisis. Some Wyoming people call this mineral wealth a blessing. Others call it a curse.

Wyoming, and a few other energy-producing States, have the resources to meet this Nation's energy requirements. The vast majority of Americans live in what are called the energy-consuming States—those States that have to import energy—from the Middle East, from Canada, from Wyoming, Louisiana, or Texas, or wherever.

Mr. President, many people in Wyoming—I among them—do not want to see the scenic beauty of our State ripped away to get at the fossil fuels needed by an energy-starved majority in the consuming States. We believe that we have some minority rights. We believe that we have a right to be heard on this issue and other issues.

In the Senate Interior Committee, I

was the only Member during markup of the surface mining bill to support my amendment to give the surface owner of Wyoming lands over federally owned coal the unrestricted right to surface-owner consent as to whether an energy company could mine his land. I believe the vote against my proposal was nine-to-one—and it could have been even more had all the proxies been exercised. Obviously, my view—a Wyoming view—was a minority view insofar as the Interior Committee was concerned.

But Mr. President, I was not denied the right to fully express my view on this issue so vital in my State. In fact, before the vote was taken, and even though the outcome was a foregone conclusion, the distinguished Senator from Montana (Mr. METCALF) who was chairing the proceedings, was careful to protect what he considered my minority right to be heard, and asked repeatedly if I desired to make further presentation of Wyoming's position on the matter. Mr. President, the people of Wyoming are grateful to the Senator from Montana for this consideration. His actions reflect belief in a principle that is dear to the hearts of all Americans.

Mr. President, Congressional Quarterly in 1967, 1969, and 1971, reported the Senate controversy over rule 22. These articles are worthy of our review:

BOTH HOUSE AND SENATE FACE RULES CONTROVERSIES

When the 90th Congress convenes Jan. 10, one of its first tasks will be to adopt the rules and procedures that will govern the House and the Senate during the next two years.

The biennial controversy over Rule 22, the cloture procedure for ending filibusters, will be repeated in the Senate. In the House, the power of the Rules Committee will again be in question. Some action appears certain on the recommendations of the Joint Committee on the Organization of the Congress, which was established in 1965 to develop the first major overhaul of Congress since 1946. Also in the House, the Select Committee on Standards and Conduct, established Oct 19, 1966, and authorized to serve until the 90th Congress convened, has asked the House to continue it through the 90th Congress and to grant it additional powers.

CLOTURE RULE

Senate Rule 22, at last amended in 1959, provided for ending debate (filibuster) by a two-thirds vote of the Senators present and voting, two days after a cloture motion had been filed by 16 Senators. Thereafter, debate was limited to one hour for each Senator on the bill itself and on all motions and amendments affecting it. No new amendments could be offered except by unanimous consent. Amendments that were not germane to the pending business and amendments and motions clearly designed to delay action were out of order. The rule applied both to ordinary business and to motions to change the Senate rules. (*1965 Almanac p. 590*).

Since 1917, when the cloture procedure was first adopted, there were 37 cloture votes, of which only seven were successful. In recent years, a number of filibusters occurred over civil rights legislation. Cloture votes were unsuccessful until the 1964 Civil Rights Act and the 1965 Voting Rights Act.

In 1966, the Senate failed in its attempt to invoke cloture on an Administration civil rights bill, the main reason Sen. Philip A. Hart (D Mich.), one of the liberals seeking modification of the rule, gave for the need to revise the rule in 1967. In all, there were seven cloture votes during the 89th Congress. On only one, the Voting Rights bill, was it successful. Failures were recorded on three votes on repeal of Section 14(b) of the Taft-Hartley Act, two on civil rights issues and one on home rule for the District of Columbia. (*1966 Weekly Report p. 381, 2193, 2259, 2466*)

In its 1917 form, Rule 22 required two-thirds of the Senate present and voting to invoke cloture. Over the years, however, a series of rulings and precedents made Rule 22 virtually inoperative by holding that it could not be applied to debate on procedural questions, although it could be used on attempts to change Senate rules. In 1949, when the Truman Administration was seeking enactment of a civil rights measure, the Rule was changed to require two-thirds of the entire Senate to support cloture votes, but it allowed cloture to operate on any pending business or motions with the exception of debate on motions to change the Senate rules themselves. In 1959, the cloture rule was again revised to apply to debate on motions to change the Senate rules and once again cloture could be imposed by two-thirds of those present and voting. At the same time, language was added to Senate Rule 32 stating that: "The rules of the Senate shall continue from one Congress to the next unless they are changed as provided in these rules." (*1965 Almanac p. 591*)

The language added to Rule 32 was directed at a key question with which the Senate had wrestled for years: Was the Senate, since one-third of its membership was elected every two years, a continous body which should operate under rules carried over from Congress to Congress or should it adopt new rules by general parliamentary procedure—majority vote—at the beginning of each Congress? (The House, all of whose Members are elected every two years, adopts its rules at the beginning of each Congress.) If the Senate was a continuous body, rules changes could be talked to death unless two-thirds of the membership supported them. If not, a filibuster could be stopped by majority vote at the beginning of the new Congress and the substantive proposals for changes in the rules could be voted on.

Mr. WILLIAM L. SCOTT. Mr. President, if the Senator has completed his remarks, I ask to be recognized.

Mr. HANSEN. I am happy to yield to the Senator from Virginia.

The PRESIDING OFFICER. Has the Senator from Wyoming yielded the floor?

Mr. HANSEN. Yes, I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WILLIAM L. SCOTT. Mr. President, we had some discussion a few minutes ago about procedure after cloture is adopted. I have looked at page 213 of the Senate Procedure, the book prepared by Dr. Riddick last year, and would like to share with the membership of the Senate the portion entitled "Cloture Procedure" and the subtitle of "Debate," and it reads in this manner:

After the adoption of a cloture motion, "no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate"—

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

Mr. WILLIAM L. SCOTT. Very briefly, I will be happy to yield.

Mr. FORD. On the Senator's hour?

Mr. WILLIAM L. SCOTT. It is on my hour, if the Senator just wants to ask a brief question.

Mr. FORD. That is all I wanted.

Mr. WILLIAM L. SCOTT. Was the Senator's inquiry whether this is on my time?

Mr. FORD. Yes.

Mr. WILLIAM L. SCOTT. Of course, that is up to the Chair, but yes, it is on my time.

Mr. FORD. I only wanted to know.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WILLIAM L. SCOTT. Now, Mr. President, I will go back and start all over again and if I am not interrupted I will finish reading the portion that relates to debate:

After the adoption of a cloture motion, "no Senator shall be entitled to speak in all more than 1 hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same * * *," but no Senator is restricted to one speech; he may divide his time as he sees fit or proper, but all time is charged to the Senator having the floor, even if he yields for an interruption.

If cloture is adopted on a proposition, each Senator is entitled to 1 hour of debate on all issues to which the cloture is directed, and he may not yield it to another Senator on objection.

The time taken for parliamentary inquiries is charged to the Senators making such inquiries.

The time consumed in reading an amendment or for calling a quorum is not taken out of a Senator's time allowed under the cloture rule.

The Chair does have authority to declare quorum calls dilatory, but Rule XXII says nothing about quorum calls, reading of amendments in the limitation of debate; it says that each Senator under the rule once cloture is invoked may speak in all not more than 1 hour and under the practices of the Senate, a quorum call has never been charged to any Senator.

A Senator may use his hour at any point in the consideration of the issue to which cloture has been invoked.

It is not in order, during cloture proceedings, for a Senator having the floor to reply to a question asked him by a Senator on the latter's time.

A unanimous consent agreement limiting debate on a bill will not be affected by the rejection of a cloture motion, subsequently offered.

Then it has the paragraph headed Debate and Yielding:

It is not in order, however, for one Senator to yield his time to another without losing his right to the floor. He can yield on his own time for a question, but not for a statement.

The Senator who has been recognized can yield only for a question when the regular order is called for, and he may not yield to another Senator.

A Senator who has the floor may yield on his time for a question, but he cannot interrogate another Senator.

A Senator who has the floor, during proceedings under cloture, may yield for a question, but he may not ask another Senator a question.

A Senator having time available may not ask a question of another Senator and yield his own time for the answer to that question.

A Senator who yields for a question will have time charged to himself, and he cannot yield time to another Senator.

The Chair in 1971 advised the Senate that a Senator had a right to assert that he yielded back his allotted time if he so desired.

The next paragraph, Mr. President, reads—and this is Debate—Time Kept by:

It is the duty of the Presiding Officer to keep the time of every Senator who speaks, but by unanimous consent, a Clerk may be directed to perform that duty.

Now, Mr. President, I merely wanted to read this to refresh the recollection of the various Senators as to the procedure after cloture is invoked because we have not spoken at great length recently after the imposition of cloture and sometime it might be easy for us to confuse debate before the adoption of cloture with debate after the adoption of cloture.

Mr. President, how much time have I consumed in total?

The PRESIDING OFFICER. The Senator has consumed 33 minutes.

Mr. WILLIAM L. SCOTT. Mr. President, I reserve the remainder of my time.

Mr. THURMOND. Mr. President——

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in opposition to the resolution of the Senator from Minnesota (Mr. MONDALE). If this motion is passed Senate rule XXII will be amended so as to allow three-fifths of the Senators duly chosen and sworn to shut off debate. This would effectively give absolute rule to little more than a mere majority of Senators. A Senate majority does not necessarily represent a consensus of the people or of the States. Many times popular opinion on an issue does not develop until after prolonged discussion of the matter in the Senate has served to publicize the issue. In this sense, prolonged debate may prevent hasty majority action which would be out of harmony with genuine popular consensus; whereas simple majority cloture will not allow for a sober second thought of the American people.

Mr. President, it is the unique function of the Senate to act as a check upon the executive, a responsibility it could not perform without full freedom of debate. Majority cloture in the Senate would destroy its deliberative function and make it a mere annex of the House of Representatives.

Mr. President, prolonged debate is not resorted to lightly or at the whim of a few Senators. To do so would destroy its effectiveness. It is only when an issue of vital importance is presented, that a minority of Senators, concerned with their roles as "ambassadors of the States," engage in extended debate in order that all viewpoints may be presented and all options considered.

Mr. President, I wish to remind my colleagues that there are presently 61 Democrats in the Senate. If this resolution passes, it is then theoretically possible for the members of the majority party to close off debate on a highly partisan issue, thus effectively negating the rights of the minority. I wish to remind Members of the Senate that today's majority may be tomorrow's minority.

Mr. President, when this issue was last debated in 1969, I, along with many others, delivered remarks on the Senate floor. I feel that these remarks are as pertinent and purposeful now as they were then, and I wish to quote from them at length:

The Senate is now in the midst of a discussion about the rules of debate. At first glance, such a procedure might seem trivial and a waste of time. However, the members of the Senate know that the stakes in this issue are high, and that the very survival of free government is threatened if the Senate rules for debate are substantially changed.

The Senate is the last forum that allows unlimited debate in our process of government. The House of Representatives, because of the great number of its Members, cannot allow everyone to express their views at length. Most legislation moves through the House under tight restrictions on debate.

I see no reason why Senate procedures should become a carbon copy of the House. The practice of unlimited debate allows a thorough discussion of the issues, even to an unpopular minority. Both liberals and conservatives have made use of this privilege. When extended debate develops, the national attention is focused upon the issue at hand. Thousands of people become aware of the arguments, and frequently write to their Senators expressing their views. Thus on crucial issues, a Senator is able to consult his constituency during the course of debate, a privilege which is denied to him when legislation is rushed through.

The fact is that, if the Senate really wishes to end debate, it can do so with a two-thirds vote. The Senate has actually done so on a number of occasions. Yet, it does not happen very often, indicating that most Senators maintain an open mind about the need for debate. The present debate rules, particularly rule XXII requiring a two-thirds majority for ending debate, have played a long and honorable history in drawing the Senate's attention to unwise and hasty legislation, when fundamental constitutional questions may be at stake. The framers of our Constitution consistently required a two-thirds majority for fundamental issues.

A two-thirds vote of the Senate to ratify a treaty, a two-thirds vote of both Houses to override a veto, a two-thirds vote of both Houses to pass constitutional amendments, a two-thirds vote of the Senate to convict on impeachment, and a two-thirds majority vote of either House to expel its own Member. The concept of a two-thirds majority is embedded in the heart of our constitutional thinking.

Our governmental system has developed a complex system of checks and balances, some of them written into the Constitution, and others adopted through precedent, practice, and legislative decision. The U.S. Senate's practice of unlimited debate is an important part of that system and must be retained.

Mr. President, such words as "democracy" and "liberty" are used often in discourses concerning American government. They are too often used interchangeably, and taken to mean the same thing. It is necessary, however, that we ponder for a moment just what these words mean, and the difference between them. It is true that these two words refer to similar characteristics of the Government of the United States: Democracy, simply put, being rule by the majority, and liberty being the rights of the individual. Both concepts are important to all Americans. Take away either, and the other would probably no longer aptly describe our system of government.

While both democracy and liberty are essential to our form of government, there is a point at which these two ideals conflict, and the fight to preserve both democracy and liberty is often a fight to keep the two in proper balance with one another. If the principle of majority rule is expanded without limitation, the consequences would be severe: should 50 percent plus one of the electorate decide to ignore the rights of the minority, the justice of the minority cause would become irrelevant. Majority rule would prevail. Liberty, or the rights of the individual would be abolished.

Democracy would, in fact, become mobocracy or tyranny. Similarly, if liberty is allowed to permanently thwart the will of the majority, we would not have liberty, but oligarchy and thus tyranny.

Mr. President, we in the Senate have an awesome responsibility. As the world's greatest deliberative body, it is appropriate for us to consider and to ponder the philosophical foundations of our Government. The immediate interest of those favoring particular legislation must not be allowed to further erode the institutions which buttress our Republic. If the desire of a temporary majority conflicts with a principle important to the maintenance of democracy and liberty, then, in my judgment, the duty of the Senate is to side with the long-range good of the Nation. Mere temporary majority support for legislation is hardly the sole criterion for passage of legislation.

Mr. President, this concern for our Republic, and the institutions which keep it free, is the principal motivation for those of us who favor retention of the rule XXII in its present form. This rule is one of a number of important rules and procedures which serve to protect our Republic and its free institutions. By allowing extensive debate of legislative proposals, and by allowing an exceptionally determined minority of 34 Senators to speak indefinitely, the Senate prevents passage of unduly harsh or punitive legislation, even though a majority may favor it. In my judgment, this is the strength of the Senate: our goal is not to contrive legislation which pleases a mere majority; rather, it is to attempt to fashion proposals which will consider the desires of the many geographical, ideological, economic, and other interests of this vast country.

Mr. President, rule XXII in its present form encourages this great body to consider the entire Nation when conducting our business. To weaken the rule by allowing three-fifths of the Senators to cut off debate is to discourage this broad approach which is essential to the unity of our Nation. The most able American and South Carolinian John C. Calhoun, who served with great distinction in this body, is known for expounding the theory of the concurrent majority. Calhoun was a brilliant political scientist, and his analysis of the United States as a pluralistic society was not only original for its day, it has also stood the test of time. This great Senator correctly perceived that our Nation consisted of numerous competing groups—business, agricultural, sectional, religious, and so forth. He contended that none of these groups alone could determine the course of government, but that the interests would combine—giving and taking with each other—until a given policy was sufficiently broad to receive the support of a majority of the interests in the Nation. The coalition was hardly permanent, but another would be formed on behalf of another policy.

Mr. President, John C. Calhoun, in propounding the theory of the concurrent majority, was presenting an analysis of our body politic, and how it worked. He was not advocating, but observing. However, Calhoun did foresee a danger that the system could break down if safeguards were not provided to insure that major interests, representing a substantial segment of the population, were given a voice on matters vitally affecting them. Indeed, Calhoun at one time advocated several executives—with veto powers—rather than one President, so concerned was he that our system could not sustain the complete alienation of a major part of our Nation. Perhaps Calhoun was prophetic—for indeed the War Between the States was in part the result of the inability of our government to reconcile opposing points of view within the system.

Rule XXII, as presently written, has been criticized by its critics not merely because

its use has prevented passage of certain legislation but because the threat of extended debate under the rule works an influence on legislation that is passed. It has been said that the threat of extended debate by small groups of Senators has diluted otherwise good legislation. In my judgment, this is not an argument for weakening rule XXII, but a most persuasive one for retaining the present rule. While critics use the term "dilute," in reality they are referring to changes in proposed legislation which accommodate the bill to the numerous points of view represented in this body. This process, far from being harmful, actually helps fashion legislation more acceptable to the entire Nation. The result is not diluted legislation but legislation that is designed to do more than satisfy a temporary majority—that is, designed to meet the requirements of as large a proportion of the American people as is possible. In a time of increasing bitterness and frustration among the American people, it would appear to be ill-advised to weaken a device which allows a substantial minority to make its views felt on legislation. Let us all remember, particularly those who wish to weaken rule XXII, that today's majority can easily become tomorrow's minority.

Mr. President, some would give the impression that a small and willful minority now have a virtual veto over all legislation because of rule XXII. I think we are all aware that this is not the case. First of all, 34 Senators are required to prevent cloture, if all are present to vote.

I should like to remind my colleagues that there are only 22 Senators from the States of the old Confederacy, and that all 22 seldom vote as a unit. Second, the success of extended debate depends in some measure on the infrequency of its use. It is a technique that would rapidly become ineffective if used often. A substantial minority of Senators will exercise their rights under rule XXII only if they feel very strongly about an issue. When this occurs, there can be no doubt that the issue is important. It is probable that the additional attention focused on the issue as a result of extended debate—both here in the Senate and in the news media—is justified, and might well prevent hasty action that, while acceptable to a majority, would be strongly opposed by a minority.

Mr. President, in my judgment, rule XXII in its present form is an important preservative of the rights of the minority point of view. It helps preserve that balance between democracy and liberty essential to the well-being of our Republic. It encourages legislation more acceptable to the entire Nation—and thus provides consideration of all major interests by the concurrent majority of which Calhoun wrote. The Senate—as the world's greatest deliberative body—would be wise to resist those who would weaken its effect.

Why do we have debate in the Senate at all? We have debate because people have different views, and some have formed opinions, perhaps, on a subject, before they come to the Senate, or before they have had the opportunity to consider the matter; but upon the stimulation of thought, with new ideas being injected into debate, and upon reflection, and upon reading and hearing discussions, it is very helpful to Senators to get new ideas and new thoughts. If a Senator is openminded—and I would attribute to my colleagues in this body that they are openminded—then debate is helpful. And if debate is helpful at all, why is not extended debate helpful, where the subject involved is so extremely important and vital to the whole Nation, or any one section of the Nation?

Not only does rule XXII provide the minority with an opportunity to present its views, but it also provides a forum for the majority, speaking here in this body, to expose their opinions to the Nation, and to meet the approval or disapproval by public opinion of what is being advocated; and if the Nation approves of what the majority is doing, then that opinion will become stronger and stronger, and put the majority in a very fortified position, in which they might not otherwise have been.

Mr. President, on an occasion when a substantial minority of Senators realizes that it has a chance of preventing action on an extremely controversial matter, this chance, provided by rule XXII, encourages both sides to look long and hard at a proposal and give more careful consideration to the issue than would have been given had the rule not existed.

Mr. WILLIAM L. SCOTT. Mr. President, will the Senator yield?

Mr. THURMOND. Mr. President, I ask unanimous consent to yield to the distinguished Senator from Virginia, with the understanding that I shall not lose my right to the floor.

Mr. CRANSTON. I object.

Mr. FORD. Object.

The PRESIDING OFFICER. The objection is heard.

Mr. WILLIAM L. SCOTT. Mr. President, if the Senator will permit me to make a parliamentary inquiry, it is my understanding that a Senator may yield any time he wants to for a question without losing his right to the floor. Under the act of cloture that has been imposed, he has 1 hour, and he may use this. I suggest that the Parliamentarian——

Mr. ROBERT C. BYRD. Mr. President, I ask regular order.

The PRESIDING OFFICER (Mr. BUCKLEY). The Senator is not correct. Under the rules, during 1 hour debate, now under cloture, one Senator may not yield for a question on another Senator's time. He may yield on his own time.

Mr. WILLIAM L. SCOTT. Mr. President, may I ask that the Parliamentarian look at page 214 of Procedures?

Mr. ROBERT C. BYRD. Mr. President, I ask for regular order.

Mr. THURMOND. Mr. President, if a point of order has been raised by the rule, I have no objection, although I am willing to continue. I am wondering if there is any objection on the part of the acting majority leader for the Parliamentarian to rule on the matter? If so, I will continue. If there is no objection, it might be well for him to rule.

Mr. ROBERT C. BYRD. Mr. President, the Senator from South Carolina has the right to yield for a question only.

Mr. THURMOND. That is all I was going to yield for, a question. I was merely asking unanimous consent to yield for a question, with the understanding that I not lose my rights to the floor.

Mr. ROBERT C. BYRD. That is all right.

Mr. THURMOND. I will be pleased to yield to the able and distinguished Senator from Virginia for a question.

Mr. WILLIAM L. SCOTT. Mr. President, I thank the distinguished Senator from South Carolina for yielding. I had just read the rules and was familiar with what I was talking about.

Mr. President, I listened to the Senator's remarks a few minutes ago and I wonder if he was not trying to say that none of us should have our minds in concrete, or minds made up, on a given issue so that he would not be willing to listen to some other person's point of view, that we might be persuaded to a different point of view if we would listen to the other man's opinion on a given issue that might be before the Senate? Was that, in essence, the thought that the Senator was sharing with us at the time that I requested that he yield briefly for a question?

Mr. THURMOND. Mr. President, in response to the distinguished Senator from Virginia, the Senator from South Carolina will say that he was trying to bring out the point that my colleagues do have open minds and, because they do, then something somebody says in debate may have some influence on their thinking. New ideas are injected, new thoughts are injected in debate. Because of that, frequently, Senators change their minds.

I am reminded very much of the story of the fellow who was on a jury one time and when he heard the State's case against the defendant he was ready to vote right then and there, without hearing the defendant's side, that the defendant was guilty. But then, after he heard the defendant testify and heard his witnesses, he was ready to vote immediately that the defendant should be acquitted.

So decisions sometime depend on which side one hears and sometime depend on the points that are brought out. If debate is worth anything—and I think it is; otherwise, for almost 200 years, this Senate would not have been maintained as a deliberative body—then it certainly is worth hearing what Senators have to say and to get their views and to benefit from the views of other people.

Mr. WILLIAM L. SCOTT. I appreciate the comments of the Senator. I was just noticing in the Book on Procedures on page 214 that it indicates that a Senator who has been recognized can yield only for a question when the regular order is called for, and he may not yield time to another Senator. A Senator who has the floor may yield on his time for a question, but he cannot interrogate another Senator.

Would the Senator construe that to mean that he may yield on his own time for a question?

Mr. THURMOND. I would construe that I can yield on my own time for a question.

Mr. WILLIAM L. SCOTT. I appreciate the Senator's response.

Mr. THURMOND. I wish to thank the Senator from Virginia. I continue:

Mr. President, rule XXII demands of the Senate that legislation be carefully drawn. It demands that the views of Senators—and also of part of the American public—which may be in an unpopular minority be given both a fair hearing and a due consideration in the provisions of the legislation. Rule XXII stands as a barrier to whim, to radical change which, though temporarily popular, could do harm not contemplated by the proponents of the change.

Mr. President, our Republic has survived and prospered because we have attempted to preserve a balance between democracy and liberty, because our forefathers contemplated the democratic process not as an end in itself, but as a means to an end. The rights of

man are held to exist independently of the willingness of a majority to tolerate those rights. For this reason, we have not had government by Gallup, in which the will of the majority at a given time is the sole test of the merit of a given proposal.

This is not to say that there is something wrong with the majority opinion prevailing. Our system of government, while replete with safeguards against majority excesses, is essentially a system whereby majority opinion is translated into government action. The use of extended debate under rule XXII allows a minority of Senators—who might actually represent a majority of the people—to stand up and yell "Wait a minute." If a sufficient minority of Senators is willing to take such a stand, then there is certainly a serious doubt as to the advisability of the proposal.

Mr. President, it has been said that extended debate delays the Senate in its work. I submit that this is a deliberative body—not a traffic court anxious to clear the docket. Speed may be a virtue in other branches or agencies of government, but not necessarily in the Senate. Deliberation by its very nature takes time. It is important for the Senate that we consider many aspects of legislative proposals and other matters. Is the bill constitutional? This must be considered by the Senate—not left to the Supreme Court. The Senate, being a reflective body, is well suited to preventing passage of legislation which violates the Constitution—even though the proposal might be otherwise popular.

In addition, the Senate must consider the wisdom of legislation. It is entirely conceivable that a bill acceptable to a majority of Senators—and a majority of the Nation—could work an extreme hardship on a minority. A Senate operating under rule XXII is peculiarly sensitive to such matters—a bill injurious to the interests of a substantial minority naturally runs the risk of extended debate. A Senate with a weakened rule XXII would, in my judgment, be much less inclined to consider a bill from the standpoint of its effect on all Americans—not just a majority.

Mr. President, the proposal to alter rule XXII changes the percentage of Senators required to invoke cloture from 66⅔ to 60 percent of those duly elected and sworn. Some of the proponents of this change appear to recognize the advisability of a rule which prevents a cutoff in debate by a mere majority. They apparently believe, however, that 60 percent represents a sufficient safeguard. I should like to remind my colleagues that the 90th Congress began with a Senate composed of 64 Democrats and 36 Republicans. Had a proposal been before the Senate of a highly partisan nature which seriously endangered the minority party, the 36 Republicans could have debated the measure extensively and probably guaranteed its alteration or withdrawal, because of the requirements of rule XXII. However, had the proposed change in rule XXII been in effect, with only 60 Senators required to invoke cloture, the minority party would have been powerless to prevent passage of such a measure.

I make no prediction, but those of the majority must certainly consider the possibility that the next Congress will find them looking at the rules from the point of view of the minority—whether it be a partisan minority, a philosophical minority, a sectional minority, or some other minority. All of us find ourselves espousing a minority point of view at one time or another. There are times when a minority viewpoint needs the protection which 34 Senators can now provide. As I have said, extended debate is not used capriciously in the Senate. Senators on the losing side of an issue often feel strongly about the matter, yet extended debate is resorted to sparingly. The rigors involved in extended debate are indeed safeguards against its overuse in the Senate.

Mr. President, in attempting to devise a specific number or fraction of Senators necessary to close debate, it is to some extent neecessary that the specific figure appear arbitrary. There is nothing magic about the fraction two-thirds or the fractions three-fifths, but, in my judgment, it is clear that a change to the three-fifths rule would weaken the protection offered to the minority under rule XXII. Simply put, it means that where 34 Senators can now prevent passage of extremely harsh legislation, it would take 41 under the proposed change. I believe rule XXII has worked well and that it effectively provides a degree of protection for the minority point of view.

Mr. President, the issue at stake in this debate is one of great importance to all people of this country and should be of the greatest importance to the minority groups of this country. It is most unusual that the Members of the Senate who are proposing restrictions upon freedom of debate in the Senate and, thereby, curtailment of the right of minorities, are the very ones who are the most eloquent in their defense of minority rights in other areas. It is also an anomalous situation in that a number of the proponents of the proposals for greater restrictions upon debate are noted for their loquaciousness on other issues when they feel strongly either for or against them.

While proponents of this change often talk about the rights of the minorities, they are seeking to deny a long-standing right of the Members of the Senate, who happen to be in the minority on a certain issue, to fully debate the issue while representing their constituents in a manner which is consistent with each Senator's pledge to represent the people of their State and to uphold the Constitution. Our Government was not founded on the principle of absolute rule by the majority; there are a number of provisions in our Constitution which refuse the idea of absolute majority rule.

Mr. President, while our Founding Fathers, in setting up our Federal Republic, provided for a very substantial increase of political power in the Central Government, they did not abolish the sovereign States and they distributed the newly created powers in a manner which would practically eliminate the possibility of absolute rule by the majority. One of the primary considerations of our Founding Fathers in providing a wide distribution of power was the desire to prevent radical action by a popular majority. The principle of checks and balances which is preserved in our Constitution by the creation of three co-equal branches of government fully expresses the spirit of our form of government as being opposed to the rule by an absolute majority. The Senate and the manner in which it came into being are proof of the fact that our Founding Fathers were opposed to a form of government which would allow a popular majority to work its will on a powerless minority. The compromise between the large and small States at the Philadelphia Convention to give equal representation to all States in the upper House of the Congress of the United States insured that the large States would not be able to completely dominate our new National Government. This illustrious body stands as a barrier to the demise of the type of government which has made our Nation great; equal representation for every State in the Senate assures that the people of the smallest State will have an equal chance to have their views expressed on any and every issue which is presented to the Congress. The Senate was envisioned by the Founding Fathers as a body where the rights of States and the views of minorities would be given extraordinary consideration.

During the course of the debates of the Philadelphia Constitutional Convention of 1787, the delegates reached agreement upon a House of Representatives to be elected by the people every 2 years and based upon a population ratio divided into congressional districts. After this action was taken, the smaller of the participating 13 States wondered how their minorities could be adequately protected from the capricious whims of a majority in the House.

After long debate, which was at times most acrimonious, and which actually threatened to break up the Convention, the solution was offered by the wise and venerable Benjamin Franklin; namely, equal representation in the Senate for every State. And, to make sure that that representation would be of a character that would calmly consider and patriotically and unselfishly act on laws under which all the people would have to live, it was provided in the original instrument that Members of the Senate should be elected by State legislators and not by popular vote and given a term of 6 years. The Senate was never intended to be a vehicle to be used by a majority of the large States or by any simple majority as a means of imposing their will on a minority of the States; but it was designed to be a long-term protector of the freedoms which our Founding Fathers fought and died for and sought to preserve in the new Constitution.

Mr. President, the Senators who are making this attempt to change rule XXII are attempting to deny the protection that was given to the small States by our Founding Fathers against domination of the U.S. Senate, the Congress and our Government by the large States. There is more at stake in this debate than the simple wording of rule XXII. A change in rule XXII could be the first step in a series of maneuvers by a radical popular majority which could result in the loss of many of the freedoms which we have enjoyed for nearly 200 years in this great Nation.

Mr. President, many of the citizens of the original 13 States were concerned about the extent to which they were submitting themselves to the new Federal law. They had recently freed themselves from tyranny and secured for themselves individual liberty in a great fight for independence. Consequently, numerous safeguards to protect the rights of the States were built into the Constitution. Before they would assent to the ratification of this supreme law, however, they won assurance of early approval of the first 10 amendments to the Constitution. These amendments, commonly referred to as the "Bill of Rights," constitute the greatest set of civil and individual rights to be found anywhere.

Probably the most important of these 10 amendments to the present discussion is the first. It reads as follows:

ARTICLE I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

This amendment contains one of the most important restrictions placed upon Congress, in that Congress is prohibited from enacting any law which abridges the freedom of speech. The importance of free and open debate was foremost in the minds of the authors of this amendment.

The Founding Fathers also wrote into the original Constitution other safeguards against what the advocates of a rules change term "majority rule." They provided in certain instances for votes requiring a majority of two-thirds. Here are some of these provisions as found in the Constitution.

No person shall be convicted on impeach-

ment without the concurrence of two-thirds of the Senators present (art. I, sec. 8).

Each House, with the concurrence of two-thirds, may expel a Member (art. I, sec. 5).

A bill returned by the President with his objections may be repassed by each House by a vote of two-thirds (art. I, sec. 7).

The President shall have power, by and with the advice and consent of the Senate to make treaties, provided two-thirds of the Senators present concur (art. II, sec. 2).

When the choice of a President shall devolve upon the House of Representatives, a quorum shall consist of a Member or Members from two-thirds of the various States of the Union (amendment 12).

A quorum of the Senate when choosing a Vice President shall consist of two-thirds of the whole number of Senators (amendment 18).

The Constitution, therefore, does not give recognition, in all cases, to the rights of the majority to control, and our Founding Fathers envisioned the Senate as a very real barrier to absolute rule by the majority and as a citadel to protect the numerated rights of the citizens of the new Republic, * * *.

Mr. President, one of the most important safeguards of our freedoms established and preserved by the U.S. Constitution is article V which requires that two-thirds of both Houses must concur on any amendment to the Constitution. Article V reads as follows:

"ARTICLE V

"The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress: Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."

Not only does an amendment to the Constitution require the concurrence of two-thirds of both Houses or the concurrence of conventions called by two-thirds of the States but the Constitution provides that any amendments approved must be ratified "by the legislature of three-fourths of the several States, or by conventions in three-fourths thereof."

Extended debate, or if you prefer, filibuster, is a weapon as old as parliamentary procedure and is justified as man's last defense against what Aristotle first recognized as the "Tyranny of the majority." It is impossible to determine when its use first began, when the first "leather lunged, iron legged" men began to stand up in forums and literally talk to death public measures they deemed obnoxious.

When Julius Caesar was Praetor—according to Seutonius—he staged one of the first recorded filibusters. Alone of the Roman Senators, he was bitterly opposed to a measure to condemn and execute the Catiline conspirators. Caesar began what started out as an argument against conviction, and quickly developed into a full-fledged filibuster against the measure. After some time, the Roman guard entered the chamber with loud threats against Caesar's life, began thrusting at him, with their swords, until his friends, fearing for his life, covered him with their togas and ushered him from the Senate.

As consul, Caesar himself was victimized by this same stratagem practiced by Cato. The younger Caesar was anxious to pass a farm bill, and Cato the younger started to filibuster against it. Outraged by the same practice he had indulged, Caesar ordered the sergeant-at-arms to eject Cato from the chamber. When this officer performed his duty the entire Senate left the chamber with Cato as a demonstration of their disapproval of this arbitrary conduct. Thereafter, to the end of the Roman Republic, there was no attempt to limit debate in the Senate, and filibusters flourished on many occasions.

The Romans undoubtedly carried the art and practice with them through Western Europe and into England, where we next find filibusters used defensively against tyranny of a majority in forums. In 1604, the British Commons sought to curb filibusters by providing for "submission of the previous question," and while this had the result of terminating debate and bringing the issues to a conclusion, ways were still found to debate and delay extreme proposals for legislative enactment.

Edmund Burke, Parnell, and other Members of the Commons were adept at finding parliamentary means of opposition. They used mostly the ruse of forcing rollcalls or divisions. Parnell, a great and fearless Irishman, led the famous battle of 1881 to obstruct all business of Commons and compel public attention to the Irish home rule bill. With a little group of 24, Parnell dominated the House, forced endless rollcalls, raised nearly 2,000 points of order, and made over 6,000 speeches.

It was on this occasion that Speaker Brand declared:

"Under the operation of the accustomed rules and methods of procedure, the legislative powers of the House are paralyzed. A new and exceptional course is imperatively demanded."

Then the House adopted the rule of "urgency" under which the Speaker might put the main question, in itself a form of cloture against which the opposition fought, without success, tooth and nail.

France, too, had her troubles. In fact, "cloture"—as opposed to English cloture—is a French word. It was introduced in the French parliamentary procedure in 1814.

The United States borrowed "filibuster" from the English, and gave it its name. The word itself is derived from "filibusteros," West Indian pirates who sailed in small vessels called filibotes or fly boats.

Our Government owes much of its success to the fact that the exercise of sovereignty by the people is facilitated by the Senate's full and free debate on public issues. To further curtail this basic function of the Senate would be to weaken further the entire political system on which our Nation has based its hope for freedom and prosperity. I urge the Senate to reject the pending proposal to amend rule XXII, lest our country fall victim to that historical nemesis of freedom, self-government and statehood—the "tyranny of the majority."

The Senate, in its wisdom, has recognized the importance of preventing absolute majority rule. The Senate has recognized that the wishes of a temporary majority may conflict with the rights of a minority, rights which should be preserved. The Senate has recognized its role as a body peculiarly well suited to giving due consideration to a point of view that may not be popular, but may possess great merit Let us continue to exercise this wisdom by rejecting once again the proposal now before us.

This attack upon the Rules of the United States Senate should be viewed as what it actually is—a frontal assault upon tradition and orderly procedure and a real and present danger to the Senate of the United States. This fact is largely forgotten or intentionally overlooked due to the propaganda barrage leveled against the present rule XXII by the liberal press as merely a device for defeating civil rights legislation. Nothing could be further from the truth.

Tradition, in and of itself, is not accurate and cannot provide the complete answer to every problem. Nevertheless, longstanding traditions are seldom maintained without sufficient reason. Almost invariably, traditions serve as a warning beacon of oft-forgotten and sometimes obscure, but always sound and logical purposes.

A beacon of more than 178 years unbroken tradition stands as a warning of the seriousness of the proposal before this body. Should the motion to proceed to a consideration of the rules be favorably considered by this body, this 170-odd year tradition will be destroyed, and regardless of a subsequent return to the same method of procedure by this body after sober reflection, the tradition will be broken, and the beacon extinguished forever.

Even more vital, however, are the logical purposes which prompted the unshattered existence of this tradition. Foremost among these purposes is that of insuring an orderly procedure, so vital in such an authoritative body.

Complaints have been made that this body is not only deliberative but, on occasions, dilatory when operating under its present rules. Yet some of those who voice these complaints would have this body declare itself, by an affirmative vote to proceed to the adoption of rules, to be a noncontinuing body and, therefore, without any rules whatsoever.

The Senate is not an ordinary parliamentary body. Analogies to the procedure of other parliamentary bodies have little, if any, relevancy to the question before us. For instance, the House of Representatives is exclusively a legislative body. The Senate is far more. In addition to being a legislative body, it performs, by constitutional mandate, both executive and judicial functions. Article II, section 2, of the Constitution provides that the President shall share with the Senate his executive treatymaking power and his power of appointment of the officers of the United States. Article I, section 3, of the Constitution requires of the Senate a judicial function by reposing in the Senate the sole power to try all impeachments.

"The uniqueness of the Senate is not confined, by any means, to its variety of functions. There are innumerable other aspects about this body which prevent its orderly operation at any time under parliamentary law other than its own rules, adopted in accordance with the provisions of these rules. For example, almost all parliamentary procedures presuppose that any main question, after due notice, can be decided by at least a majority of the Members of the particular body using the parliamentary procedure. Any Senate rules which presupposed such a conclusion would be inoperable, for the Constitution itself specifies the necessity for two-thirds majority for action on many matters. Among these issues requiring a two-thirds majority by constitutional mandate are for conviction on impeachment; to expel a Member; to override a Presidential veto; to concur in a treaty; to call a constitutional convention; to propose a constitutional amendment to the States and to constitute a quorum when the Senate is choosing a Vice President. The very fact that each State, regardless of its population, has equal representation in this body belies the thought of simple majority rule in its deliberation.

"It is this very uniqueness which has compelled so many to conclude that the Senate had a degree of continuity unknown to other parliamentary bodies.

"The Founding Fathers themselves, in drafting the Constitution, provided for this continuity by establishing a 6-year term of office for each Senator, so that a minimum

of two-thirds of the entire body would continue from one session to the next. Had the Founding Fathers desired continuity only, but less than a continuing body, they could have provided for a staggered term of 4 years for a Senator with one-half of the Senate returning from one session to the next. This would not have provided the necessary quorums to do business at all times, and the Senate would not have been a continuing body.

"The Senate itself has reinforced the premise that it is a continuing body by the unbroken precedent of continuing its rules from one session to the next. In recent years there are two clearcut precedents upholding the Senate's status as a continuing body, and even more specifically, that its rules continue from one session to the next. In 1953 and again in 1957, this body tabled a motion that it proceed to take up the adoption of rules for the Senate.

"In 1954, the Senate voted to condemn the late Senator McCarthy for his conduct in a previous session. The committee report accompanying the resolution stated: 'The fact that the Senate is a continuing body should require little discussion. This has been uniformly recognized by history, precedent, and authority.'

"In addition, the Senate has jealously maintained its authority to continue its committees in their operations beween adjournment and the commencement of the next ensuing session. The Supreme Court in the 1920 case of McGrath against Daugherty specifically ruled that the Senate was a continuing body and that, therefore, its committees were authorized to act during the recess after the expiration of a Congress.

"Is the purpose sought to be accomplished by the drastic action proposed so worthy as to justify the risk of stripping the Senate's committees of their authority to function after the date of adjournment? Is it so imperative that it justifies the abandonment of orderly procedure for the jungle of 'general parliamentary law'? The Senate has again this year answered this question in the negative. The Senate is a continuing body.

"The proponents of the pending motion aver that the real target for this all-out effort is one Senate rule, and only one—the one which primarily governs the limitation of debate. This much maligned rule has been made the scapegoat by many groups. Its greatest distinction, however, appears to be its seclusion from objective consideration."

In discussing the history of limitation of debate in the U.S. Senate, many newspaper columnists appear to be under the impression that a limitation of debate existed in the United States in the period between 1789 and 1806. Their assumption is based on the fact that, during that period, the Senate rules allowed the use of a motion called the previous question. During the debate on this subject in previous years, the point was discussed, and it appears that the debate would have established in the mind of a reasonable person that there was no limitation on debate in the Senate during this period. Nevertheless, some newspaper editorials and columnists apparently still labor under the misapprehension that "the previous question," which existed in the Senate between 1789 and 1886 was a motion to end debate. For this reason, I believe it would be well to review this matter to some extent so that any lingering doubts that there was a limitation of debate in the Senate between the years 1789 and 1917 will be dispelled.

In discussing the "previous question" which existed in both the Senate and the House until 1803, Dr. Joseph Cooper stated:

"There is very little evidence to support the contention that in the period 1789–1806 the previous question was seen as a mechanism for cloture, as a mechanism for bringing a matter to a vote despite the desire of some members to continue taking or to obstruct decision. This is true for the House as well as for the Senate. On the other hand, convincing evidence exists to support the contention that the previous question was understood as a mechanism for avoiding either undersired discussions or undesired decisions, or both.

"The leading advocate of the view that the proper function of the previous question related to the suppression of undesired discussions was Thomas Jefferson. In his famous manual, written near the end of his term as Vice President for the future guidance of the Senate, he defined the proper usage of the previous question as follows:

"The proper occasion for the previous question is when a subject is brought forward of a delicate nature as to high personages, etc., or the discussion of which may call forth observations, which might be of injurious consequences. Then the previous question is proposed: and, in the modern usage, the discussion of the main question is suspended, and the debate confined to the previous question."

"In terms of his approach, then, Jefferson regarded as an abuse any use of the previous question simply for the purpose of suppressing a subject which was undesired but not delicate, and he advised that the procedure be "restricted within as narrow limits as possible."

"Despite Jefferson's prestige as an interpreter of parliamentary law for the period with which we are concerned, his view of the proper usage of the previous question cannot be said to have been the sole or even the dominant one then in existence. A second strongly supported conception understood the purpose of the previous question in a manner that conflicted with Jefferson's view; that is, as a device for avoiding or suppressing undesired decisions.

"The classic statement of this view was made in a lengthy and scholarly speech delivered on the floor of the House of Representatives on January 19, 1816, by William Gaston. In this speech Gaston, a Federalist member from North Carolina, argued that on the basis of precedents established both in England and America the function of the previous question was to provide a mechanism for allowing a parliamentary body to decide whether it wanted to face a particular decision. In the course of his speech he took special pains to emphasize his differences with Jefferson:

" 'I believe, sir, that some confusion has been thrown on the subject of the previous question (a confusion, from which even the luminous mind of the compiler of our Manual, Mr. Jefferson, was not thoroughly free) by supposing it designed to suppress unpleasant discussions, instead of unpleasant decisions * * *'

"Gaston's speech, to be sure, was made 5 years after the previous question had been turned into a cloture mechanism in the House and it was made as a protest against this development. It is valuable, nonetheless, as an indication of the state of parliamentary theory in the years from 1789 to 1806 and its standing as evidence of this nature is supported both by the arguments made in the speech itself and by less elaborate statements made on the floor of the House in the years before 1806.

"That the previous question was understood as a mechanism for avoiding undesired decisions in the early Senate as well as the early House is indicated by an excerpt from the diary of John Quincy Adams. The excerpt comes from the period in which Adams served in the Senate and it contains his account of Vice President Burr's farewell speech to the Senate. In this speech, delivered on March 2, 1805, Burr by implication seems to understand the function of the previous question as relating primarily to the suppression of undesired decisions.

"He (Burr) mentioned one or two of the rules which appeared to him to need a revisal, and recommended the abolition of that respecting the previous question, which he said had in the four years been only once taken, and that upon an amendment. This was proof that it could not be necessary, and all its purposes were certainly much better answered by the question of indefinite postponement. * * *

"We should note in closing our discussion of proper usage that in Burr's case, as in a number of others, his words do not rule out the possibility that he understood the previous question as a mechanism for avoiding undesired discussions as well as undesired decisions. Indeed, despite the exclusive character of the positions maintained by Jefferson and Gaston their basic views could be held concurrently and in the years immediately preceding 1789 they were, as a matter of general agreement, so held in the Continental Congress. The previous question rule adopted by that body in 1784 read as follows:

" 'The previous question (which is always to be understood in this sense, that the main question be not now put) shall only be admitted when in the judgment of two Members, at least, the subject moved is in its nature, or from the circumstances of time and place, improper to be debated or decided, and shall therefore preclude all amendments and further debates on the subject until it is decided.'

"Thus, a third alternative existed in parliamentary theory in the early decades of government under the Constitution with reference to the previous question—that of seeing it as a mechanism for avoiding both undesired discussions and undesired decisions. The extent to which Jefferson's, Gaston's, or a combination of their positions dominated congressional conceptions of the proper function of the previous question is not clear. The lack of rigidity in parliamentary theory was an advantage rather than a disadvantage and the average member, in the years before 1808 as now, was not apt to be overly concerned with the state of theory or its conflicts unless some crucial practical issue was also involved. However, practice in these years reveals that in both the House and the Senate the previous question was used mainly for the purpose of avoiding or suppressing undesired decisions, rather than undesired discussions. Still, practice also reveals that the degree to which these purposes can be distinguished varies widely from instance to instance and that often any distinction between them must be a matter of degree and emphasis, rather than a matter of precise differentiation.

"The previous question of these early congressional days was a mechanism for avoiding undesired discussions or decisions rather than to achieve cloture. Three key factors in the rule's operation from the standpoint of parliamentary theory illustrate this: The motion of previous question was debatable, the procedure followed after the motion was determined and the limitations on the use of the motion.

"When the previous question was properly moved by the required number of Members, it was debatable. The debate could be extensive, for the only real limitation in the Senate was the provision that no Senator should speak more than once on the same issue on the same day without permission of the Senate.

"The procedure following a determination on the previous question motion is described by Dr. Cooper as follows:

"Equally, if not more important, as an indication of the purposes for which the previous question was designed is the manner in which the House and Senate understood the motion to operate after a decision had been rendered on it. With regard to negative determinations of the previous question, the view that appears to have been dominant in the period from 1789 to 1806 was that a

negative decision postponed at least for a day, but did not permanently suppress, the proposition on which the previous question had been moved. In the House this view seems to have prevailed during the whole period from 1789 to 1806, though it is possible to place a contrary interpretation on the evidence, which exists for the first few years of the House's existence. As for the Senate, less evidence is available, but it is probable that its view was similar to that of the House. This conclusion can be based on Jefferson's statement that temporary rather than permanent suppression was the consequence of a negative result and the fact that on one occasion the Senate seems to have acted in accord with the temporary suspension view. However, it should also be noted that in a number of instances in which the previous question was used in both the House and Senate, the circumstances were such that permanent suppression was or would have been the unavoidable consequence of a negative result.

"The fact that a negative determination of the previous question suppressed the main question supports our contention that the previous question was originally designed for avoiding undesired discussions and/or decisions, rather than as an instrument for cloture. That the previous question could not be employed without risking at least the temporary loss of the main question * * * adapted it for use as a cloture mechanism. It is not surprising that one of the long run consequences of the House's post-1806 decision to use the previous question for cloture was the elimination of this feature. On the other hand, suppression was a key and quite functional feature of the previous question, viewed as a mechanism for avoiding undesired discussions and/or decisions. Indeed, in the period from 1789 to 1806 suppression served as a defining feature of the mechanism. Men who intended to vote against the motion would remark that they supported the previous question and on one occasion the motion was recorded as carried when a majority of nays prevailed.

"With regard to affirmative determinations of the previous question, the evidence which exists again does not lend itself to simple, sweeping judgments of the state of parliamentary theory in either the House or the Senate. The House in the years from 1789 to 1806 on a number of occasions allowed proceedings on the main question to continue after an affirmative decision of the previous question. Finally, in 1807 a dispute arose over whether such proceedings could legitimately be continued. The Speaker ruled that they could not, that approval of the motion for the previous question resulted in an end to debate and an immediate vote. This was Jefferson's opinion as well. But despite the fact that Jefferson's pronouncements on general parliamentary procedure were as valid for the House as for the Senate, the House procedure were as valid for the House as for the Senate, the House overruled the Speaker and voted instead to sustain the legitimacy of continuing proceedings after an affirmative decision of the previous question. It is not clear whether this decision should be explained by assuming that it reflected the House's long-term understanding of proper procedure or by assuming that it merely reflected the House's pragmatic desire to escape the consequences of the 1805 rules change which abolished debate on the motion for the previous question.

"As for the Senate, again less evidence is available, but the Senate appears to have accepted the view that the proper result of an affirmative decision was an end to debate and an immediate vote on the main question. This is what seems to have occurred in the three instances in which the previous question was determined affirmatively in the Senate. Nonetheless, it should be noted that the issue never came to a test in the Senate and we cannot be certain what the result would have been if it had.

"Yet, even if we concede that the Senate understood the result of an affirmative decision as Jefferson did, what must be emphasized once more is that this facet of the rule's operation does not mean that the previous question was designed as a cloture mechanism. Jefferson did not regard it as such, but rather saw an immediate vote upon an affirmative decision as an integral part of a mechanism designed to suppress delicate questions. To be sure, it was this facet of the rule's operation, combined with the abolition of debate on the motion for the previous question, which helped make it possible for the House to turn the rule into a cloture mechanism. This occurred in 1811 when the House, fearful that filibustering tactics were going to result in the loss of a crucial bill, reversed its previous precedents and decided that henceforth an affirmative decision would close all debate on the main question, finally and completely. Nonetheless, despite the fact that the previous question was available for use as a cloture mechanism from 1811 on, the the House did not make frequent use of it for several decades. One of the reasons for this was that the rule, not having been designed as a cloture rule, continued to retain or was interpreted to have features which made it both ineffective and unwieldly when used for the purpose of cloture. Indeed, it took the House another 50 years of intermittent tinkering to eliminate most of these debilitating features."

Mr. President, Dr. Cooper also described how the limitations on the scope of the motion "previous question" handicapped the possibility of its use as a cloture device. He stated:

"For one thing, the previous question could not be moved in committee of the whole, a form of proceeding which both the early House and early Senate valued highly as a locus for completely free debate. Thus, when the House beginning in 1841 finally decided to limit debate in committee of the whole, it was forced to develop methods other than the previous question or accomplishing this result. However, the early Senate relied to a large extent, not on the regular committee of the whole, but on a special form of it called quasi-committee of the whole, i.e., the Senate as if in committee of the whole; and apparently it was possible to move the previous question when the Senate operated under this form of proceeding.

"More important as a limitation on the scope of the previous question was its relation to secondary or subsidiary questions. At first, at least in the House, the previous question was treated as a mechanism that could be moved on subsidiary or secondary questions, e.g., motions to amend, motions to postpone, etc., as well as a mechanism that could be moved on original or principal questions, e.g., that the bill be engrossed and read a third time, that the bill or resolution pass, etc. Thus, though this fact is often misunderstood, in the early House the main question contemplated by the motion for the previous question was sometimes a subsidiary question rather than the principal or original question. Whether the Senate permitted the previous question to be applied to secondary or subsidiary questions before 1800 is not clear. However, in that year Thomas Jefferson, as presiding officer of the Senate, ruled that the previous question could not be moved on a subsidiary question and his manual when it appeared reaffirmed this position. The House followed suit in 1807, though as late as 1802 a ruling of the Speaker, concerned with the effect of a negative determination of the previous question, took cognizance of the fact that the previous question had been moved on a subsidiary question and allowed such usage to go by unchallenged."

The decision of the House to confine the previous question to principal questions created great difficulties once it began to use the device as a cloture mechanism. Neither the rules of the House or the Senate clearly gave the previous questions procedure over other subsidiary questions, such as the motions to postpone, commit, or amend. Thomas Jefferson's opinion was that subsidiary questions moved before the previous question should be decided prior to a vote on the previous question. However, such an approach became entirely unacceptable once it was desired to employ the previous question as a cloture mechanism. If subsidiary questions moved before the previous question took precedence over it and if the previous question could only be applied to the original or principal question, then obstructionists could move subsidiary questions before the previous question and prolong the discussion of these questions for great lengths of time. It was probably no accident that the House amended its rules to give the previous question precedence and used the previous question for cloture.

Nonetheless, this change did not transform the previous question into an efficient cloture mechanism. Beginning with the 12th Congress—1811-13—rulings of the Speakers strictly enforced and further developed the doctrine that the previous question applied only to the original or principal question. This caused the House great inconvenience. It meant that if the previous question was approved, it cut off all pending subsidiary questions and brought the House directly to a vote on the original or principal question. Thus, a vote might have to be taken on a form of the question undesired by the majority; for example, that the bill without the amendments reported pass to a third reading instead of that the bill with the amendments reported be recommitted with instructions. Thus also, when a subsidiary question was moved early in debate the House might either have to endure a lengthy discussion on the motion or employ the previous question, which would force a vote on the principal question before it had been adequately considered. Ultimately, of course, the House did reshape the previous question mechanism so that it could efficiently be applied to the subsidiary questions involved in an issue. However, this reshaping occurred piecemeal over a number of years in response to the difficulties we have described and it was in a sense dependent on them.

We may conclude, then, that in the period from 1789 to 1806 the previous question mechanism was designed to operate in a manner that was stated only to its utilization as an instrument for avoiding undesired discussions and/or decisions. In the Senate and in the House until December of 1805 debate on the motion was permitted. In both bodies a negative determination of the previous question postponed or permanently suppressed the main question and in the House, at least, debate and amendment were permitted after an affirmative decision. In the eyes of those who saw the previous question as a means of avoiding undesired decisions this could easily be justified by assuming that the vote on the previous question only determined whether the body wanted to face the issue. Finally, the nature of the limits on the scope of the motion greatly handicapped its efficacy as a cloture mechanism. It is true that in the beginning the House and possibly the Senate allowed the previous question to be applied to subsidiary questions. It is also true that, once both bodies accepted the proposition that the device could not be so applied, this restriction could and in the Senate actually did handicap those who wanted to use the previous question as a mechanism for avoid-

ing certain decisions. Still, as the experience of the House after 1811 demonstrates, the nature of the handicap was one that was much less a limit on the negative objective of suppressing a whole question than on the positive objective of forcing a whole question to a vote. In short, we may conclude that in both the early House and early Senate not only was the purpose of the previous question conceived of as relating to the prevention of undesired discussions and/or decisions; in addition, the device itself was clearly designed operationally to serve such ends rather than the ends of cloture. In later years the previous question was turned into an efficient cloture mechanism in the House. But this required considerable tinkering, and what is more, tinkering that resulted ultimately in a basic transformation of the operational nature of the mechanism.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. STENNIS. Mr. President, I thank the Chair for recognizing me. I was called to another matter before the Rules Committee at 11 o'clock and did not get to finish my remarks. As I recall, there was something like 40 minutes that I had used at that time.

The PRESIDING OFFICER. The Senator has used 36 minutes.

Mr. STENNIS. I thank the Chair.

Mr. President, as I pointed out this morning, this matter is not just a question of a time to vote or a time to change a program for a day, or for any day. There is a great principle involved here. Also there has been an overturning, to a degree, of our Senate rules and procedures that have served so long.

I do not think there is any doubt that the people at large, even the ordinarily well-informed people, have not realized the implications of what I call, with proper respect to the office, the Rockefeller ruling.

I say that because this week I have been in touch with very well-informed and intelligent people on other matters. They have not realized what has happened here. They have been assuming that beyond all doubt the Senate is largely the same institution that it was. The rules may be changed slightly, but they do not realize any other implication of what might be the effect of the developments so far.

I feel that there would be a tremendous interest, a very broad and in-depth interest among highly responsible people, if it was realized throughout the country, throughout the country as a whole, just what had happened. That would be particularly true, I think, in the so-called smaller States, or the States with less economic advantages, less population, or any other factor that makes them not major parts of our great Nation as are some of the areas or some of the other States.

I would hope, too, that we would look beyond just the matter of what the rights are of this body to change its rules; that we would look to the nature of the institution, itself.

As I was saying this morning when I had to leave on another official matter, the very nature of the Senate is unique, and its membership has attracted, I think, a very fine quality of men, by and large, throughout the Nation for decade after decade.

One of the attractions is the 6-year term. That carries a great deal of meaning.

Another one is—and this is partly repetition but it is part of the necessity of getting my thoughts back into focus—that it is the place where a man just cannot be readily pushed around. He cannot be cut off, at least until he has had some chance to explain his views and, furthermore, a chance for the people to be informed and to get the reaction.

During this debate, and this is just one of many on the subject, I do not know of any other major parliamentary body where one member—and I am just the one member—can stand up and continue to stand up and just tell the Presiding Officer the merits of his ruling or the demerits, or could continue to carry on, without any feeling of being hindered or hampered in any way.

It might be contrary to the leadership of his own side of the aisle. This resolution is offered by one of our leaders, but I do not feel the slighest hesitancy in opposing it to the limit, or as much as my judgment might lead me to oppose.

Even though the present position now is supported by our majority leader, a man of unusual stature, capacity, fairness and value to this body and the Senate, I do not feel any restraint, and I do not think he personally wants me to. I do not feel any restraint and the average Member would not. This means something, I think, to the body, to the institution, to the soundness of the legislation that finally emerges.

I have a very fine personal feeling as to my friends. It is seldom I make reference to one side of the aisle or the other.

Our friends in the so-called minority well know that this is the day when the caucus is becoming more prominent in the affairs of government and in the making of laws. The caucus has been asserted more in both the House of Representatives and the Senate, to a degree—a much lesser degree—since I have been here. It would seem to me, and I would submit to them, that the group in the minority could well consider again whether they would vote to cut off a rule that can be used and is often used by a minority of some kind—maybe not a political minority but a philosophical group in the minority.

As I see things, I do not want the caucus to go where it would try to dictate how a member of the party would or should vote, or would have to vote. I know neither of our present leaders favor that. My point is that this is a time when the caucus appears to be more active, more influential and more effective than heretofore in the conduct of the affairs of the Congress, not just on the procedural matters but on the merits. If that is true, it certainly is a time when the minority party should very carefully consider its position and not contribute here to a change in the rules that would lessen the reasonable prerogatives that a Member or a few Members or a group of Members of this body now have.

I do not like to use the term "downgrading"—that is not the thought I want to bring—but you lessen the importance of a seat in the Senate when you take powers and prerogatives away from the occupant of that seat. That cannot be avoided.

I recall the late Senator Kerr of Oklahoma, who was one of our valued and most effective Members for a long time. He never gave but one explanation for his stand with reference to cloture or the change of rule XXII, and that was that the people of Oklahoma did not send him here to lessen or diminish in any way the powers and the responsibilities of the seat that he was honored to occupy.

I think that is another reason that adds to the stature and the attractiveness and the power—political power, I mean—that goes with membership in this body. It makes the entire body distinctive and different, and at the same time has left it capable of taking care of the serious affairs of our Government.

I think that now, with our tremendous population extending over this vast area and the problems of economics and social problems becoming more pronounced, it is as important as ever—if not more important than ever—that we not try to bring everything into a small field of operations and legislate here under majority rule methods for well over 200 million people, with the decades to come being certain to produce even more and more people with a more and more complicated economic system and society, with many, many more social problems, even though we make some headway in solving some of those problems.

So, instead of the change of times pointing in the direction of trying to bring everything into one focus and one pattern and limiting it where a lesser majority—Mr. President, I will yield half of my time to anyone who wants to speak——

Mr. MONDALE. I object.

Mr. STENNIS. The Senator will not object to what I am saying.

I will yield to anybody half the time I have remaining if they will just let me use the other half in reasonable quiet.

The PRESIDING OFFICER (Mr. FORD). Is there objection?

Mr. ALLEN. What is the Senator's request?

Mr. STENNIS. I just ask that we have quiet in the Senate, and some Senator misunderstood me and objected, and I am sure that he did not mean to object.

Mr. President, returning to the subject matter, I want to review what I think was the bedrock question that the constitutional convention met, staring them in the face, when a majority of them really were ready to give up for the time being and submit a documnet that was less than what they felt was needed and was less than what a majority of them wanted; but they could not work out a proposition of how the representation was going to be chosen and what voting rights they would have in the two bodies. That was when they submitted the question to George Washington, as the acknowledged most influential Member of that great body.

The proposal was that they could not proceed further, that they would put together something that would serve some kind of purpose, even though it

was not in the final form they wanted. They told him that it was most likely that whatever they did would not be suitable, that the people would not approve, and that they submit it to him, though, and go home. That matchless man, in his splendid leadership, which he had exhibited so many times, very promptly and with some impatience—as I have found in the record—turned down their proposition flatly and said,

If we submit to the people that which we do not approve ourselves, it will certainly be rejected, and we will labor on here and find a way that is just and fair and submit that to the people, and then the matter will be in the hands of God and the people.

Some 10 days later, after another tremendous effort, they came in with the proposal that the House of Representatives would be chosen on the basis of population, and it has worked until this day; but the Senate would be composed of each State having equal representation. That was such a far-reaching decision and point at issue that they not only provided this provision in ordinary words but also wrote into the Constitution that each State would always have two Senators. They did not stop there, because there was a possibility that someone could have proposed that Senators from a State with such and such a population or less would have less than a full vote. That was their reasoning, and they wrote into the Constitution itself that each Senator would have one vote.

Then they put a veto on any change in that, in this way: They provided that that arrangement should not be disturbed without the consent of that particular State, which in effect gave a veto power to just one State over anything in that field that the rest of them might unanimously agree on.

That is the constitutional background—in minute particular, we might say—that certainly sets this body aside as being different from the rest, and something very special as a parliamentary body.

It is a striking thing, too, that now we have come all the way down the decades of history. Even though many have disagreed on many points and disagreed as to conclusions about this rule which has now become rule XXII—before it had that number, there was just an absolute rule with no way to cut off debate—it has come thundering on down through the decades, that this distinctive body in parliamentary government, in free countries, the U.S. Senate, would have a rule that did protect minorities and that matters could not be passed over their protest until they had gone through a process of refining and adjustment and amendment and discussion, to the extent that there would have to be considerably more than a majority who favored the passing of whatever form the proposal, bill, resolution, or whatever it was, had taken in that process of refinement and amendment.

So I have very strong feelings about this matter; and I appeal to the membership, those who have reservations left as to how they should vote, that we should not change that rule now. I do not know what may be coming. I do feel that I know, with virtually everyone else, that we are facing very, very serious problems.

I think that there are extreme measures proposed. I do not expect any quick remedy here. We may have to go through a refining process beyond the imagination of any of us up to now. I do know that the American dollar—and I mention this not to depreciate it one bit, but I am concerned, even though it is a field that I do not understand, that we have devaluated the American dollar twice in the last few years, in 1971 and 1973, and it did not seem to bring about a result.

Mr. President, may I make a parliamentary inquiry as to how much time I have left?

The PRESIDING OFFICER (Mr. LEAHY). The Senator has 4 minutes remaining.

Mr. STENNIS. I thank the Chair.

The devaluation was official that I mentioned, but the devaluation goes on. According to a statement by Mr. Burns of the Federal Reserve Board, it has lost 7 percent of its value since last September. The OPEC countries, those of them that did have a recent assemblage, observed, or some of them did, that they would further delay their actions and see if there was further evidence as to what the fate was going to be of the American dollar.

With those conditions, it seems to me, in the uncertainty of what we may face, that we would be justified in laying aside this entire question of changing the rules of the Senate until a day when other matters are less cloudy and less serious and get somewhere in the direction, anyway, of a start on solving these great problems that I have mentioned.

Mr. President, I reserve the remainder of my time. I yield the floor.

Mr. ROBERT C. BYRD. Mr. President.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. I ask unanimous consent that time on any rollcall throughout the remainder of today and this evening and tonight and tomorrow, if necessary, be limited to 10 minutes rather than 15 minutes.

Mr. ALLEN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ALLEN. Mr. President, I call up——

Mr. FORD. Mr. President.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. I ask unanimous consent that John Barry, assistant to the Senator from Vermont (Mr. LEAHY), be allowed the privilege of the floor for the balance of the session today.

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

AMENDMENT NO. 45

Mr. ALLEN. Mr. President. I call up amendment 45 and call for the yeas and nays.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

Amend S. Res. 4 as amended by BYRD substitute in following manner: At the end add the following new section:

"SEC. —. Not more than a total of three cloture motions can be filed with respect to any Senate bill or its companion House bill in any one session of a Congress.".

Mr. MONDALE. Mr. President.

Mr. ALLEN. I call for the yeas and nays.

Mr. MONDALE. Mr. President, I yield myself——

The PRESIDING OFFICER. Is there a sufficient second?

Mr. ALLEN. I called for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. ALLEN. I suggest the absence of a quorum.

Mr. MONDALE. Mr. President.

The PRESIDING OFFICER. The Senator has suggested the absence of a quorum. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Mr. ALLEN. I object.

Mr. ROBERT C. BYRD. Mr. President, the Senator has to stand when addressing the Chair.

Mr. ALLEN. I am not familiar with that rule, but I will do it.

Mr. ROBERT C. BYRD. The rule is there.

Mr. ALLEN. I object.

The PRESIDING OFFICER (Mr. LEAHY). Objection is heard. The clerk will proceed.

The rollcall was continued and concluded, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 20 Leg.]

Abourezk	Glenn	Muskie
Allen	Gravel	Nelson
Baker	Griffin	Nunn
Bartlett	Hansen	Packwood
Bayh	Hart, Gary W.	Pearson
Beall	Hart, Philip A.	Pell
Bellmon	Hartke	Percy
Bentsen	Haskell	Proxmire
Biden	Hatfield	Randolph
Brock	Hathaway	Ribicoff
Brooke	Helms	Roth
Buckley	Hollings	Scott, Hugh
Bumpers	Hruska	Scott, William L.
Burdick	Huddleston	Sparkman
Byrd, Harry F., Jr.	Inouye	Stafford
Byrd, Robert C.	Jackson	Stennis
Cannon	Javits	Stevens
Case	Johnston	Stevenson
Chiles	Laxalt	Stone
Church	Leahy	Symington
Clark	Long	Talmadge
Cranston	Magnuson	Thurmond
Culver	Mansfield	Tower
Dole	Mathias	Tunney
Domenici	McClure	Weicker
Eastland	McGee	Williams
Fong	McGovern	Young
Ford	McIntyre	
Garn	Mondale	
	Moss	

The PRESIDING OFFICER (Mr. LEAHY). A quorum is present.

Mr. ROBERT C. BYRD. Mr. President, I move to lay on the table the amendment of the Senator from Alabama (Mr. ALLEN).

Mr. ALLEN. I call for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk

will call the roll. The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. METCALF), the Senator from New Mexico (Mr. MONTOYA), the Senator from North Carolina (Mr. MORGAN), and the Senator from Rhode Island (Mr. PASTORE) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) and the Senator from Rhode Island (Mr. PASTORE) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. FANNIN), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

I further announce that the Senator from Ohio (Mr. TAFT) is absent due to illness.

I further announce that, if present and voting, the Senator from Ohio (Mr. TAFT) would vote "nay."

The result was announced—yeas 73, nays 12, as follows:

[Rollcall Vote No. 53 Leg.]

YEAS—73

Abourezk	Gravel	Mondale
Bartlett	Griffin	Moss
Bayh	Hart, Gary W.	Muskie
Beall	Hart, Philip A.	Nelson
Bellmon	Hartke	Packwood
Bentsen	Haskell	Pearson
Biden	Hatfield	Pell
Brock	Hathaway	Percy
Brooke	Hollings	Proxmire
Bumpers	Hruska	Randolph
Burdick	Huddleston	Ribicoff
Byrd, Robert C.	Inouye	Roth
Cannon	Jackson	Scott, Hugh
Case	Javits	Stafford
Chiles	Johnston	Stevens
Church	Laxalt	Stevenson
Clark	Leahy	Stone
Cranston	Long	Symington
Culver	Magnuson	Tower
Dole	Mansfield	Tunney
Domenici	Mathias	Weicker
Fong	McClure	Williams
Ford	McGee	Young
Garn	McGovern	
Glenn	McIntyre	

NAYS—12

Allen	Hansen	Sparkman
Baker	Helms	Stennis
Buckley	Nunn	Talmadge
Byrd, Harry F., Jr.	Scott, William L.	Thurmond

NOT VOTING—14

Curtis	Humphrey	Morgan
Eagleton	Kennedy	Pastore
Eastland	McClellan	Schweiker
Fannin	Metcalf	Taft
Goldwater	Montoya	

So the motion to lay on the table Mr. ALLEN's amendment was agreed to.

Mr. McCLURE. Mr. President?

Mr. ALLEN. Mr. President?

The PRESIDING OFFICER. The Chair recognizes the Senator from Idaho.

Mr. McCLURE. Mr. President, I have not spoken with regard to the cloture matter. It has not been my custom to speak on matters under the subject of debate under cloture.

I expect that a good many Senators may wonder whether they have time to get something to eat. I suspect they have. I do not say that with any desire at all to delay consideration, but I do it in fairness to my colleagues who may wonder what the schedule is. I do not know what the schedule is beyond the period of time which I control. But having been recognized, it is my intention to use at least a half of the hour which is allotted to me.

There are some who think that the debate on cloture is a futile thing, and I suspect that may be true. I have been involved in the legislative process for some time——

The PRESIDING OFFICER. The Senate will be in order.

Mr. McCLURE. I have been involved in the legislative process—

Mr. MANSFIELD. Mr. President, may we have order? The Senator is entitled to be heard.

The PRESIDING OFFICER. There will be order in the Senate.

Mr. McCLURE. I thank the Senator from Montana.

I have been involved in the legislative process long enough to count votes, and I think to make some estimate whether or not a particular parliamentary procedure is going to be successful. I do not think there is anyone who really cherishes any illusions any longer that the proponents of the rule change will not be ultimately successful in working their will in the Senate of the United States. The votes on procedural motions have indicated the spread between the proponents and opponents of the measure at least in sufficient measure to indicate that it is unlikely that a shift will occur which would change the final result.

My reason for taking some time now is not to delay that ultimate action, because I am not certain that delay has any fruitful purpose. I think perhaps the delay, itself, is as pointless as the demand that we come to a vote on it yet today. I think whether the vote occurs on Friday night or Saturday morning, or Monday or Tuesday, the outcome will be approximately the same. I think all of us know that.

So it seems to me we are engaged in somewhat of an exercise in futility as one side seeks to delay and the other side seeks to force us to a vote at this time. I think both points are equally pointless.

I am sorry that we have gotten ourselves locked in this kind of mortal combat where it seems impossible to reach any kind of compromise agreement that would effectuate the same end results with probably the same vote and still accommodate the majority of the Members of the Senate.

One of the principles that we are discussing in this entire debate has been the rights of a minority—yes, even a minority of one Member. So long as there is one Member who seeks to exercise his rights under the rules, I certainly will applaud and support him, and will seek to support the Senator from Alabama as he is pursuing what has become a more lonely road hour by hour. I believe he is entitled to that kind of support because of the courage and gallantry with which he has conducted the battle.

My comments are really intended as a tribute to the Senator from Alabama for his tenacity, his courage and his determination. I believe he, like myself, probably knows that the results will not be altered, that whatever chance there was to persuade, to change or to compromise the issue has already been spent in the compromise that has been forged.

I would like to address myself for a moment to the merits of the actions that are being taken in regard to filibuster.

Mr. President, for the greater part of our history, the right of full and free debate in the U.S. Senate has stood as a vital safeguard over the right of the minority to protest against legislation it believes to be injurious or oppressive.

Over the years there have been many eloquent attacks and rebuttals on the question of limitation of debate in the U.S. Senate. Those of us who come upon such well plowed ground cannot hope to shed much in the way of original thought upon this subject; yet I am sure there are good reasons and essential arguments that must be covered at the start of the 94th Congress as we once again consider this vital question.

We must underscore the principle of full and free debate which is an underlying foundation of the U.S. Senate, along with the basic principle that each State be represented equally no matter what its land area or population count.

Historically speaking, the filibuster has been at the forefront in support of these principles.

One of the first important filibusters about which much is known occurred in 1841 in opposition to a bill to remove the Senate printers. Of course, most subsequent filibusters have involved more substantial questions. In 1863, an unsuccessful filibuster was conducted against a bill involving President Lincoln's wartime suspension of the writ of habeas corpus. More successful was the prolonged debate in 1890 that resulted in the defeat of the "Force Bill" which would have provided Federal supervision of elections.

In more recent years, Senate liberals resorted to the filibuster in their opposition, in 1953, to the so-called tidelands oil bill of the Eisenhower administration and to the communications-satellite bill sponsored by President Kennedy in 1962.

If we were to examine the various issues that have created prolonged debates or filibuster, we would quickly realize that they cover a vast range of political, economic, and constitutional conflicts. The filibuster is not the exclusive weapon of any philosophy, party, or section of the country. On this historical floor, distinguished Senators of both parties representing every shade of political thought and every area of our great Nation have taken part on occasion in extended debate or filibuster in support of a minority position.

Also from a historical perspective, some of the greatest Members of this distinguished body have been the most eloquent champions of the right of full

and free debate. These men, and they include many of the greatest liberals as well as conservatives of this century, believed that limitation of free speech in the Senate—gag rule—would undermine the rights and liberties of all Americans.

Clearly, this is not a partisan matter. This is a matter that goes to the heart of our system. The Senate of the United States is a unique body. It has been one of the most useful instruments of government down through the years. It has served this Nation well as a continuing body, with two-thirds of its Members going over from election to election as the Founding Fathers provided, to carry with them experience and an understanding of the operations of the other branches of the Government, so that they might help to protect the people of tihs country from the excesses of the executive branch of the Government; or to undo some excess or wrong that was worked by the decisions of the judicial branch of the Government.

Mr. President, I would further state that "the majority of any party in power would find the suppression of free speech a convenient method of expediting what is considered useful and urgent legislation. It is always annoying to have errors exposed and it would not be long before a majority of one decided that for political purposes it should retain the illusion of infallibility by preventing exposure—here of its errors. And then it would not be long until corrupt and even ominous legislation might be shepherded through this great and illustrious Chamber in enforced silence."

Of course, there have always been great Senators representing both liberal and conservative factions that were more than outspoken in support of the filibuster as a perfectly valid parliamentary device for the protection of the just rights of the minority viewpoint.

Men like Robert LaFollette, in particular, was a strong advocate of open debate in the Senate. This great Senator once stood here and in a ringing statement said:

> Believing that I stand for democracy for liberties of the people of this country and for the perpetuation of our free institutions, I shall stand while I am a member of this body against any closure that denies free and unlimited debate. Sir, the moment that the majority imposes the restrictions contained in the pending rule, that moment will have broken down one of the greatest weapons against wrong and oppression that the members of this body possess.

The Senate has had a proud history that has evolved from the right of the representatives of the States of this Union to stand up and speak their pieces. This is the place where that can be done.

The right of free speech in the Senate is particularly important because the Senate is the only institution of the Federal system in which the smaller States exercise an equal influence over the conduct of the affairs of the Nation. In the general scheme of things, the smaller States are always disadvantaged and handicapped. Until recent years, very few men from very small States were even appointed to the President's cabinet. The one place where the small States have had a right to be heard, where they could defend the interests of their people, was the Senate of the United States.

Accordingly, ours is a country of diverse interests as among the several States and the various sections. What may be good for the people of New Hampshire may not be good for the people of Texas and what may be right for the people of Pennsylvania may not be right for the people of Alaska. The Senate of the United States has become a stronghold within our Federal system wherein the right of the States and the rights of the minorities are protected. Without freedom of debate in the Senate, the United States could go the way of unlimited democracies; we could reach the stage where a misguided majority can destroy the liberties and right of individual citizens in the name of some currently popular cause.

Those who would suppress and gag freedom of debate should not forget that popular opinion can be a wary instrument. Causes that are popular today may very quickly sink into a sea of unpopularity. Those who find themselves on the majority side of an issue today may find themselves cast in the minority position tomorrow.

Therefore, it is easy to see that a major issue at stake in this debate is one of great importance to all people of this country and should be of the greatest importance to the minority groups of this country. By the same token, it is most unusual that the Members of the Senate who are proposing restrictions upon freedom of debate in the Senate and, thereby, curtailment of the rights of minorities are the very ones who are the most eloquent and loquacious in their defense of minority rights in other areas.

Because of numerous reasons like these, I cannot escape the conclusion that those who advocate restricting the rights of the minority by curtailing freedom of speech in the Senate may be sowing the seeds of their own downfall on some future questions of burning national interest.

Mr. President, from the standpoint of the Senate itself as a body—and I have great respect for the Senate of the United States as an institution—I think the right of free speech in this body has been one of the factors that has made this Government, this system of ours, the oldest operating system of government on Earth today. Mr. President, the only way the rights of Senators—the rights I have discussed today—can be protected in representing the States that sent them to the Senate is to preserve the right of free speech in the Senate. When that right is limited, the power of every Senator is limited and the rights of the State that sent here are neglected.

In concluding, Mr. President, few fair minded persons would deny that there have been abuses in the constitutional freedoms enjoyed by all Americans, none would advocate striking there basic guarantees from the Constitution. Freedom of debate in the Senate should not be destroyed on the pretext that it is sometimes abused.

I think we should realize that the present rules of the Senate are wholly adequate to prevent unjustified obstruction of the work of the Senate and the passage of vital legislation.

Indeed, the present rules have enabled the Senate to function as a legislative body without serious detriment to the welfare of the United States throughout our history. They have enabled the Senate to discourage and prevent excesses by the temporary majority of the moment that may seek drastic change for selfish or partisan gain.

Over the years when you balance it up, the right of free speech in this body has been vastly more beneficial—in the preservation of our system of government, maintaining our system of checks and balances, in trying to maintain the division of powers between the three separate branches of the Government—than the action of any army. The Senate is the last bulwark of the minority in this land.

Freedom of debate in the Senate, so long as it is preserved, serves as a protection of the fundamental rights and liberties for which men, for thousands of years, have fought and died.

I made an analysis, Mr. President, of the cloture motions that have been filed and cloture votes conducted in the last 2 years in this body, and I think it is interesting. It is interesting because people who propose this rule change, even the compromise which has been suggested, have somehow been operating either under the illusion or the misapprehension that a rule change is necessary to invoke cloture.

In the last 2 years, we have had, in the Senate of the United States, 13 different issues subjected to the cloture petition to limit debate. In those 13 issues, cloture has been invoked on 9. On the four in which cloture was denied, compromises were effected on two.

I parenthetically note that on those two, cloture was denied primarily because liberals in the Senate did not want cloture invoked. They joined in defeating the cloture motions. In only two instances in the last 2 years has a minority been successful in blocking legislation in which the liberals were not directly involved—2 years, two times.

Is that the kind of evidence of need for rule change that has been so urgently requested by the proponents of this measure?

I note that the reduction from 67 to 60, or from a two-thirds of those present and voting in the current rule to a 60-vote to invoke cloture, would not have changed the results on any of those votes save one—with one exception; when cloture that was voted would have been denied because there were fewer than 60 who voted in favor, but two-thirds of those present and voting.

I might just go through the list, because I think it is important to note. Voter registration was the first of these. It took three different cloture motions before cloture was invoked on May 9, 1973. How much time did it take to get to that point? The first cloture vote occurred on April 30, the second on May 3, and the final one on May 9. If there had been a 60 vote instead of a

67 vote, that cloture would have been invoked on May 3 instead of May 9. The Senate would have moved to final consideration of that bill 6 days earlier than it did. And of course, as everyone knows, that 6 days was not lost to other activities in the interim. Under the able leadership of the Senator from West Virginia, the filibuster has lost much of its meaning because the Senate does not stop action while cloture is being considered and in the interim between cloture petitions and votes.

The second of those 13 issues was campaign financing, on which cloture was first voted on December 2, 1973, and cloture was denied.

On December 3, a second cloture vote was held and again, the cloture was denied. But in April of 1974, cloture was voted first on April 4 and again denied; but on April 9, it was carried and the issue was joined on the issues of campaign financing.

Again, if the margin required were reduced to 60, as is now suggested, the April 4 motion would have carried and the Senate would have moved forward to consideration on that issue 5 days earlier than it did otherwise. Again, however, other business was conducted in those 5 days.

The third of the issues that were subjected to cloture in the last 2 years was the issue of Rhodesian chrome. That was subjected to three cloture votes before the proponents of the change were able to invoke cloture, the first of those votes occurring on December 11, 1973, the second on December 13, 1973 and the third on December 18, 1973, when cloture was invoked. Again, as in the other instances, had the rule then read 60 votes rather than two-thirds, cloture would have been invoked on December 13 instead of December 18 and again, the Senate would have gotten to the issue 5 days earlier than they otherwise did.

Is that an earth-shaking change? Does that illustrate the necessity for the rule change where the Senate does wish to work its will?

The fourth such issue was legal services. The first cloture petition was filed on December 13, 1973, and failed, although with a 60-vote margin it would have succeeded on December 13.

Another cloture petition was filed on December 14 and it failed. But on January 30, 1974, a similar motion was presented and it passed, and legal services were then passed by this body.

The fifth such issue was one in which the proponents of cloture failed, one of the two victories of the opponents in the last 2 years and that was on the Genocide treaty. On February 5, 1974, it failed by a vote of 55 to 36 and on the following day, it failed by a vote of 55 to 38—one of the two times that cloture has been refused by this body in the last 2 years.

The sixth such issue was the Government pay raise, on which a cloture petition was filed and voted on on March 6, 1974, and cloture was voted on the first attempt.

The seventh such issue was the public debt ceiling, which the Senator from Massachusetts may remember well, having been the vehicle for some tax reform proposals. On that particular one, because of the nature of the issue, the issue had a different outcome, with three different cloture votes on June 19 and June 26 of 1974, the final vote being 48 in favor of cloture, 50 opposed to it, and the issue lost. But, again, it was not because of any conservative opposition in that instance.

On the eighth issue, the Consumer Protection Act, or the Agency for Consumer Advocacy as it is now known, there were four cloture petitions, the first of which was on July 30, the second on August 1, the third on August 20, the fourth on September 19. In that particular instance, the opponents of the legislation were able to win. That was one of the two instances in the last 2 years in which there was not a compromise that affected the change other than simply failing to invoke cloture.

The ninth such issue was the Export-Import Bank. The Senator from Oregon (Mr. PACKWOOD) was very much involved in that, as the Senate had voted some limitations and the House did not want to go along with those limitations imposed by the Senate. So there was a confrontation not between forces within the Senate, but between the Senate and the other body. In that instance, after four cloture votes, all of which occurred between the 3d of December and the 16th of December, the cloture opponents were successful. The House receded from their disagreement and the Senate had won its day. Cloture became a means by which the Senate majority worked its will and the other body therefore agreed to the Senate position.

Trade reform was the 10th such issue in the last 2 years and again, cloture was invoked on the first effort. I might note on the Eximbank, the reduction from a two-thirds majority to a simple, straight 60-vote margin would have made no difference. The result would have been the same.

The eleventh of those issues was the school desegregation amendment and again, on one vote, on the first vote, cloture was invoked. This is the one time where cloture would not have been invoked under the 60-vote rule, because two-thirds of those present and voting turned out to be 56 and cloture was invoked with a vote of 56.

The twelfth such issue was the social services, and again, cloture was invoked on the first attempt. The thirteenth was on the taxes and tariff measures on which, again, on the same date, December 17, 1974, cloture was invoked on the first attempt by a vote of 67 to 25.

Is this the record of an urgent need to revise the rules in a way which will limit the rights of the minority to protect themselves? Is there in this record over the last 2 years the clear call for a change of rules that threaten the rights of minorities? Or is it a record which indicates that the majority, when there is a clear and compelling need, has been able to work its will over the opposition of a minority, even though a determined minority? They have been able to work their will where there was substantial opposition, but they still were able to invoke cloture on all but 2 of the 11 issues that were thus involved without compromise.

I think the nature of the debate, perhaps, is better defined in two editorials which I am sure most Senators have read, but in consideration of the possibility that there are those who have not, I would like to repeat those editorials. One is an editorial from the New York Times entitled "Hollow Victory." I quote from that editorial:

> The Senate liberals have marched up the hill and down the hill and arrived, if not exactly where they started, not very far away. The vote to impose closure on the long filibuster conducted by Senator James Allen, Alabama Democrat, and his allies clears the way for a final vote on the so-called compromise proposal to reform the Senate's rules.
>
> The liberals started out wanting to relax Rule 22 sufficiently to enable three-fifths, instead of two-thirds, of those members present and voting to shut off debate. After two months of time-wasting discussion, Senator Allen and the dwindling conservative minority for which he speaks were able to beat down the liberal majority, forcing it to settle for a toothless compromise offered by Senator Russell Long, Louisiana Democrat. The minority prevailed even though Vice President Rockefeller ruled repeatedly in favor of the majority position.
>
> The compromise requires a constitutional three-fifths of the members—that is, no less than sixty votes—to impose closure. If all 100 members are present, the existing two-thirds rule requires 67 votes. In theory, this is a slight gain for the liberals.
>
> In reality, it amounts to virtually no change because the entire 100 members are rarely present for any vote, no matter how important. Only once in history have sixty or more Senators voted for cloture and failed to obtain it. In short, a minority's power to block legislative action has been reduced only marginally, if at all.
>
> Senator Allen and his allies have held out against even this trivial change, refusing to yield anything to the other side. But there is no doubt as to who the winners are. If the Senate liberals possessed Senator Allen's mastery of parliamentary procedure and his relentless tenacity in seeking and holding the floor, they would not now be trying shamefully to pass off this pathetic compromise as a substantial victory.

That is the end of the editorial from the New York Times. The second is an essay by William Safire, entitled "Crushing Dissent in the Senate," and reads as follows:

> WASHINGTON.—Good men, nobly motivated by the spirit of reform, can do more harm to our political system than the worst villains lusting after power.
>
> A serious attempt is being made in the Senate this week to alter the compromise made at the Constitutional Convention of 1787. At that time, representatives of the smaller states were fearful of a "tyranny of the majority" in a legislature reflecting the population as a whole. Contrariwise, the states with large populations were not about to give in to demands that all states have equal votes.
>
> So the checks-and-balances compromise of a bicameral, or two-house, legislature was struck: "Majority rule," based on population, would be the character of the House of Representatives; and "deliberation" or minority protection based on the same number of Senators from each state, chosen by state legislatures, would be the character of the Senate.
>
> For two centuries, the Senate has helped make the Democratic experiment work by

preventing the excesses of democracy. Time after time, lonely dissenters—right and wrong—have used the Senate's rules to delay, to restrain, to force some adjustment to minority demands. Ultimately, the theory went, the majority would rule, but not until the passions of the moment—or of the year—had passed.

In the course of time, the Senate agreed to attune itself more closely to the popular will by permitting direct election of Senators by the people, and they agreed to limit debate by a two-thirds vote, treating the veto of a minority the same as a veto by the President.

All along, however, Senators remembered what a senate was for, why it had been created in the first place to protect the minority, to ensure deliberation, to make it impossible to crush dissent under the steamroller of democratic majority rule.

Now there is a move to make the Senate into a kind of slower House of Representatives. The Senators who want to change the rules to make it possible to cut off debate with only a three-fifths vote say this will make it harder for a minority to obstruct progressive legislation. And so it will.

The majoritarians say the filibuster is anti-democratic. They are absolutely right, if a democracy is the absolute rule of the majority. And the majoritarians say they will let the majority talk for weeks under the new rules, on the majority's kind of sufferance, as if talking—and not checking majority power—were the central issue.

Helping to crash through the resistance to this radical change in character of the Senate is its new presiding officer, Vice President Rockefeller. He ruled in favor of the anti-dissenters at the start, which was not unprecedented; but then he went on to refuse to recognize Senators who wanted to oppose the motion.

When Senator James Allen rose with a parliamentary inquiry, Mr. Rockefeller pretended not to hear or to see, and instead went to a vote the majority wanted. Once again, Mr. Rockefeller sees enormous mischief in delay.

With the majority steamroller piloted by Mr. Rockefeller, a member of the minority—Senator Long—senses defeat and is suggesting a milder formula for stopping dissent. He is wrong; once the gates are lowered, nothing he writes into his resolution is going to keep succeeding majorities from making it possible for a simple majority to cut off debate. And then you might as well not have a Senate at all.

Senators Mondale and Pearson, who designed this steamroller, are men with the best of intentions who want only to turn the Senate into a more active body, more capable of defying a President, more able to exert leadership. With much logic, they can point out how a minority in the Senate was able to obstruct the rights of a black minority for generations.

But they are fiddling with the foundations of a good system in order to improve the chances for this year's legislation. The automatic supporters of good-guy reformers might want to consider the day when the other side is in the saddle.

Might it not be possible, only a decade or so hence, for the political picture to change so that a revived "silent majority" is reflected by a conservative Senate and House, a conservative President, and a conservative Supreme Court?

It could happen here. And then some little group of willful men, or some willful group of little men, or some fighting band of big men, will arise in the Senate to dissent from the popular tide. Brave liberals all, they will fling their voices and their votes in the way of right-wing retrogression, perhaps led by a white-haired Fritz Mondale battling to save the victories of the seventies.

And their dissent will be choked off by a simple majority closure, their resistance flattened by the monstrous steamroller of their own invention. Poetic injustice will triumph, the temporary majority will rule, and the spirit of the United States Senate will be dead.

Mr. President, I think that the two editorials, focusing as they do on two viewpoints, pretty aptly characterize the state to which we have come at this hour, and again I would say, as I said at the beginning of my remarks, I have no illusions that the issue is in doubt. I have no doubt that the rollcall by which this issue will be finally decided can be written now by any number of observers, and they would not be off by more than one or two votes. I suspect we can take a tally sheet and check it over pretty well now.

Again I say it is too bad we come to the point where both delay for the sake of delay becomes important, and vote for the sake of vote today becomes important, because whether the vote is tonight or early after midnight or some time tomorrow or on Monday or on Tuesday, the result is not in doubt, and I think everyone who has followed this debate recognizes the truth of those words.

I think it has been a stirring debate. I think it has been a fruitful fight. I hope there has been better understanding of the issues that are involved, and I would hope that, growing out of the victory of the majority, there will come a tolerance for the minority; that in their eagerness for victory, they will not attempt to use the powers gained in this historic debate—not the compromise but the precedents that have been set—to crush a minority simply because they have the votes to do it.

I think the compromise may be heralded as an attempt to signal the desire on the part of people of good will to continue to allow the minority its voice. But something within me rebels at the idea that the minority must have its rights recognized only as a matter of sufferance and not as a matter of right within this great body.

The history of the foundation of this Republic very clearly indicates to anyone who will read it that the Founding Fathers had a very clear perception of the tyranny of history, that tyrants always seize power and destroy the freedoms of individuals. So they constructed a government that was not intended to be a model of efficiency in its operations, but to be a model only in terms of protecting the freedom of the individual citizen.

We have so concentrated in recent years on the checks and balances, as though the only checks and balances in the system were those that were built between the executive, the legislative, and the judicial branches, that we have forgotten that there were other essential checks against the abuse of authority and power in Government.

One of those checks that has been ignored to our detriment in recent years has been the growing tendency on the part of the legislative branch and the judiciary to ignore the fact that the central government, the Federal Government, exercises only those powers delegated to it, and that all other rights and powers are reserved to the States and to the people. That was deliberately written into the Constitution as a protection against the abuse of authority that characterized every government they had studied in the history of mankind up to the formation of this one.

Another one of those protections that we give a great deal of lip service to is the protection of the rights of the minorities guaranteed by the first 10 amendments, the so-called Bill of Rights to the Constitution.

We are inclined to look at that today with selective acuity. We see some of those rights very clearly, and the press is very jealous of first amendment rights, but somehow the second amendment with the right to keep and bear arms is a less sacred right, a less important guarantee of the rights of individuals under the Constitution.

But another one of those guarantees against the abuse of power in an all-powerful central government was the compromise which guaranteed to the small States an equal representation in this body and, as was pointed out by Mr. Safire in his essay, when the concession was made it changed the character of the election to the Senate of the United States by a direct popular election within the States, and that was somewhat balanced by a two-thirds cloture majority to permit a veto by the minority upon the same terms and the same conditions as a veto by the President of the United States.

I would guess that many of those who would like to change the rules here to allow a three-fifths vote to invoke cloture would also like to see a three-fifths vote imposed upon the overriding the President's veto because what they are really saying is they do not like to see the minorities exercise their rights unless they are minorities which they favor, and then by sufferance they will protect those rights.

So, Mr. President, without any illusions that I have said will change the outcome of the vote, and without any illusions as to what that outcome will be, I wish to rise in strong dissent to the course that has been charted for us on this measure, a measure which I believe diminishes the stature of this body, a measure, which in the words of the distinguished majority whip, the Senator from West Virginia, when we were talking about the course of action that will be taken that would impose a majority cloture, would destroy the unique character of this body.

There are those who have remarked that if the German Parliament had had a Senate, with its rules, in the late 1920's and the early 1930's, Hitler would never have gotten the power which he was able to get through the parliamentary procedures of that body.

I do not charge any Member of this body sitting here today, voting upon these matters, with desiring that a dictatorship emerge in this country. But they are setting the conditions under which it is easier for that kind of a popu-

lar figure to emerge in this land. The conditions in this country are ripe for the emergence of a demagog, a demagog to lead the people out of their frustrations and out of their anxieties, and the direction that we are taking on this reduces the opportunity for this body to stand as a stalwart blockade to the attempt for any acquisition of power no matter how popular it might seem at the moment.

The rights and freedoms of the people of this country are threatened to some degree by the action which we are taking.

Mr. President, I reserve the remainder of my time.

AMENDMENT NO. 42

Mr. ALLEN. Mr. President, although it is obvious a quorum is not here, I shall not put in a quorum call, but I call up amendment No. 42.

The PRESIDING OFFICER (Mr. BURDICK). The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Alabama proposes amendment No. 42.

The amendment is as follows:

Proposed to be offered by Mr. ALLEN to S. Res. 4 as amended by ROBERT C. BYRD substitute.

Amend S. Res. 4 as amended by BYRD substitute in following manner: On page 2 between lines 4 and 5 add the following: "To proceed to the consideration of any other bill, resolution, or other measure on the calendar.'."

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

Mr. ALLEN. I call for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

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.

Mr. ALLEN. I object.

The PRESIDING OFFICER (Mr. BURDICK). Objection is heard.

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.

Mr. ALLEN. I object.

The PRESIDING OFFICER. Objection is heard.

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.

Mr. ALLEN. I object.

The PRESIDING OFFICER. Objection is heard.

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.

Mr. ALLEN. I object.

The PRESIDING OFFICER. Objection is heard.

The call will continue.

The second assistant legislative clerk resumed the call of the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 21 Leg.]

Abourezk	Gravel	Moss
Allen	Hansen	Muskie
Baker	Hart, Gary W.	Nelson
Bartlett	Hart, Philip A.	Nunn
Bayh	Hartke	Packwood
Beall	Haskell	Pearson
Bellmon	Hatfield	Pell
Bentsen	Hathaway	Percy
Biden	Helms	Proxmire
Brock	Hollings	Randolph
Brooke	Hruska	Ribicoff
Buckley	Huddleston	Roth
Burdick	Inouye	Scott, Hugh
Byrd, Harry F., Jr.	Jackson	Scott, William L.
Byrd, Robert C.	Javits	Sparkman
Cannon	Johnston	Stafford
Case	Kennedy	Stevens
Chiles	Laxalt	Stevenson
Church	Leahy	Stone
Clark	Long	Symington
Cranston	Magnuson	Talmadge
Culver	Mansfield	Thurmond
Dole	Mathias	Tower
Domenici	McClure	Tunney
Fong	McGee	Weicker
Ford	McGovern	Williams
Garn	McIntyre	Young
Glenn	Metcalf	
	Mondale	

The PRESIDING OFFICER. A quorum is present. The question is on the motion to table. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from New Mexico (Mr. MONTOYA), the Senator from North Carolina (Mr. MORGAN), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Rhode Island (Mr. PASTORE), would each vote "yea."

Mr. HUGH SCOTT. I announce that the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. FANNIN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), and the Senator from Pennsylvania (Mr. SCHWEIKER), are necessarily absent.

I further announce that the Senator from Ohio (Mr. TAFT), is absent due to illness.

I further announce that, if present and voting, the Senator from Ohio (Mr. TAFT), would vote "nay."

The result was announced—yeas 75, nays 9, as follows:

[Rollcall Vote No. 54 Leg.]

YEAS—75

Abourezk	Bellmon	Brooke
Bartlett	Bentsen	Buckley
Bayh	Biden	Burdick
Beall	Brock	Byrd, Robert C.
Cannon	Hruska	Nelson
Case	Huddleston	Nunn
Chiles	Inouye	Packwood
Church	Jackson	Pearson
Clark	Javits	Pell
Cranston	Johnston	Percy
Culver	Kennedy	Proxmire
Dole	Laxalt	Randolph
Domenici	Leahy	Ribicoff
Fong	Long	Roth
Ford	Magnuson	Scott, Hugh
Garn	Mansfield	Stafford
Glenn	Mathias	Stevens
Gravel	McClure	Stevenson
Hart, Gary W.	McGee	Stone
Hart, Philip A.	McGovern	Symington
Hartke	McIntyre	Tower
Haskell	Metcalf	Tunney
Hatfield	Mondale	Weicker
Hathaway	Moss	Williams
Hollings	Muskie	Young

NAYS—9

Allen	Hansen	Sparkman
Baker	Helms	Talmadge
Byrd, Harry F., Jr.	Scott, William L.	Thurmond

NOT VOTING—15

Bumpers	Goldwater	Morgan
Curtis	Griffin	Pastore
Eagleton	Humphrey	Schweiker
Eastland	McClellan	Stennis
Fannin	Montoya	Taft

So the motion to lay on the table Mr. ALLEN's amendment was agreed to.

The PRESIDING OFFICER (Mr. HASKELL). The question is on agreeing to Senate Resolution 4, as amended.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair.

Mr. President, momentarily, I shall call up—but I do not do so now—my amendment No. 29, and thereafter my amendments No. 27, 28, and 30.

Preliminary to that, the amendments that I am offering would amend those portions of the pending resolution——

Mr. ALLEN. Let us have order in the Senate, please, Mr. President. Will Senators please take their seats?

The PRESIDING OFFICER. The Senate will be in order. Senators will please take their seats.

The Senator may proceed.

Mr. HELMS. I thank the Chair.

As I was saying, Mr. President, the amendments I am offering would amend those portions of the pending resolution pertaining to the use of allowable time for debate following the invocation of cloture.

As the resolution reads at present, after cloture is invoked, each Senator may speak 1 hour. This amendment would simply allow Senators to donate or give their 1 hour or any part of it to another Senator. The total allowable time for debate would not be increased. It would still be 100 hours at a maximum. Therefore, if a Senator wished to speak for 2 or more hours, he would need 2 or more Senators each to give him a part of or all of their hours, as the case may require.

Of course, once a Senator had given away his hour, he would not be permitted to speak on the matter subject to cloture. However, since the provision in question refers to a Senator's "time or part thereof," it is obviously intended that a Senator may give away any portion of his 1 hour to one of his colleagues, and retain the balance for himself. Or, if he chooses, a Senator may give various portions of his time to several different colleagues,

provided the total time so given does not exceed 1 hour.

In this connection, it is important to note that the amendments provide that a Senator may "grant, or yield," his time to his colleagues. Normally, of course, we think of Senators "yielding" time. However, I added the word "grant," because it is the express intention that this language be so construed that at any time following the invocation of cloture, any number of Senators may simply state for the record that they are "granting," or that they are "yielding for the balance of the period that cloture is invoked" under that particular cloture petition, their time, or any part of it, to a specified Senator or specified Senators. The intention is that, then, whenever the Senator who received the "grant" of time wishes to use it—consistent with other provisions of the rules, of course—he may do so without the necessity of the donor Senator being physically present on the Senate floor to formally "yield time" in the traditional, customary manner.

Mr. President, I ask that the Senate be in order.

The PRESIDING OFFICER. The Senate will be in order.

Mr. HELMS. I thank the Chair.

Of course, the purpose of this "grant of time" as opposed to the customary "yielding of time" is obvious. It is to provide the most efficient and expeditious method for the conveyance of speaking time on the Senate floor under this particular provision. Construing the word "grant" in this manner will render it unnecessary for Senators to be on the Senate floor or to run down to the Senate floor simply for the purpose of "yielding." They may "grant" their time whenever they choose by stating for the record that they are so doing, and the clerk shall then credit the donee Senator with the amount of additional time so "granted."

Additionally, in the application of the provision contained in the pending amendments, it is the intention that a Senator receiving a "grant of time" as aforementioned may reconvey the time so granted to any of his colleagues, including the original donor. That is to say, a Senator may "grant" time to another Senator, and the second Senator, if he chooses, may "grant" the time that he received from the first Senator to a third Senator, and so on. If the second Senator chooses, he may "grant" the time back to the Senator who "granted" it to him. It is the intention that such a subsequent conveyance of time may be accomplished in the manner aforementioned for an original "grant of time."

Mr. CHILES. Will the Senator yield?

Mr. HELMS. I am glad to yield.

Mr. CHILES. I lost him between the second grant of time and the third grant of time.

Mr. HELMS. I am simply saying that each Senator will have an hour, as he does now, and that he may yield or grant that time to another Senator or Senators, and that they, in turn, may grant or yield it, even back to him, if the situation should so develop.

Mr. CHILES. Either the grantor or the grantee could yield the time back?

Mr. HELMS. Yes. I say to the Senator that there would be no increase in time of the total of 100 hours. There would simply be more expeditious use. I feel that under the circumstances, since we obviously are going to the three-fifths, so obviously, there should be a more expeditious use of the time so as to ameliorate, to some small extent, this gag rule that is in the offing. That is the purpose of the four amendments which I propose.

I thank the Senator for his question.

Of course, this construction of the word "grant" is intended to be applied in the application of the particular provision contained in the pending amendments. In the construction of other provisions of rule XXII, or any other rule, it is expected that the traditional, customary meaning will be attached to the word "yield."

Finally, under the pending provision, it is intended that if a Senator wishing to donate time to a colleague prefers not to "grant" his time as aforementioned, but wishes to "yield" in the traditional, customary manner while physically present on the Senate floor, he has the option of doing so.

I think, Mr. President, that this is a useful and reasonable method to ease somewhat the impact of this gag rule that is now being rammed through the Senate. Of course, after I have called up the first of my four amendments, I shall urge its adoption, and in due course, the other three as well.

The distinguished assistant majority leader, my friend from West Virginia (Mr. ROBERT C. BYRD), and I discussed this and looked at the rule book earlier this afternoon. It may be implicit in the rules that a Senator cannot yield to another Senator on the second Senator's time, but I am not certain that I read the clear inference that apparently some of the precedents have in prior years indicated. In any case, my amendments would clear up that question.

Mr. President, while I am on my feet, I wish to speak most respectfully of the distinguished majority leader, the Senator from Montana (Mr. MANSFIELD) and his remarks to the Senate earlier today. he said, if I recall his words correctly, that this debate has been a civic lesson for the people of America; that he was not at all happy with that lesson. The good Senator spoke rather disparagingly of those who have done the best we could to resist this gag rule.

There is indeed a civic lesson involved in this, and I do wish that the American people understood the implications of what this Senate is doing, because it is not, Mr. President, a waste of time. It is not an exercise in futility or an exercise of frivolity, in the judgment of the Senator from North Carolina. The traditions and the precedents and the intent of the U.S. Senate are, to me, very dear, because the Founding Fathers intended this body to be perhaps the last forum on Earth where free men could have their say and where the rights of the minority would be protected against an emotional majority or even a tyrannical majority.

What has transpired on this floor really is not frivolous, in the judgment of the Senator from North Carolina, nor should it be condemned by anyone. There are those of us who feel very strongly and very sincerely that a vital principle is at stake, a principle that should not be surrendered or discarded. Principles are discarded, Mr. President, principles are abandoned, Mr. President, so easily these days and, in the judgment of the Senator from North Carolina, that is one of the causes of the travail of our country in our time.

It used to be, Mr. President, that personal responsibility in America was a requirement for a man's honor. I think we have developed poor attitudes, encouraged by legislation that has flowed through the Senate—even with the two-thirds rule in effect—without, in my judgment, enough consideration. As a result too many Americans are not really concerned about their own personal responsibilities.

Be that as it may, Mr. President, the fight that has been waged in this matter has not been a frivolous one.

There is indeed, as the distinguished Senator from Montana said earlier today, a civics lesson of which the American people ought to be aware, but it is not quite the kind of civics lesson that he had in mind. It is not a civics lesson. I would say to my dear friend, that the minority in this case has been irresponsible. Rather it is an instance in which the Senator from Alabama (Mr. ALLEN) has stood steadfast on principle, against insurmountable odds and in the face of certain defeat. I have been proud to stand with him.

I have no criticism of the leadership on either side, but it is a fact that the leadership on both sides of the aisle has been active in support of this gag rule. That, plus the rulings of the Vice President, including his refusal to recognize Senators seeking recognition, deprived the minority of any real hope of exercising the rights of the minority.

So, I do agree that there is a vital civics lesson for the people of America in this matter, and I do wish that the news media of this country could convey the importance of what is happening here. But I suppose that is too much to ask.

AMENDMENT NO. 29

In any case, Mr. President, I now call up my amendment No. 29, I move its approval, and I ask for the yeas and nays.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 29.

Mr. HELMS' amendment (No. 29) is as follows:

On page 3, line 6, in paragraph 2 following the phrase "Thereafter no Senator shall be entitled to speak in all more than one hour on a measure, motion, or matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same," and before the word "and", insert the following: "unless another Senator shall have granted, or yielded, his time or part thereof to such Senator,".

In paragraph 3 following the phrase "Thereafter no Senator shall be entitled to

speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same," and before the word "and" insert the following: "unless another Senator shall have granted, or yielded, his time or part thereof to such Senator,".

Mr. ROBERT C. BYRD. Mr. President, I make a point of order against the amendment. An amendment consisting of two provisions amending a bill or resolution at different points is in fact two amendments, and cannot be offered together if a question is raised, except by unanimous consent. I make the point of order that the amendment is not in order.

The PRESIDING OFFICER (Mr. HASKELL). The point of order is well taken.

Mr. HELMS. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. HELMS. In the light of the Chair's ruling, can the amendment be divided?

Mr. ROBERT C. BYRD. Mr. President, the amendment cannot be modified because the Senator can only call up those amendments that were presented and read prior to the cloture vote. Modification now would require unanimous consent. The amendment must be before the Senate before a division could possibly be made.

Mr. HELMS. The Senator from North Carolina understands that, and accepts the Chair's ruling.

AMENDMENT NO. 27

I call up amendment No. 27.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 27.

Mr. HELMS' amendment (No. 27) is as follows:

On page 2, line 10 in paragraph 2, following the phrase "Notwithstanding the provisions of rule III or rule VI or any other rule of the Senate, at any time a motion signed by" and before the word "Senators" strike out the word "sixteen" and insert in lieu thereof the word "twenty-five".

On page 3, line 19, in paragraph 3, following the phrase "Notwithstanding the provisions of rule III or rule VI or any other rule of the Senate, at any time a motion signed by" and before the word "Senators" strike out the word "sixteen" and insert in lieu thereof the word "twenty-five".

Mr. ROBERT C. BYRD. Mr. President, I make the same point of order. The amendment is directed at two different portions of the resolution.

The PRESIDING OFFICER. The point of order is sustained.

Mr. HELMS. Mr. President, I appeal the Chair's ruling.

Mr. ROBERT C. BYRD. Does the Senator appeal?

Mr. HELMS. Yes.

Mr. ROBERT C. BYRD. Mr. President, I move that the appeal be laid on the table.

Mr. HELMS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll, and the following Senators answered to their names:

[Quorum No. 22 Leg.]

Abourezk	Gravel	Mondale
Allen	Griffin	Moss
Baker	Hansen	Muskie
Bartlett	Hart, Gary W.	Nelson
Bayh	Hart, Philip A.	Nunn
Beall	Hartke	Packwood
Bellmon	Haskell	Pearson
Bentsen	Hatfield	Pell
Biden	Hathaway	Percy
Brock	Helms	Proxmire
Brooke	Hollings	Randolph
Buckley	Hruska	Ribicoff
Burdick	Huddleston	Roth
Byrd, Harry F., Jr.	Inouye	Scott, Hugh
Byrd, Robert C.	Jackson	Scott, William L.
Cannon	Javits	Sparkman
Case	Johnston	Stafford
Chiles	Kennedy	Stevens
Church	Laxalt	Stevenson
Clark	Leahy	Stone
Cranston	Long	Symington
Culver	Magnuson	Talmadge
Dole	Mansfield	Thurmond
Domenici	Mathias	Tower
Fong	McClure	Tunney
Ford	McGee	Weicker
Garn	McGovern	Williams
Glenn	McIntyre	Young
	Metcalf	

The PRESIDING OFFICER (Mr. INOUYE). A quorum is present.

Mr. HELMS. Mr. President, I ask unanimous consent that I be permitted to withdraw the request for the yeas and nays.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. HELMS. The Chair will put the question.

The PRESIDING OFFICER. The question is on the amendment.

Mr. ROBERT C. BYRD. No, the question is on the motion to table the appeal.

The PRESIDING OFFICER. The question is on the motion to table the appeal of Mr. HELMS. [Putting the question.]

The motion was agreed to.

Mr. HELMS. Mr. President, I reserve the remainder of my time.

Mr. ALLEN addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. I was not seeking recognition.

Mr. ALLEN. It is interesting that the Senator is recognized while not seeking recognition.

Mr. ROBERT C. BYRD. I was standing, and that is why the Chair thought I was seeking recognition. I do not happen to be one of those Senators who addresses the Chair while sitting.

AMENDMENT NO. 33

Mr. ALLEN. I call up amendment No. 33.

The assistant legislative clerk read as follows:

The Senator from Alabama proposes Amendment No. 33.

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

Mr. ALLEN. Let the amendment be stated. Is that not customary that an amendment must be stated?

Mr. ROBERT C. BYRD. I thought the clerk had stated it.

Mr. ALLEN. The clerk had not stated the amendment.

Mr. ROBERT C. BYRD. I beg the Senator's pardon.

The assistant legislative clerk read as follows:

At the end add the following new section:

"SEC. 5. This resolution shall become effective at the end of the beginning of the Ninety-fifth Congress.".

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

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment. [Putting the question].

Mr. ALLEN. I call for a division.

The PRESIDING OFFICER. A division is requested. Senators in favor of the motion to lay on the table will rise and stand until counted. [After a pause.] Those opposed will rise and stand until counted.

On a division the motion to lay on the table was agreed to.

AMENDMENT NO. 34

Mr. ALLEN. I call up amendment No. 34.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

At the end add the following new section:

"SEC. 5. This resolution shall become effective at the beginning of the end of the Ninety-fifth Congress.".

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

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table. [Putting the question.]

The motion was agreed to.

AMENDMENT NO. 49

Mr. ALLEN. I call up amendment No. 49.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

On page 3, line 6, between the words "thereafter" and "no" substitute the words "unless time is yielded to him by another Senator".

Mr. ROBERT C. BYRD. Mr. President, this amendment allows time to be yielded by one Senator to another Senator without unanimous consent on a measure after cloture has been invoked. I move to table the amendment.

The PRESIDING OFFICER. The question in on agreeing to the motion to table. [Putting the question.]

The motion to lay on the table was agreed to.

AMENDMENT NO. 35

Mr. ALLEN. I call up amendment—was that or 49 or 35, which one was tabled?

Mr. ROBERT C. BYRD. Forty-nine.

Mr. ALLEN. I call up amendment No. 35.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

On page 4 strike line 9 and substitute the following: "by two-thirds of the Senators duly chosen and sworn, then said".

Mr. ROBERT C. BYRD. Mr. President, this amendment would require a constitutional two-thirds to invoke cloture, which would mean that we would go back to the cloture rule of 1959 and prior thereto. I move that the amendment be tabled.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table. [Putting the question.]

The motion was agreed to.

AMENDMENT NO. 37

Mr. ALLEN. I call up Amendment No. 37.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

At the end of page 4 add the following: "The one hour period prior to the establishment of a quorum prior to the cloture vote shall be equally divided between the proponents and opponents of the cloture petition for the purpose of debate on the cloture issue.".

Mr. ROBERT C. BYRD. Mr. President, as a general rule, this is done by unanimous consent. If it were not done morning business normally would occur under rule VII, and the amendment, if adopted, would have the effect of precluding routine morning business, during the hour before the cloture vote. I, therefore, move to table the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table. (Putting the question.)

The motion was agreed to.

AMENDMENT NO. 38

Mr. ALLEN. Call up amendment No. 38.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

At the end add the following new section: "SEC. 5. The rules of the Senate may be amended only by a two-thirds vote of Senators present and voting.".

Mr. ROBERT C. BYRD. Mr. President, this amendment has nothing to do with the closing of debate. It increases the number required to change the rules. The rules can now be amended by a majority of Senators present and voting, and this amendment would require two-thirds of those Senators present and voting to amend the rules.

I move to table the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table. [Putting the question.]

The motion was agreed to.

AMENDMENT NO. 39

Mr. ALLEN. Call up amendment No. 39.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

On line 17 page 2 strike word "calendar" and substitute word "legislative".

Mr. ROBERT C. BYRD. Mr. President, the effect of this amendment, if it were to be adopted, would be to force adjournment before a vote on cloture. I think that the leadership might from time to time feel it necessary to recess the Senate rather than to adjourn before the vote on cloture, and if this amendment were to be adopted, of course, it would take that choice away from the leadership. I, therefore, move to table the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table. [Putting the question.]

The motion was agreed to.

AMENDMENT NO. 36

Mr. ALLEN. Call up amendment No. 36.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

On page 3 strike all of line 1 and substitute the following: "by two-thirds of the Senators present and voting, then".

Mr. ROBERT C. BYRD. Mr. President, the effect of this amendment, if it were to be adopted, would be to keep the present requirement of two-thirds present and voting to invoke cloture. I, therefore, move to table the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table. [Putting the question.]

The motion was agreed to.

AMENDMENT NO. 44

Mr. ALLEN. Call up amendment No. 44.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

At the end add the following new section: "SEC. . Debate on motions, resolutions, bills, or other measures having any reference to an amendment of the Senate rules shall be governed by and limited only by the Senate rules whether such bill, resolution, motion, or other measure is offered at the beginning of a Congress or at any other time.".

Mr. ROBERT C. BYRD. Mr. President, this amendment would simply be excess verbiage because it adds nothing to the present rules. I call attention to paragraph 2 of rule XXXII of the present rules:

The rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules.

I move to table the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table. (Putting the question.)

The motion was agreed to.

AMENDMENT NO. 40

Mr. ALLEN called up amendment No. 40.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

On page 3 strike all of line 1 and substitute the following: "by two-thirds of the Senators duly chosen and sworn, then".

Mr. ROBERT C. BYRD. Mr. President——

Mr. ALLEN. Mr. President, I move that the amendment be laid on the table to save the time.

Mr. ROBERT C. BYRD. Mr. President, I have the floor. I may not wish to table the amendment.

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. ALLEN. I withdraw the amendment.

AMENDMENT NO. 36

Mr. ALLEN. I call up amendment No. 36.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from Alabama proposes—

The PRESIDING OFFICER. Amendment No. 36 has been tabled.

AMENDMENT NO. 37

Mr. ALLEN. Well, amendment No. 37 then, I got that in the wrong stack, apparently.

The PRESIDING OFFICER. The amendment will be stated.

That has been tabled also.

Mr. ALLEN. What did the Chair say?

The PRESIDING OFFICER. We have a whole pile of amendments that have been tabled and amendment No. 37 is in the pile of amendments.

AMENDMENT NO. 41

Mr. ALLEN. Well, I ask the clerk to call up the next amendment in number of the Senator from Alabama.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alabama proposes amendment No. 41.

The amendment is as follows:

Proposed to be offered by Mr. ALLEN to S. Res. 4 as amended by ROBERT C. BYRD substitute.

Amend S. Res. 4 as amended by BYRD substitute in following manner:

On page 2, line 7, strike all after semicolon following word "arranged" and strike all of lines 7 and 8.

Strike semicolon following word "arranged" and substitute therefor a period.

The PRESIDING OFFICER. The Senator from West Virginia.

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

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion to lay on the table was agreed to.

AMENDMENT NO. 43

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. I ask the next amendment be called up.

The PRESIDING OFFICER. Amendment No. 43.

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alabama proposes amendment No. 43.

The amendment is as follows:

Proposed to be offered by Mr. ALLEN to S. Res. 4 as amended by ROBERT C. BYRD substitute.

Amend S. Res. 4 as amended by BYRD sub-

stitute in following manner: At the end add the following new section:

"SEC. . Motions, resolutions, bills, or other measures having any reference to an amendment of the Senate rules offered or presented at the beginning of a Congress or at any other time shall be governed by the debate limitations provided for in this resolution in like manner as any other bill, resolution, motion, or other measure.".

Mr. ROBERT C. BYRD. Mr. President, I move the amendment be laid on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Alabama.

AMENDMENT NO. 46

Mr. ALLEN. I call up the next numbered amendment.

Mr. ROBERT C. BYRD. Mr. President, I wish the Senator would call the number of his amendment. It would assist other Senators in locating the amendment.

The PRESIDING OFFICER. The amendment number 46.

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alabama proposes amendment No. 46.

The amendment is as follows:

Proposed to be offered by Mr. ALLEN to S. Res. 4 as amended by ROBERT C. BYRD substitute.

Amend S. Res. 4 as amended by BYRD substitute in following manner: On page 3 lines 11 through 14 strike the words "Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time.".

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, this amendment would allow any amendment to be presented after cloture had been invoked—even though such amendment had not been presented and read prior to the vote on cloture.

I move to table the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Alabama.

AMENDMENT NO. 47

Mr. ALLEN. I call up the next numbered amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alabama proposes amendment No. 47.

The amendment is as follows:

Proposed to be offered by Mr. ALLEN to S. Res. 4 as amended by Robert C. Byrd substitute.

Amend S. Res. 4 as amended by Byrd substitute in following manner: On page 3 between lines 18 and 19 add the following: "The one hour period prior to the establishment of a quorum prior to the cloture vote shall be equally divided between the proponents and opponents of the cloture petition for the purpose of debate on the cloture issue.".

Mr. ROBERT C. BYRD. Mr. President, I thought we had already acted on this amendment.

Mr. ALLEN. It is probably the same proposition, stated in different words.

Mr. ROBERT C. BYRD. Then I move to table the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Alabama.

AMENDMENT NO. 48

Mr. ALLEN. I call up amendment No. 48.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alabama proposes amendment No. 48.

The amendment is as follows:

Proposed to be offered by Mr. ALLEN to S. Res. 4 as amended by Robert C. Byrd substitute.

Amend S. Res. 4 as amended by Byrd substitute in following manner: On page 4, line 13, between the words "thereafter" and "no" substitute the words "unless time is yielded to him by another Senator".

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, this would have the effect of allowing a Senator to yield time to another Senator after cloture has been invoked without getting unanimous consent to do so.

I move to table the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion to lay on the table was agreed to.

AMENDMENT NO. 50

Mr. ALLEN. I call up amendment No. 50.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alabama proposes amendment No. 50.

The amendment is as follows:

Proposed to be offered by Mr. ALLEN to S. Res. 4 as amended by ROBERT C. BYRD substitute.

Amend S. Res. 4 as amended by BYRD substitute in following manner: At the end add the following new section:

"SEC. . Other than by unanimous consent the method of limiting debate provided for herein shall be the exclusive method of limiting debate on a measure, bill, resolution, or motion, and this rule shall apply whether the measure, bill, resolution, or motion concern an amendment of the rules and whether it is offered during the beginning of a Congress or at any other time.".

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, this is another of those amendments which would be just excess baggage in view of the fact that paragraph 2 of rule XXXII of the Standing Rules of the Senate accomplishes the same objective insofar as it can be accomplished.

I move that the amendment be tabled.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Alabama.

AMENDMENT NO. 51

Mr. ALLEN. I call up amendment No. 51.

The PRESIDING OFFICER. The amendment will be stated. Amendment No. 51 has been tabled. Amendment No. 54 is the next.

Mr. ALLEN. Has No. 52 been acted upon in a deliberative fashion?

The PRESIDING OFFICER. Amendment No. 52 is the amendment submitted by Senator ROBERT C. BYRD.

Mr. ROBERT C. BYRD. That is my amendment.

Mr. ALLEN. Very well.

AMENDMENT NO. 53

Has No. 53 been acted upon?

The PRESIDING OFFICER. Yes; No. 53 has been withdrawn.

Mr. ALLEN. Well, I ask it be called up again.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alabama proposes amendment No. 53.

The amendment is as follows:

Proposed by Mr. ALLEN to S. Res. 4 (as amended), a resolution amending rule XXII of the Standing Rules of the Senate with respect to the limitation of debate, viz: At the end add the following new section:

SEC. . Motions, resolutions, bills, or other measures having any reference to an amendment of the Senate rules offered or presented at the beginning of a Congress or at any other time shall be governed by the debate limitations provided for in this resolution in like manner as any other bill, resolution, motion, or other measure, and the method of limiting debate provided in this resolution shall be the exclusive method, other than by unanimous consent, of limiting debate on any such motions, resolutions, bills, or other measures having any reference to an amendment of the Senate rules irrespective of when offered.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President this is the same amendment, but in a different form, to which I have previously alluded as being excess baggage and one which is better taken care of by paragraph 2 of rule XXXII of the Standing Rules of the Senate.

I move to table the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion to lay on the table was agreed to.

AMENDMENT NO. 54

Mr. ALLEN. Does the Senator from Alabama have other amendments at the desk?

The PRESIDING OFFICER. Amendment No. 54.

Mr. ALLEN. I ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alabama proposes amendment No. 54.

The amendment is as follows:

Proposed to be offered by Mr. ALLEN to S. Res. 4 as amended by ROBERT C. BYRD substitute.

Amend S. Res. 4 as amended by BYRD substitute in following manner:

On page 3, line 7, strike the words "one hour" and substitute the words "two hours."

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, this would have the effect of allowing 200 hours for debate, rather than a maximum of 100 hours for debate, on any measure after cloture has been invoked.

I, therefore, move to table the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Mr. President, how much time remains to the Senator from Alabama?

The PRESIDING OFFICER. The Senator from Alabama has 53 minutes remaining.

Mr. ALLEN. I thank the Chair.

I yield myself such time as I may use.

Mr. President, there are three reasons why it was necessary to continue the discussion on this issue after the Senate voted overwhelmingly to invoke cloture.

The first is that there were a number of basic changes proposed in the amendments that have been given deliberative consideration here in the Senate in the last few minutes.

The Senator from Alabama and the other Senators wanted to have some opportunity to discuss the amendments and to have them acted upon on their merits. But on yesterday a promise was exacted between some of the Senators on the side of the gag rule that there would be no amendments agreed to with respect to Senate Resolution 4, as amended by the Byrd substitute. So there was little opportunity to have serious, careful, and deliberate consideration given to any amendments. But the case had to be made for the substantive amendments that were represented in the group that have now been turned down by the Senate. So this consideration should have been given to this amendments.

The second reason that the debate had to continue was that in the judgment of the Senator from Alabama, and a number of other Senators, there could have been no compromise with those who flouted the Senate rules, who came into the Senate with a method providing for a majority cloture on the issue of changing the Senate rules.

Since that procedure was outside the Senate rules, it did not seem appropriate to the Senator from Alabama to enter into any compromise with Senators proceeding outside of the rules. To do so would have given the stamp of approval or the stamp of legitimacy to their actions in proceeding through a backdoor approach to the rules and not through the Senate rules themselves.

Of course, the cloture proceedings, both on the motion to proceed to the consideration of Senate Resolution 4 and the cloture proceeding with respect to the resolution, itself, was nothing more than a sham to deliver up to the gag rule Senators a cloture as a fait accompli. Cloture had to be presented on a silver platter or else the implied threat was that we would go back to a majority cloture which had been established here in the Senate through the Vice President's ruling. There could have been no compromise on this principle, the principle of requiring that the Senate rules be followed. The discussion had to continue until such time as all further recourse available to free debate Senators had been exhausted. That is the position we have come to at this time.

Then, too, Mr. President. I feel that it was necessary that the debate be continued after the invocation of cloture because it was necessary for us to serve notice on the gag rule Senators who might, 2 years from now, see how easy it was to ram a change in the Senate rules through the Senate and they might come back in an effort to amend the rules again.

So, Mr. President, the towel had been thrown in immediately after cloture has been invoked. At the time the distinguished majority leader (Mr. MANSFIELD) took the floor and pointed out the top-heavy vote in favor of cloture and cautioned Members of the Senate to proceed with dispatch in disposing of this matter.

Mr. President, if the idea is prevalent that Members of the Senate will lie down, roll over and play dead to this type of action—unauthorized and not countenanced by the rules—then you can certainly look for that effort to be made.

The distinguished majority leader, whom I admire very much, a man of great character, dedication, and sincerity, spoke of Senators who had referred to the actions here in the Senate as being the actions of an arrogant majority, knew that the Senator from Alabama has used that very same phrase with respect to those who would move outside of the Senate rules and ram through this Senate something that is not authorized by the rules.

The Senator from Alabama saved a copy of the speech of the distinguished majority leader made on February 20 when he was speaking of the action of the Senators who were seeking to ram through majority cloture.

I concede, of course, that, for the time being, this is a constitutional three-fifths requirement on invoking cloture. But it does not obscure the fact that any time they want to come in and seek to change the rules they can do so by offering a resolution, a motion to proceed, a further motion to cut off debate, to cut off amendments, to cut off motions, to have a convenient point of order made, table that point of order, have the Vice President say that that tabling put into effect the very provisions of the majority cloture motion without the motion ever being acted upon.

So any rights that the philosophical minority here in the Senate has it has at the sufferance of the gag rule Senators.

Mr. President, let us see if the opinion of the Senator from Alabama in referring to this action of those who put into effect majority cloture here in the Senate is too different from the opinion of the distinguished majority leader.

This is what he said about this effort to ram through majority cloture. Let us see if he thought they were being arrogant.

But the fact that I can and do support the content of Senate Resolution 4 does not mean that I condone or support the route taken or the methods being used to reach the objective of changing Senate rule XXII.

Mr. MANSFIELD continues:

The present motion to invoke cloture by a simple majority vote, if it succeeds, would alter the concept of the Senate so drastically that I cannot find any justification for it.

Continuing, he says:

The proponents of this motion would disregard the rules which have governed the Senate over the years simply by stating that the rules do not exist.

That sounds like arrogance to me.

This is Senator MANSFIELD talking:

The proponents of this motion would disregard the rules which have governed the Senate over the years simply by stating that the rules do not exist.

How arrogant can you get?

They insist that their position is right and any means used are therefore proper.

How arrogant can you get?

Mr. MANSFIELD says:

I cannot agree.

So the Senator from Alabama does not believe in being taken to task for referring to this action as the action of an arrogant majority, when he went even so far as the majority leader did in categorizing the action of this willful group.

Mr. President, I rather like this procedure here, following cloture. It gives a Senator an opportunity to be recognized. He has an hour's time staked out, and he can get up and ask to be recognized, with some hope of being recognized. Of course, a moment ago, the same old story occurred, however. But that was an oversight, I am sure. But the ability to get up and be recognized and have some little say about the issue involved is a rather comforting feeling.

Of course, you do not get to discuss your amendments, because they recognize somebody to table them before you have an opportunity to do that.

Another thing that the distinguished majority leader had to say about the rule of the filibuster: He said that back in the old days, it was used for one specific purpose, and I understood that to mean a filibuster against a civil rights measure. But now he says it is used for a wide range of things. Well, thank goodness it is. I hope that it is never again tarred with the image of being a device used to defeat civil rights legislation, because it is far more than that and far deeper than that, in seeking to protect a minority

viewpoint in the Senate and throughout the country. So more power to extended debate, if it opens up other fields wherein caution can be advised by Senators who can and will and do discuss issues pending before the Senate.

So, yes, it is more than that. It is more than a device to stop civil rights legislation. It is not that anymore. A wide range of usefulness is open to the right of extended debate in the U.S. Senate.

Mr. President, it seems that in a short time, this new rule will come into effect in the Senate, and I am hopeful that it will not be used to stifle free debate in the Senate. I am hopeful that it will be a useful check on excess discussion. But the two-thirds rule has not hindered legislation in recent years, with one or two possible exceptions; because in December, in a matter of 10 days' time, we invoked cloture in the Senate on a measure that had never been discussed in the Senate—the first time—and the trade bill was one of them, by a vote of 71 to 19. So the Senate can move anytime it so desires.

Mr. President, I was disappointed that my amendment No. 53 was not considered in the Senate but was tabled immediately. It has this to say:

> Motions, resolutions, bills, or other measures having any reference to an amendment of the Senate rules offered or presented at the begining of a Congress or at any other time shall be governed by the debate limitations provided for in this resolution in like manner as any other bill, resolution, motion, or other measure, and the method of limiting debate provided in this resolution shall be the exclusive method, other than by unanimous consent, of limiting debate on any such motions, resolutions, bills, or other measures having any reference to an amendment of the Senate rules irrespective of when offered.

Mr. President, we have heard a great deal about a compromise in the Senate. The Senator from Alabama did not participate in any conferences looking to a compromise, because you cannot compromise on principle, as I have pointed out. This so-called compromise carried with it the idea the precedent set by the Vice President, that you could have majority cloture at the beginning of a Congress with respect to amendment of the rules. The agreement was—as was echoed throughout the Chamber and throughout the cloakrooms—that this precedent would be reversed and that future rules changes would be governed by the rules; and they cynically put in there that two-thirds would still be the requirement for cutting off debate on a rules change, knowing full well that they would go the majority vote route by just putting in a debate-chokeoff motion, getting a point of order made to it, tabling it, and then you would have a nondebatable, nonamendable, nonreferrable measure before the Senate.

An effort was made to reconsider votes on a point of order; and when they finally got around to acting on it, it was the day after the point of order had died, so there was nothing to which to direct it.

So the precedent had not been reversed, and these Senators knew it. They knew it had not been reversed. If it had been reversed, there would not have been anything to keep them from coming in with a nondebatable motion again.

So the purpose of this amendment was merely to say that future efforts to amend the rules would be governed, insofar as debate limitations are concerned, by the Senate rules themselves. The Senate rules say that; but despite that, they moved forward with a debate limitation by majority vote, on February 20.

So the Senator from Alabama was not unrealistic enough to feel that this little amendment would prevent gag rule Senators from applying the gag rule again. But he thought it might provide just some little check, just some little ethical requirement, just some restraint on their action. When they got ready to file one of these majority vote debate choke-off motions, they would look at this part of Senate Resolution 4 or rule XXII and say, "Maybe we better not do this. Maybe this kind of binds us a little bit. The Senate voted it; maybe we ought to be governed by it."

No, they did not even want that amount of restraint. They voted it down without really knowing its provision. That is what we are faced with, Mr. President.

What I do not like is the idea that hanging over this Chamber from now on will be the sword of Damocles that might fall at any time. Any time the gag rule Senators are not satisfied with the 60-vote cloture, they can come in with their majority cloture route, as they started before. As long as the other 40 or 41, as the case might be, as long as the philosophical minority in the Senate behave themselves, as long as they do not have any input in the Senate, as long as they do not speak on measures before the Senate, as long as they do not bother to come by the Senate Chamber, as long as they confine themselves to Fourth of July speeches, and Veterans Day, to Rotary Clubs, Farm Bureau, posing on the Capitol steps, sending out seed to Minnesota—as long as they confine themselves to those activities, everything will be fine. This new rule is going to just live on and on and on.

But I tell you, the first time that they are required to seek to invoke cloture and they do not get 60 votes, we are going to see an effort to change the rules again. As long as we are good boys and do not interfere with them, as long as we let this monolithic 60 Senators run things here, in the Senate, decide what measures we are going to have, who is going to talk on them, how long he is going to talk, how many billions he is going to spend, and the others do not interfere with him, we will get along fine with the new rule XXII. But if one of those who is not one of the 60 comes in and asks to speak, why, he will get treatment about like Oliver Twist in asking for second helpings. He would not last very long here, in the Senate. But as long as we are good boys, everything will be fine. They will not make any effort to change the rules. Why should they? Everything will be going their way.

But if we are naughty boys, if we do not play their game, we can rest assured that there are going to be more changes in the Senate rules.

"Oh," they will say, "do you not remember, you agreed to reverse that decision of the Vice President?"

Well, the answer will be, "Well, let us see what the Vice President thinks about it today." And we know what he thinks about it. And we know what the gag-rule Senators will think about it, that if it is necessary to do it, they are going to do it.

That is the reason I have been against this modification of the rules, the reason I have opposed it and spoken against it at every opportunity, though not too frequently, that I was given to speak on the issues.

Mr. President, I was also interested in the fact that this measure had the approval of the Vice President and his active cooperation in ramming it through the Senate. It had the approval of an arrogant majority in the Senate. It had the approval of both minority leaders and both majority leaders. And then, finally, it had the approval of free debate Senators who felt that this was the proper course to follow, who felt, with a pistol at their head, that they had better agree to what the gag-rule Senators were offering or they might end up with less.

I find no fault with them for going off after that line of settlement. But it will not last. We would have been much better off allowing them to ram through what they intended to ram through to start with an be stuck with the sorry mess that they had made.

I appreciated the remarks of the distinguished Senator from Mississippi in answering, in graciously answering, the majority leader when the majority leader suggested that 21 Senators who voted against cloture, in effect, ought to fold their tents and get right on this issue. The distinguished Senator from Mississippi (Mr. STENNIS), who, I say, without any doubt, is the finest and greatest Member of the U.S. Senate, chided the majority leader for any such suggestion. If 21 Senators, or 1 Senator, do not have the right to express their feelings here, on the floor of the U.S. Senate, we have come to a mighty sorry pass.

Mr. President, this battle is going to be history, probably, in a matter of not too many minutes. But it is going to live on. It would not be proper for me to say that it is going to live on in infamy, as Franklin Roosevelt once said about a foreign nation's actions. But I do not believe it is going to be our proudest day.

This is the direct result not of the cloture vote—that has nothing to do with this whole issue. The cloture vote was—I would not want to use the word. It would be improper here, on the floor of the Senate, for me to say that.

But the cloture vote had to have a predetermined outcome, or things would have broken wide open here in the Senate. This is not going to be the proudest day for the gag-rule Senators, starting off as they did operating outside the rules, knowing full well that they were getting the cooperation of the Vice President, cutting off debate in advance, having the Vice President activate a motion that had not even been passed by the Senate. Then that led to the plan to run it the cloture route, inasmuch as the original effort acquired such a terrible

smell that they had to turn the management of the bill over to the leadership to handle from there on out.

And they did a good job of it. The distinguished assistant majority leader, with his great ability and expertise, has rammed the bill on through. But, Mr. President, I cannot close without commenting on the fact that when we first got started here, the leadership was against this majority cloture effort, and then when the compromise was made, they started leading the parade. And the poor Senator from Minnesota (Mr. MONDALE) and the Senator from Kansas (Mr. PEARSON) had to sink into the shadows when the leadership took the measure over to ram it through.

And it has been rammed through. Not a single amendment was considered on its merits. Not one. Not one single amendment considered on its merits. The Senator from Alabama had some 35 amendments, many of them substantive amendments. He was trying to reform rule XXII, though he was referred to in the media as an antireformist, and those who stopped the consideration of amendments, they are the reformers. That is passing strange to the Senator from Alabama.

Mr. President, how much time remains to the Senator from Alabama?

The PRESIDING OFFICER. The Senator has until 8:43 p.m.

Mr. ALLEN. I thank the Chair. I reserve the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

Two votes which have occurred this week are of significance, not simply in the history of this measure, but as a guide for the future. I believe it is important, therefore, to make a clear record of what we have done, and what we have not done.

To recapitulate:

On February 20, Senator PEARSON moved that we proceed to the consideration of Senate Resolution 4 and that a vote be taken immediately, and without further debate, on the motion to take up.

Senator MANSFIELD then raised a point of order that the Pearson motion was out of order and Senator MONDALE moved to table the point of order.

The Vice President announced that a vote by the Senate to table the point of order would be interpreted by him as an expression of the will of the Senate that Senator PEARSON's motion be adopted. The point of order was then tabled 51 to 42.

On February 26, after a series of intervening dilatory motions had been tabled, our earlier action was clarified in a series of motions wherein Senator MONDALE moved that in accordance with the precedent of February 20, we proceed to vote on the motion to take up Senate Resolution 4. Senator MANSFIELD raised a point of order to the effect that the Mondale motion was out of order in that it would preclude intervening motions. In tabling that point of order by a vote of 46 to 43, the Senate affirmed its earlier intention to preclude such motions as well as further debate on the Mondale-Pearson motion.

On March 3 and March 5, in preparation for adopting a compromise rule XXII, the Senate voted, respectively, to reconsider the tabling motion of February 26 and to affirm the point of order raised that day by Senator MANSFIELD.

The point which I believe is important for us to emphasize is that while the Senate did reconsider its earlier votes—and in so doing, gave up valuable precedents which could have been used in future efforts to amend rule XXII—we in no way diminished our rights under the Constitution. The same can be said of our adoption of a new rule XXII which provides, in part, that all future rules changes be accomplished by a two-thirds vote. Even though we now adopt this rule, we are in no way precluded, in future Congresses, from arguing that the Constitution itself precludes such a restriction. As the distinguished senior Senator from California (Mr. CRANSTON) said immediately following the vote on March 5:

> Upholding the Mansfield point of order only adds one tree to the jungle of precedents we reside in. But above and beyond that jungle stands the Constitution. And no precedent can reverse the fact that the Constitution supercedes the rules of the Senate—and that the constitutional right to make its rules cannot be challenged.

If there remains any doubt as to our right to raise the constitutional issue even though the new rule is specific on the point we can look to the history of the operation of rule XXII as amended in 1959. At that time, the Senate changed the rule so as to require a two-thirds vote of those present and voting to cut off debate—rather than a constitutional two-thirds—and we also added a new section to rule XXII, providing that "the rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules." Although I opposed the latter provision, and indeed sought to amend it I never believed even at that time that it would have any practical effect on our right to raise the constitutional argument in future Congresses. The history of our continuing efforts to change rule XXII proves that that interpretation was correct. To quote from the 1959 debate on this point:

> Mr. JAVITS. I also believe that, in all fairness, a new Congress could raise the question (of amending the rules by majority vote) anew, and seek to decide it anew, and no one could stop it. We cannot amend the Constitution. No one knows that better than we. I think this is a constitutional question.
>
> Mr. LAUSCHE. As I understand, the Senator takes the position that the language of the Constitution conferring power upon the Senate to impose restrictions upon future Senates in the establishment of its rules of proceedings is violative of the Constitution insofar as it tries to restrict future Senates in the adoption of rules.
>
> Mr. JAVITS. That is exactly my argument.
>
> Mr. LAUSCHE. Therefore, it is the opinion of the Senator from New York that to comply with that constitutional provision, all Senates in the future should be left unshackled in their power to adopt rules of procedures?
>
> Mr. JAVITS. Exactly.
>
> Mr. LAUSCHE. Because the moment this Senate attempts to impose restrictions upon future Senates, to that extent this Senate is usurping a power which resides only in the people of the United States, not in the Senators of the United States. Is that correct?
>
> Mr. JAVITS. I thoroughly agree with my colleague, except that I point out that the words should be "threatening to usurp" because under the Constitution of the United States I do not believe we can bind any future Senate.

The foregoing debate, quoted from the RECORD of January 12, 1959, clarifies our intent, confirmed by 16 years of Senate action on this matter, as to the effect of rules purporting to bind future Congresses on the right of Members to raise constitutional arguments against such restrictions. In adopting a new rule XXII today—a rule which, as I said in 1959, "threatens to usurp" the rights of future Congresses—I want to make it clear that I have the right, as I did in 1959, to argue this question on constitutional grounds in the 95th Congress.

Finally, Mr. President, I do not think we could really end this debate without a tribute to the Vice President. He is a colleague of mine from New York, a man of an enormous reputation and an enormous record, who came absolutely new to presiding over what has probably been one of the most difficult debates for the Presiding Officer that has ever taken place in this Chamber. I think his marks, though not necessarily perfect, were very high. He showed gallantry, courage, and a great conscience, and the willingness to stick his neck out, to use a common phrase, in order to serve what he considered to be the dictates of his conscience as they applied to the law and the Constitution.

Mr. President, he was, in every sense of the word——

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

Mr. JAVITS. I yield myself 2 more minutes.

He was, in every sense of the word, a real Presiding Officer of the Senate, staking his own reputation upon the decisions which he felt in good conscience, after very profound study, he had to make.

I honor him for it, and I am very pleased and I feel very honored that he is a colleague of mine, has been for many, many years. And that he has had the rare privilege, vouchsafed a few officers who have presided over the Senate, to have exercised his prerogatives in a way in which he did.

Mr. President, I yield the floor.

AMENDMENT NO. 52

Mr. ROBERT C. BYRD. Mr. President, I call up Amendment No. 52.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

On page 2, beginning on line 14, strike "except one to amend the Senate rules, it" and insert in lieu thereof "is".

On page 3, line 1, after the comma, insert the following "—except on a measure or motion to amend the Senate rules, in which case the necessary affirmative vote shall be two-thirds of the Senators present and voting—".

Beginning on page 3, line 19, strike section 3.

Renumber section 4 as section 3.

Mr. ROBERT C. BYRD. Mr. President, this is a technical amendment. It corrects a typographical error, and it also shortens and makes more concise the language of the rule. It makes no substantive change whatsoever in the substitute, and I urge its adoption.

Mr. ALLEN. Mr. President, will the Senator yield? I did not quite understand what he said. It makes no change in the Byrd substitute?

Mr. ROBERT C. BYRD. It makes no substantive change. It is a technical amendment. It shortens and makes more concise the language, and it corrects a typographical error.

The PRESIDING OFFICER. The question is on agreeing to the amendment. [Putting the question.]

The amendment was agreed to.

TRIBUTE TO SENATOR JAMES B. ALLEN OF ALABAMA

Mr. HARRY F. BYRD, JR. Mr. President, the long and difficult fight as to whether the rules of the Senate shall be changed will come to an end in a few moments. The outcome is clear. But I do wish to say a few words about a courageous Senator.

The Senator from Alabama (Mr. ALLEN) has proved himself not only a master of parliamentary procedure and tactics, but he has proved himself a dedicated, tenacious and resolute legislator.

It is never pleasant to go down in defeat.

But Senator JAMES B. ALLEN of Alabama will stand as tall in defeat as ever he could have stood in victory.

In this political era, where political leaders, including two Presidents, have boasted that in politics the name of the game is to win, the Senator from Virginia is willing to assert for the record somewhat different view.

I realize what I shall say is considered outdated, but I still believe what I was taught many years ago: that whether it be baseball or politics, the important element is not whether one wins or loses, but how one plays the game.

The Senator from Alabama has played the game fairly, forthrightly, and brilliantly. If his rights have not always been recognized, it has been through no negligence on his part. If he has been beaten down by the theory that might makes right, he can take some consolation, for that theory prevails in most parts of the world and in most lines of endeavor.

As to whether history will record that the position taken by the Senator from Alabama, and under his leadership by the Senator from Virginia, would be in the best interest of our Nation and the Senate, none can say with certainty. So I see no point in attempting to predict.

But I do want to say to a gallant leader, I have been pleased to serve under your leadership in this long and difficult fight.

I salute Senator JAMES B. ALLEN of Alabama and express the conviction that the people of his State are as proud of him in defeat as they would have been had he achieved victory.

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

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

Mr. ALLEN. I would like to express my sincere appreciation for his overgenerous praise. I will never forget it.

Mr. HANSEN. Mr. President, will the Senator yield? I would like to say very briefly that I think what has been said by the distinguished senior Senator from Virginia voices the thoughts and, indeed, the respect, admiration, and appreciation that all of us here, no matter which side we may be on, feel toward the Senator from Alabama which, I suspect, in the coming years, will be appreciated more and more by all Americans everywhere.

Mr. ROBERT C. BYRD. Mr. President, I rise to inquire as to whether or not any Senator intends to offer any further amendments or motions. Apparently not.

Mr. President, I ask for the yeas and nays on final passage of Senate Resolution 4, as amended.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, I want to take just a moment to express my appreciation to all Senators for their understanding and the patience they have demonstrated in this effort.

I want to thank those Senators on both sides of the aisle who have canceled engagements for this evening, for this afternoon, and even for today in order that they might be present and in order that the Senate might work its will on this important change in the rules. They have demonstrated their intention to stay on the floor throughout tonight and tomorrow, if necessary, to bring this matter to a final vote this weekend.

I especially want to express my commendations to Senator MONDALE, Senator CRANSTON, Senator LONG, Senator PEARSON, the majority leader, Mr. MANSFIELD, the minority leader, Mr. SCOTT, Mr. GRIFFIN, and all Senators who have worked so diligently and in such a dedicated way to support the substitute which, as has been stated repeatedly, is a fair and equitable and well-balanced solution to the question that has been before the Senate now far too long.

As always, I think the Senate has demonstrated that, while it will often debate and debate at length, in the final analysis, it will render a judgment, and in almost all cases in my 17 years here, I have believed that the final judgment of the Senate has been the right judgment, as will also prove to be the case in the decision shortly to be rendered.

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

Mr. ROBERT C. BYRD. Yes, I yield the floor.

Mr. MANSFIELD. Mr. President, the distinguished assistant majority leader has mentioned everyone but himself, and I want to take this occasion to go on record in extending my thanks to the distinguished Senator from West Virginia for the way he has conducted himself during the entire course of events leading up to what I hope will be an ultimate conclusion soon.

He, like the Senator from Alabama, is a master of the rules, and he, like the Senator from Alabama, has done his homework.

I think that we are extremely fortunate to have a man of the integrity, the ability, the dignity and the character of ROBERT BYRD of West Virginia taking the lead in this particular difficult situation, and acquitting himself with honor and intelligence all the way through.

I wish to extend to him my deep personal thanks for what he has been able to do and to accomplish in this most difficult hour.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished majority leader.

Mr. SYMINGTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. SYMINGTON. Mr. President, I would like to associate myself with the remarks of the majority leader with respect to the distinguished Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Missouri.

The PRESIDING OFFICER. The question is on agreeing to Senate Resolution 4, as amended. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

REFORM OF SENATE RULE XXII

Mr. MONDALE. Mr. President, today is an historic day in the U.S. Senate. Passage of Senate Resolution 4 represents a significant victory for those who have fought to reform the procedures of this body. Reform of Rule XXII will make the Senate more efficient, more democratic, and more effectual.

Senate Resolution 4 is the first reform in 16 years—and I believe, the most important reform in 186 years—of a rule which has frequently paralyzed this body and diminished its credibility with the citizens of America.

But te real importance of today's action goes beyond procedural reform and beyond the confines of the U.S. Senate. In a very real sense, today's action is a victory for all America.

With a reformed rule XXII, the Senate will be able to deal with the pressing problems of America of 1975. With a reformed rule XXII, the Senate will be able to legislate in the fields of tax reform, energy policy, economics, campaign procedures, consumer needs, and other critical matters.

With a reformed rule XXII, the Senate will be able to act, even when a small, intransigent minority seeks to frustrate action. With a reformed rule XXII, the will of this body and the will of the American people will be translated into legislative action.

Instead of the "filibuster Congress," the 94th Congress will be known as the "action Congress."

Mr. President, I want to congratulate all of the Senators who have worked so hard to achieve the passage of Senate Resolution 4.

It has been a particular honor for me, as chief sponsor of Senate Resolution 4, to serve with the other chief sponsor, the distinguished Senator from Kansas (Mr.

PEARSON). I congratulate the distinguished Senator on his outstanding accomplishment. His intelligence, his thoughtfulness, his understanding, and his hard work have been invaluable to the success of this effort.

Much credit and much thanks must also go to the distinguished Senator from Iowa (Mr. CLARK), the distinguished Senator from California (Mr. CRANSTON), the distinguished Senator from Maryland (Mr. MATHIAS), and the distinguished Senator from Vermont (Mr. STAFFORD). These Senators have served as coleaders of this effort. Their time, their ideas, and their energy have made today's victory possible.

I thank too all of the other cosponsors and supporters of Senate Resolution 4, many of whom have spent hour after hour on the floor of the Senate in a dedicated effort to achieve passage of Senate Resolution 4. Particular credit in this regard, and the sincere thanks of many, must go to the distinguished Senator from Vermont (Mr. LEAHY) and the distinguished Senator from Colorado (Mr. HART).

We all, of course, owe a deep debt of gratitude to those Senators who have worked for many, many years to see rule XXII reformed. I think particularly of the distinguished Senator from Michigan (Mr. HART), the distinguished Senator from New York (Mr. JAVITS), and the distinguished Senator from South Dakota (Mr. MCGOVERN), who have been fighting this battle for many years. Their commitment and resilience is admired and appreciated.

On behalf of all of the cosponsors and supporters of Senate Resolution 4, I wish to thank the joint leadership for their work on behalf of compromise and conciliation. Because of the effort of the joint leadership, we have reached a concensus on the reform of rule XXII and we have made the Senate a more viable institution as a result.

The distinguished majority leader (Mr. MANSFIELD) has once again shown himself to be an exceptional leader. He has been fair to all; he has worked toward compromise; he has held the best interest of the Senate above all else. I am proud he is my leader.

Particular thanks and a special salute must go to the distinguished assistant majority leader (Mr. BYRD). The distinguished Senator has managed the amended Senate Resolution 4 with adeptness, fairness, and distinction. His efforts on behalf of this reform, on behalf of the joint leadership, and on behalf of the entire Senate are to be admired.

Finally, the thanks and recognition of the supporters and cosponsors of Senate Resolution 4 go to the distinguished Senator from Louisiana (Mr. LONG) who played a critical role in the formulation of a concensus plan for the reform of rule XXII. Once again, the distinguished Senator has proven himself an able negotiator, an understanding craftsman, and an invaluable Member of this body.

Mr. President, someone who is not a member of this body must also be congratulated on his work during the Senate consideration of Senate Resolution 4. I speak of our distinguished Presiding Officer, the Vice President of the United States, NELSON ROCKEFELLER. Although new to the presiding function and relatively unfamiliar with Senate procedure, the distinguished Vice President performed admirably. He showed a command of Senate practice, precedent, and procedure. He showed us all his commendable ability to perform skillfully under the most difficult of circumstances. He showed unimpeachable fairness to both the proponents and opponents of Senate Resolution 4. And, above all, he showed a deep and determined respect for the U.S. Senate as an institution of our system of government.

SIGNIFICANCE OF THE REFORM OF RULE XXII

Mr. President, I am unhesitating in calling the Senate passage of Senate Resolution 4 a significant victory. It is a victory for all of us who want this body to be productive, to be responsive, and to be able to deal with the problems of America.

There has been some criticism of the form in which Senate Resolution 4 passed today. I want to take this opportunity to respond to that criticism and to prove why the Senate's action today represents a true step forward for those who have sought meaningful reform in this body.

Rule XXII now provides that debate may be limited on a pending matter by the vote of three-fifths of the constitutional membership of the Senate—60 Senators. Under the old rule XXII, it took two-thirds of those present and voting.

In the past 8 years, there has been only one successful cloture vote on which less than 60 votes was required to invoke cloture under the old rule. Removing that single exception, the average number of votes needed on successful cloture votes was 63.

In other words, the Senate has significantly reduced the burden on those seeking to invoke cloture and facilitate Senate action.

Looking at the other side of the picture, during the same period there were five unsuccessful cloture votes on which more than 60 Senators voted to invoke cloture. In one case, 66 Senators voted to invoke cloture, but cloture was not invoked under the old rule.

In each of these instances, cloture would have been invoked under the reformed rule XXII.

I ask unanimous consent that a list of these votes be printed in the RECORD at this point.

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

	Votes cast	Votes needed
Successful cloture votes since 1968: [1]		
Open housing, Mar. 4, 1968	65-32	65
Military draft, June 23, 1971	65-27	62
Military draft, Sept. 21, 1971	61-30	61
U.S.-Sovt. arms, Sept. 14, 1972	76-15	61
Eq. job. opp., Feb. 22, 1972	71-23	63
Voter regis., May 9, 1973	67-32	66
Rhod. chrome, Dec. 18, 1973	68-26	60
Leg. serv., Jan 30, 1974	68-29	65
Govt. pay, Mar. 6, 1974	67-31	66
Pub. fin., Apr. 9, 1974	64-30	63
Trade bill, Dec 13, 1974	71-19	60
School busing, Dec. 14, 1974	56-27	56
Tax reform, Dec 17, 1974	67-25	62
Social serv., Dec. 17, 1974	70-23	62
Unsuccessful cloture votes since 1968 with more than 60 votes needed:		
Voter regis., May 3, 1973	60-34	63
Rhod. chrome, Dec 13, 1973	62-33	64
Leg. serv., Dec. 13, 1973	60-36	64
Cam. fin., Apr. 4, 1974	60-36	64
CPA, Sept. 19, 1974	64-34	66

[1] Average: 63 (without Dec. 14, 1974).

Mr. MONDALE. There are, of course, many examples in recent years of cloture votes on which less than 60 votes were required to invoke cloture. But, the record will show that, on the most significant issues, more than 60 was required. Also, the absentees—and, consequently, the lowering of the cloture burden under the old rule—was often caused by the tacit acceptance of the impossibility of invoking cloture under the old rule.

The burden is lower, and the burden is different too. Instead of having to attempt to persuade a colleague to vote for cloture without knowing whether his vote will be the 60th vote, with anywhere from 55 to 67 votes needed, a proponent of cloture will be able to insure a colleague that his vote will satisfy a concrete—60 vote—burden. Absenteeism will be discouraged and positions more clearly delineated.

What will this new burden mean for the current Congress? Of course, I am forced to guess. But, Mr. President, I am confident that—with the reformed rule XXII—this Congress will be able to pass important legislation in the fields of economics, tax reform, energy policy, consumer needs, and many others of vital concern to the American people.

We will be more effective. We will be more responsive. We will be more efficient. We will be able to act.

All this will, in my opinion, be accomplished without harm to the essential nature of this body. Debate and thoughtful consideration are protected and insured. The rights of minority points of view safeguarded. And, the Senate will remain the world's greatest deliberative body.

Legislation alone will not tell the whole story of the significantce of this reform, Mr. President. The Senate will save hours and hours of precious time. And, the people of this Nation will have an increased respect for the Senate and its performance.

Mr. President, we cannot know what the future will hold. Time and experience may prove this reform insufficient. We may find that we want a formula other than that we have established today. However, Mr. President, if the past record is any indication, the step which the Senate has taken today should be a significant step forward.

THE CONSTITUTIONAL QUESTION

Mr. President, I would be remiss—as chief sponsor of Senate Resolution 4 in the 94th Congress—if I did not take a few moments today to comment on the procedural path which we have just crossed.

Many words have been spoken and many assertions have been made about the significance and precedential value

of certain actions which the Senate has taken over the past several weeks. I hope to set the record straight, before we leave this matter for the 94th Congress.

Let no one misunderstand. For the first time in American history, the President of the Senate of the 94th Congress and the membership of the Senate of the 94th Congress have both clearly, unequivocally, and unmistakenly accepted and upheld the proposition that the U.S. Senate may, at the beginning of a new Congress, establish its rules by majority vote, uninhibited by rules adopted by previous Congresses.

On Thursday, February 20, 1975, the distinguished Senator from Kansas (Mr. PEARSON), in an effort to amend old rule XXII, moved to close debate on the pending motion to consider Senate Resolution 4. That motion asserted the right of the Senate, under article I, section 5 of the Constitution, to establish its rules by majority vote.

The distinguished majority leader (Mr. MANSFIELD) raised a point of order against the motion, questioning its propriety.

The distinguished Vice President ruled—as had Vice President Nixon and Vice President HUMPHREY before him—that the Senate, if it chose to table the point of order, would have validated the Pearson motion and asserted its constitutional right to change the rules by majority vote.

The Senate, by a vote of 51 to 42, tabled the Mansfield point of order. The Senate thereby affirmed its article I, section 5 right.

After various procedural occurrences, the Senator from Minnesota (Mr. MONDALE), on Monday, February 24, 1975, again moved to close debate on the pending motion to proceed to the consideration of Senate Resolution 4. That motion, asserted the right of the majority to establish its rules at the beginning of a new Congress, uninhibited by rules adopted by previous Congresses.

Again, the distinguished majority leader (Mr. MANSFIELD) raised a point of order against the Mondale motion. Again, the Vice President confirmed the right of the Senate to table the point of order and assert its article I, section 5 right. Again, the Senate—by a vote of 48 to 40—tabled the point of order and confirmed its constitutional right. By an identical vote, it also refused to reconsider the tabling. And, by an identical vote, it sustained the ruling of the distinguished Vice President on appeal.

On yet a third occasion, on Wednesday, February 26, 1975, the Senate tabled a point of order raised by the distinguished majority leader (Mr. MANSFIELD) against the Mondale motion. For a third time, the Senate asserted its constitutional right. For a third time, the Vice President reasserted his ruling.

The record could not be clearer. The right is in the Constitution. The distinguished Vice President has acknowledged the right. The Senate has asserted the right.

Now, Mr. President, some will point to the fact that the Senate, on Monday, March 3, 1975, voted to reconsider the February 26 tabling of the third Mansfield point of order and rejected the motion to table the third Mansfield point of order and that, on Wednesday, March 5, 1975, the Senate voted to sustain the third Mansfield point of order.

I caution against giving those actions too much significance. Those actions cannot erase the two other affirmative votes on tabling during the 94th Congress. Those actions cannot erase the clear rulings of the Vice President. Those actions cannot waive, alter, or undercut the constitutional right which the majority of the Members of the Senate possess.

Moreover, Mr. President, I believe those actions must be placed in context. It must be remembered that, when the Senate voted to reconsider the tabling of the third Mansfield point of order, rejected the tabling of the third Mansfield point of order, and voted to sustain the third Mansfield point of order, the Senate of the 94th Congress was in the process of seeking compromise and achieving consensus.

Some Senators felt that these actions by the Senate were necessary in order to pass Senate Resolution 4, as modified by the point leadership's proposal. These Senators voted accordingly. The Senator from Minnesota (Mr. MONDALE) voted against these actions, while recognizing the right of any Senator to support them in the interest of compromise.

I must say, Mr. President, that I know of no Senator who had previously supported the article I, section 5 right who, by supporting the March 3 and March 5 actions, abandoned the present and future reliance upon or assertion of that right.

Many Senators acted in the interest of compromise and consensus. No Senator, to my knowledge, abandoned any right.

The distinguished Vice President is on record. The Senate of the 94th Congress is on record. The constitutional right is alive and well. And, Mr. President, the chief opponent of Senate Resolution 4, the distinguished Senator from Alabama (Mr. ALLEN) has confirmed this fact over and over again in his comments on the Senate floor over the past several days.

In this context, a word must be said about one part of Senate Resolution 4 as it passed the Senate today. As you know, Mr. President, the Senate of the 94th Congress agreed to limit debate on proposals to change the Senate rules only by the vote of two-thirds of those Senators present and voting.

That portion of the modified Senate Resolution 4 means no more than what it says. This Congress—the 94th Congress—will only invoke cloture on a rules change by the vote of two-thirds of those Senators present and voting.

The Senator from Minnesota (Mr. MONDALE)—and no other Senator I know of who has asserted the article I, section 5 right during this debate—does not, by the adoption of this rule of the 94th Congress, seek to bind the Members of future Congresses. Nor do we waive our constitutional right in future Congresses. Nor do we waive the right of Members of future Congresses. Even if we wanted to, we could not, under the U.S. Constitution, bind a future Congress or waive the right of a future majority.

The article I, section 5 right remains inviolate. No rule of the 94th Congress can limit it in future Congresses. And no private or public understanding limits Members of the 94th Congress from its use in future Congresses. All rights are reserved; all rights are preserved—as they must be under the Constitution of the United States.

Mr. President, I close with but one wish. It is my sincere and optimistic hope that the Senate's historic action today will make this body better able to serve the people of this great Nation, now and in the future.

Mr. BAYH. Mr. President, I join today with my colleagues who are voting to support the compromise agreement amending rule XXII. This compromise calls for a constitutional three-fifths of those Senators represented in this body to cut off debate on any measure pending before the Senate, and requires, in order to further change the Rules of the Senate, a two-thirds vote.

This compromise has received criticism from both ends of the spectrum. Those who oppose any and all changes of the filibuster rule argue that by agreeing to an absolute 60 to invoke cloture, we are starting down an irreversible path leading inevitably to majority cloture.

Those who represent the other extreme castigate the compromise because they see it as accommodating those who oppose reform when no accommodation was necessary. According to the New York Times, those who support the compromise "will be surrendering to the obfuscating and intimidating tactics of one man and a diehard minority."

In my opinion, Mr. President, both of these extremes represent an ignorance of basic traditions of the Senate. Many who oppose the compromise attempt to cast it as the bullet which will surely kill minority rights. I would like to point out that the distinguished Senator from Alabama has been able to occupy the floor for a majority of the time that this Senate has spent considering changes in rule XXII. He has done so without relying on the tactic of the filibuster, but by a keen and precise knowledge of the Senate rules.

Those who support the compromise do not want to see minority rights abrogated. Personally, I do not believe those rights will be diminished by its acceptance. Neither do I believe that those of us who have supported either the constitutional three-fifths or three-fifths of those present and voting would ever support a further move to majority cloture. We are not dealing with simple arithmetical reductions here, but rather with a commitment to the principle of an effective legislative body—this principle has been and will always be tempered by devotion to full and adequate debate on all sides of any issue. I do not believe that future Senates will be any less dedicated to this principle.

To those who oppose this compromise on the grounds that it is not the proposal originally sought by those of us who supported Senate Resolution 4, I would just like to point out that the Senate has been wrangling over this issue for more

than 2 months now. Rather than continue to block this Congress from at least being able to debate such vital measures as tax reform, aid to Cambodia, or the energy question, I think we have a responsibility to the American people to move forward.

Indeed, Mr. President, the time has come to bring this debate to a close. I hope that all Members of the Senate can join us in supporting the proposed compromise which will end this increasingly disruptive fight and will allow the Senate to enhance its ability to deal effectively with the pressing issues in the days ahead.

Mr. CLARK. Mr. President, this reform of the rules of the Senate has been a long time coming, and the length of that effort and the determination with which it has been made reflect its importance. In passing this compromise version of Senate Resolution 4, a better balance will be struck between Senators' right to debate and the Senate's responsibility to decide. The Senate now can take up the critical issues of economic well-being and social justice before the country with more freedom from the threat of crippling filibusters.

At this point, it is essential to review the terms of this compromise, how it came to pass, and what its implications are for this Congress and future Congresses.

The sponsors of Senate Resolution 4 attempted to amend rule XXII so that three-fifths—rather than two-thirds—of those Senators present and voting could limit debate on a question before the Senate. Since its inception in 1917, the present cloture requirement has often frustrated and befuddled the Senate and, in turn, the Nation. Legislation that had the support of a substantial majority of the Senate was delayed or destroyed. In addition, the mere threat of a filibuster often affected the Senate's schedule, especially near the session's end. In all too many instances over the years, a small number of Senators has been able to decide that the Senate will not decide important questions before it.

Ably led by the distinguished Senator from Alabama (Mr. ALLEN), the opponents of this resolution have sought for the last 6 weeks to prevent the Senate from changing the rule. But in the process, they have demonstrated vividly the very dangers of delay and obstruction which this resolution was designed to curtail.

Despite those tactics, the Senate was able to reach an initial vote on February 20 when a majority of the Senate, for the first time, asserted its right under article I, section 5, of the Constitution to establish the Senate's rules at the beginning of each Congress. But even after that dramatic expression of the Senate's will, which cleared the way for a vote on rule XXII, the Senate was frustrated. With skillful parliamentary maneuvers, privileged motions, and quorum calls, Senator ALLEN and his allies were able to prevent Senate consideration of the proposed rule change. So again, on February 24 and February 26, the Senate voted to prevent further interference with its constitutional responsibilities.

Just prior to that last vote, Senator ALLEN sought recognition from the Presiding Officer, Vice President ROCKEFELLER, for a parliamentary inquiry. Having presided over Senator ALLEN's repeated efforts at delay in preceding days, Vice President ROCKEFELLER refused recognition—a decision clearly within his prerogatives under the precedents of this Senate.

That decision generated a storm of protest. Some Senators were distressed that anyone should be denied the opportunity to address the Chair—whatever the precedents. Others, however, seemed more intent on using the occasion to make purely political attacks on the Vice President.

The Vice President's action was called "one of the most improper decisions made by the Chair" in the last 25 years. Well, Mr. President, I have served in the Senate but 2 years, and I have seen some very improper goings on here. At the height of the Watergate scandal, an obstructionist minority prevented the Senate from acting on campaign reform legislation. In the face of a grossly unfair tax system, an obstructionist minority blocked meaningful tax reforms. A small, determined group of men prevented a Senate vote on the Consumer Protection Agency bill that had been before the Congress for a decade, and on the Genocide Convention that was first submitted to the Senate in 1949.

Such actions may have been technically proper under a Senate rule adopted in 1917, but they are an affront to this country's democratic principles. These determined minorities were not trying to "permit further debate"—their views had been fully and fairly presented, not just once but many times. Their goal has and shall continue to be obstruction, plain and simple—to prevent a substantial majority of the Senate from reaching a decision when their own views could not prevail.

In the 58 years that the current rule XXII has been in effect, there have been 103 attempts to limit debate and come to a vote. Only 23 of them have been successful. No party or political philosophy has had a corner on the filibuster. It has been used by Senators from large States and small. But whether the issue has been civil rights legislation, the supersonic transport or the consumer protection bill, the filibuster has tied up the work of the Senate. At times, it has become much more than an expression of the rights of the minority to be heard—it has become an obstacle to effective government, creating a tyranny of the minority that is no better than the tyranny of the majority that rule XXII attempts to prevent.

That is why I so fervently believe that rule XXII must be changed, and why I reluctantly agreed to the joint leadership's request for a compromise. It was not necessary to compromise. The crucial votes to end debate had been won, and it was possible to move ahead to pass Senate Resolution 4 as originally introduced. But the leadership felt that an explosive situation existed in the Senate, so the proponents of a change in rule XXII have cooperated in their efforts to resolve this dispute, which reached its 50th day today.

The terms of the compromise, while they seemed to have changed periodically over the last several days, have come down to this:

That a three-fifths vote of the Senate's constitutional membership shall be required to invoke cloture on all matters other than changes in the Senate rules;

That a two-thirds vote of those present and voting shall be required to invoke cloture on rule changes; and

That the Senate reverse the precedent established last month to allow a majority to change the rules at the beginning of each Congress.

Now, this compromise has been executed, and I am confident that it will succeed when it finally is put to a vote tonight. In my judgment, the rule requiring a vote of three-fifths of the constitutional membership to end debate represents a significant improvement. It will make cloture easier to achieve—especially on the major issues before the 94th Congress.

However, the other two elements of the compromise have little meaning insofar as they attempt to restrict future efforts to amend rule XXII. No matter what rule XXII says about the cloture requirement for changing the rules—be it three-fifths or two-thirds or nine-tenths—if this struggle has demonstrated anything, it is that a majority clearly has a constitutional right to change the Senate's rules at the beginning of each Congress. And the Senate has voted to uphold that right, not once, but twice in the past several days.

It is true that the Senate reconsidered and reversed this precedent last Wednesday to comply with the terms of the leadership's compromise. But no less an authority on the rules and procedures of this Senate than the very learned Senator from Alabama (Mr. ALLEN) stated earlier this evening that we do not need precedents. As he said in debate last Wednesday—

> If they are looking for a precedent—I do not think they need it, Mr. President; it has been demonstrated—

The Senator is quite correct, Mr. President, it has been demonstrated. The authority rests with the Constitution of the United States, article I, section V, and neither rule XXII nor rule XXXII nor any other Senate rule or precedent can deny that authority.

I hope that this compromise works, Mr. President. I hope that we do not have to go through this kind of bitter, wasteful fight over the rules again. I hope that the constitutional three-fifths cloture rule established today will provide the kind of balance that is needed between debate and decision.

In the months ahead the Congress will be faced with the need to make crucial decisions on economic recovery, on tax reform, on health care, on this country's changing role in world affairs.

Almost certainly there will be determined efforts to prevent any action on these vital questions. I hope these efforts fail, Mr. President, that this rule change will allow the Senate to legislate as well as it debates.

If the new rule does fail—if we go through the next 2 years with filibuster after filibuster, with delay and obstruction and interminable debate—then, Mr. President, when the 95th Congress convenes, we will be back to change rule XXII so that it will permit the Senate to act—with the same rights under the Constitution asserted so forcefully in past weeks. We will be back, Mr. President, because nothing should stand in the way of the people's right to a Congress that will fully consider the merits of every question and then act for them, instead of just talk at them.

Mr. President, this has been a long and divisive struggle, but a struggle characterized by able and determined leadership on both sides. Senator MONDALE and Senator PEARSON, the original sponsors of Senate Resolution 4 and the leaders of this effort over the past weeks, deserve the highest praise. They knew from the beginning that it would be a difficult effort, but one that had to be made, and they both have demonstrated considerable skill and courage throughout.

Recognition also must go to Senators CRANSTON, JAVITS, MATHIAS, and STAFFORD for the many hours of hard work in support of this effort—and of course, to the leadership for its cooperation and patience.

And no one should overlook the significant contributions made by the various staff members who have toiled behind the scenes. Senator MONDALE's legislative assistant, Robert Barnett, consistently demonstrated how valuable good staff work can be. Arthur Hill with Senator PEARSON, Roy Greenaway and Jan Mueller with Senator CRANSTON, Chuck Warren and Pat Shakow with Senator JAVITS, Terry Barnett with Senator MATHIAS, and Victor Maerki with Senator STAFFORD all were of great help.

Finally, I would be remiss if I failed to mention the Senator from Alabama, who has proven once again how worthy an opponent can be. His knowledge of the rules of the Senate is clearly unsurpassed, and while I might wish that he would put that knowledge to better use on occasion, I cannot help but admire his skill and perseverance—not to mention his endurance.

Mr. President, I yield the floor.

Mr. BENTSEN. Mr. President, the Senate today has culminated its long effort to amend rule XXII. As a result of our action, cloture will be more easily invoked. The Senate will more easily have the opportunity to decide upon the merits of the truly difficult issues that come before it. But I am convinced that this welcomed change will not jeopardize the rights of a minority among us. Ample safeguards remain so that a sizable minority, however constituted, will be able to present its case fully and to express its concerns adequately.

I have supported the effort to amend rule XXII to permit cloture by three-fifths vote, as I did in 1971 during my first months in the Senate. We simply must be able to decide upon the crucial issues that face this Nation.

I want to commend the distinguished Members who throughout these long weeks have led to this effort, Senators MONDALE, PEARSON, CLARK, MATHIAS, JAVITS, and CRANSTON. Their determination, diligence, and stamina have insured that this rules change has been effectively and forcefully pressed, and I believe this body owes them its gratitude.

I am aware, however, of the intensity of the feeling on both sides of the issue. I recall, in particular, the strained atmosphere following the narrow 46 to 43 vote tabling a point of order and a decision by the Chair that the vote could also be regarded as our wish to limit debate on the motion before us.

Wrongly or not, many Senators felt that a controversial rules change was about to be forced upon them with little regard for the protections assured by common civility, tradition, and the rules of the last Senate. The intensity of that feeling assured that if a rules change were to be pursued, decorum might repeatedly have been violated, the calendar been indefinitely bogged down, and acrimonious divisions among individual Members become far too deep.

At that point, a proposal was offered that truly was in the best traditions of this body. The distinguished Senator from Louisiana (Mr. LONG), after stating his concern over the procedures being followed, proposed that a compromise might be found that would be acceptable to both factions and would facilitate a resolution of the prolonged debate.

Senator LONG suggested that the Senate consider amending rule XXII to permit a so-called constitutional two-thirds, or 60 Members, to invoke cloture, no matter how many Members were actually present and voting.

Senator MANSFIELD quickly indicated his interest and support for the proposal, and the basis for the compromise which permits today's conclusive action was established.

Senator BYRD, our distinguished majority whip, also quickly gave his support to the proposal. Since that hour, he has vigilantly manned the floor, carefully guiding us past one parliamentary obstacle after another so that progress to our final goal was never interrupted. He has once again vindicated our deep respect and admiration for him.

The proposal constituted a compromise in the finest sense of that word. Senators LONG and MANSFIELD had certainly approached this rules change from different perspectives, and each was thus offering to concede a portion of his position to facilitate a resolution of this matter.

Senator MANSFIELD has supported the initiative to change rule XXII to permit cloture by three-fifths vote. He has objected, however, to limiting debate and amending the Senate's rules by less than two-third's vote, even at the beginning of a new Congress. Nevertheless, the majority leader has been willing to permit the Senate as a body to decide those two crucial procedural questions, and he has provided the strong leadership needed to bring those issues to a vote. That willingness to trust in the Senate's decision expresses, I believe, a profound respect for the Members of this body, a respect that is deeply appreciated and reciprocated a hundredfold for our majority leader.

Senator LONG, on the other hand, has frequently and most eloquently expressed his support for preserving the right of a minority within this body to extended debate. Senator LONG comes from a region that has long highly valued the filibuster as a means of protecting its interests, and I know that feeling in its behalf remains strong there today.

But Senators LONG, MANSFIELD, and BYRD sensed that the proponents and opponents of change were of equal resolve in defending their positions, that acrimonious division among Members threatened to long pollute the atmosphere of this body, and that continued prolonged consideration of the matter would only hamstring this institution at a time when the American people were looking to the Congress for effective and expeditious action on the many important economic, tax, energy, and health proposals before it.

I applaud these three great leaders. I would like to acknowledge my colleague's gratitude and my own deep appreciation for their efforts. The compromise is a major step forward. It will permit this body to move more easily to deciding an issue on the basis of its merits. And it will allow us at last to get on with the crucial matters before this Congress.

I am convinced that as a result of their efforts, this body will be a better institution, and the American people will be the real beneficiaries.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from New Mexico (Mr. MONTOYA), the Senator from North Carolina (Mr. MORGAN), the Senator from South Dakota (Mr. ABOUREZK), the Senator from Arkansas (Mr. BUMPERS), the Senator from Wisconsin (Mr. NELSON), the Senator from Mississippi (Mr. STENNIS), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. FANNIN), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

I further announce that the Senator from Ohio (Mr. TAFT) is absent due to illness.

On this vote, the Senator from Nebraska (Mr. CURTIS) is paired with the Senator from Ohio (Mr. TAFT).

If present and voting, the Senator from Ohio would vote "yea" and the Senator from Nebraska would vote "nay."

The result was announced—yeas 56, nays 27, as follows:

[Rollcall Vote No. 55 Leg.]

YEAS—56

Bayh	Clark	Hart, Philip A.
Beall	Cranston	Hartke
Bentsen	Culver	Haskell
Biden	Dole	Hatfield
Brooke	Ford	Huddleston
Burdick	Garn	Inouye
Byrd, Robert C.	Glenn	Jackson
Cannon	Griffin	Javits
Case	Hart, Gary W.	Johnston

Kennedy	Moss	Scott, Hugh
Leahy	Muskie	Stafford
Long	Packwood	Stevens
Magnuson	Pastore	Stevenson
Mansfield	Pearson	Stone
Mathias	Pell	Symington
McGovern	Percy	Tunney
McIntyre	Proxmire	Williams
Metcalf	Randolph	Young
Mondale	Ribicoff	

NAYS—27

Allen	Domenici	McGee
Baker	Fong	Nunn
Bartlett	Gravel	Roth
Bellmon	Hansen	Scott, William L.
Brock	Hathaway	Sparkman
Buckley	Helms	Thurmond
Byrd, Harry F., Jr.	Hollings	Tower
Chiles	Hruska	Weicker
Church	Laxalt	
	McClure	

NOT VOTING—16

Abourezk	Goldwater	Schweiker
Bumpers	Humphrey	Stennis
Curtis	McClellan	Taft
Eagleton	Montoya	Talmadge
Eastland	Morgan	
Fannin	Nelson	

So the resolution (S. Res. 4), as amended, was agreed to, as follows:

S. RES. 4

Resolved, That rule XXII of the Standing Rules of the Senate is amended to read as follows:

"1. When a question is pending, no motion shall be received but—

"To adjourn.

"To adjourn to a day certain, or that when the Senate adjourn it shall be to a day certain.

"To take a recess.

"To proceed to the consideration of executive business.

"To lay on the table.

"To postpone indefinitely.

"To postpone to a day certain.

"To commit.

"To amend.

Which several motions shall have precedence as they stand arranged; and the motions relating to adjournment, to take a recess, to proceed to the consideration of executive business, to lay on the table, shall be decided without debate.

"2. Notwithstanding the provisions of rule III or rule VI or any other rule of the Senate, any time a motion signed by sixteen Senators, to bring to a close the debate upon any measure, motion, other matter pending before the Senate, or the unfinished business, is presented to the Senate, the Presiding Officer shall at once state the motion to the Senate, and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the Secretary call the roll, and upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question:

"'Is it the sense of the Senate that the debate shall be brought to a close?'

"And if that question shall be decided in the affirmative by three-fifths of the Senators duly chosen and sworn—except on a measure or motion to amend the Senate rules, in which case the necessary affirmative vote shall be two-thirds of the Senators present and voting—then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

"Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

"3. The provisions of the last paragraph of rule VIII (prohibiting debate on motions made before 2 o'clock) shall not apply to any motion to proceed to the consideration of any motion, resolution, or proposal to change any of the Standing Rules of the Senate.".

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the resolution, as amended, was agreed to.

Mr. MONDALE. Mr. President, I move to lay that motion on the table.

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

The motion to lay on the table was agreed to.

ORDER TO POSTPONE INDEFINITELY S. RES. 93

Mr. FORD. Mr. President, I move that Senate Resolution 93 be indefinitely postponed.

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

ORDER TO VACATE CLOTURE MOTION

Mr. STONE. Mr. President, I ask unanimous consent that the cloture motion which was offered yesterday be vacated.

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

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, not to extend beyond 15 minutes, with statements limited therein to 3 minutes.

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

Is there morning business?

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1975

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 7, Calendar No. 28.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 7) to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface coal mining operations, and the acquisition of abandoned mines, 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 Interior and Insular Affairs with amendments on page 3, in the last line under title V of the contents, strike out the words "Sec. 529. Anthracite coal mines."

On page 6, beginning in line 3, strike out the words "prevent the adverse effects to society and the environment resulting from" and insert in lieu thereof "protect society and the environment from the adverse effects of".

On page 26, beginning in line 2, strike out the following language:

At the end of each three-year period following the date of enactment of this Act, the Secretary shall adjust the fee to reflect any change in the cost of living index since the beginning of such three-year period.

On page 30, in line 1, strike out the word "thirty" and insert in lieu thereof the words "one hundred".

On page 30, in line 3, strike out the word "thirty" and insert in lieu thereof the words "one hundred".

On page 30, in line 9, after the word "agreement;" insert the following new language:

except the Secretary may reduce the matching cost share where he determines that (1) the main benefits to be derived from the project are related to improving off-site water quality, off-site esthetics values, or other off-site benefits, and (2) the matching share requirement would place a burden on the landowner which would probably prevent him from participating in the program.

On page 48, in line 11, after the word "State" insert the words "no later than thirty months after the date of enactment of this Act".

On page 49, beginning in line 8, after the word "authority" insert the following new language:

if a Federal program is implemented for a State, subsections 552 (a), (c), and (d) shall not apply for a period of one year following the date of such implementation.

On page 52, in line 23, strike out the words "the expiration of the thirty-month period following the date of enactment of this Act," and insert in lieu thereof the words "six months from the date of approval of the State program or the implementation of the Federal program,".

On page 53, at the beginning of line 6, strike out the words "existing at the date of enactment of this Act".

On page 53, in line 22, strike out the article "A" and insert in lieu therof "Unless otherwise provided in the permit, a".

On page 55, in line 22, after the word "program." insert the following new language:

The regulatory authority may develop procedures so as to enable the cost of the fee to be paid over the term of the permit.

On page 69, in line 5, after the word "prevent" insert the words "to the maximum extent possible, using the best available technology ".

On page 69, beginning at line 22, strike out the following language:

on valley floors underlain by unconsolidated stream laid deposits where farming can be practiced in the form of flood irrigated or naturally subirrigated hay meadows or other crop lands (excluding undeveloped range lands), where such valley floors are significant to present or potential farming or ranching operations

and insert in lieu thereof:

on farming or ranching operations being conducted on aluvial valley floors where such valley floors are significant to such operations

On page 73, in line 13, after "(8)" strike out the following language:

the written permission of all surface landowners of any exploration activities, except where the applicant owns such exploration rights;

and insert in lieu thereof:

a statement describing the right by which the applicant intends to pursue his exploration activities and a certification that notice of intention to pursue such activities has been given to the surface owner;

On page 80, in line 18, strike out the word "or" and insert in lieu thereof the word "of".

On page 84, in line 13, after the word "prevent" insert the words "to the maximum extent possible, using the best available technology,".

On page 84, in line 24, strike out the words "aquifer at the mine site" and insert in lieu thereof "mined area".

On page 85, beginning at line 1, insert the following new language:

(E) replacing the water supply of an owner of any interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream channel where such supply has been affected by contamination, diminution, or interruption proximately resulting from mining;

On page 85, in line 9, after the word "preserving" insert the words "to the maximum extent possible, using the best available technology,".

On page 99, in line 4, after the word "prevent" insert the words "to the maximum extent possible, using the best available technology,".

On page 105, at the beginning of line 9, insert the words "or at the prevailing Department of the Treasury borrowing rate, whichever is greater,".

On page 109, in line 10, after the word "revegetation." insert the following new language:

No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area above natural levels and seasonal flow conditions as set forth in the permit.

On page 122, beginning at line 10, insert the following new language:

(7) The regulatory authority shall render a decision upon a petition within one year from the date of submittal pursuant to this section. Failure of the regulatory authority to render a decision, however, shall not prevent the issuance of a permit.

On page 122, in line 20, after the words "Provided, however," insert the words "That the Secretary may permit surface coal mining on Federal lands prior to the completion of this review."

On page 125, in line 1, after the word "road," insert the words "except where mine access roads or haulage roads join such right-of-way line and".

On page 134, beginning at line 3, insert the following new language:

(g) the coal being mined has been owned or controlled by the operator of the mine since February 27, 1975; and

On page 134, at the beginning of line 6, strike out "(g)" and insert in lieu thereof "(h)".

On page 135, beginning at line 3, strike out the following language:

ANTHRACITE COAL MINES

SEC. 529. (a) The Secretary is hereby authorized to and shall issue separate regulations according to time schedules established in the Act for anthracite coal surface mines, if such mines are regulated by environmental protection standards of the State in which they are located. Such alternative regulations shall adopt, in each instance, the environmental protection provisions of the State regulatory program in existence at the date of enactment of this Act in lieu of sections 515 and 516. Provisions of sections 509 and 519 applicable except for specified bond limits and period of revegetation responsibility. All other provisions of this Act apply and the regulation issued by the Secretary of Interior for each State anthracite regulatory program shall so reflect: *Provided, however*, That upon amendment of a State's regulatory program for anthracite mining or regulations thereunder in force in lieu of the above cited sections of this Act, the Secretary shall issue such additional regulations as necessary to meet the purposes of this Act.

(b) The Secretary of Interior shall report to Congress biennially, commencing on December 31, 1975, as to the effectiveness of such State anthracite regulatory programs operating in conjunction with this Act with respect to protecting the environment and such reports shall include those recommendations the Secretary deems necessary for program changes in order to better meet the environmental protection objectives of this Act.

On page 146, beginning at line 23, insert the following new language:

(d) Approval of the State programs, pursuant to section 503(b), promulgation of Federal programs, pursuant to section 504, and implementation of the Federal lands programs, pursuant to section 523 of this Act, shall constitute a major action within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

On page 151, in line 21, strike out the number "716" and insert in lieu thereof "715".

On page 169, in line 13, strike out the words "December 3, 1974," and insert in lieu thereof the words "February 27, 1975,".

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 this Act may be cited as the "Surface Mining Control and Reclamation Act of 1975."

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TITLE I—STATEMENT OF FINDINGS AND POLICY

FINDINGS

SEC. 101. The Congress finds and declares that—

(a) extraction of coal and other minerals from the earth can be accomplished by various methods of mining, including surface mining;

(b) coal mining operations presently contribute significantly to the Nation's energy requirements; surface coal mining constitutes one method of extraction of the re-

source; the overwhelming percentage of the Nation's coal reserves can only be extracted by underground mining methods, and it is, therefore, essential to the national interest to insure the existence of an expanding and economically healthy underground coal mining industry;

(c) many surface mining operations result in disturbances of surface areas that burden and adversely affect commerce and the public welfare by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes, by causing erosion and landslides, by contributing to floods, by polluting the water, by destroying fish and wildlife habitats, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources;

(d) surface mining and reclamation technology are now developed so that effective and reasonable regulation of surface coal mining operations by the States and by the Federal Government in accordance with the requirements of this Act is an appropriate and necessary means to minimize so far as practicable the adverse social, economic, and environmental effects of such mining operations;

(e) because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States;

(f) while there is a need to regulate surface mining operation for minerals other than coal, more data and analyses are needed to serve as a basis for effective and reasonable regulation of such operations;

(g) surface and underground coal mining operations affect interstate commerce, contribute to the economic well-being, security, and general welfare of the Nation and should be conducted in an environmentally sound manner; and

(h) the cooperative effort established by this Act is necessary to prevent or mitigate adverse environmental effects of present and future surface coal mining operations.

PURPOSES

SEC. 102. It is the purpose of this Act to—

(a) establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations and surface impacts of underground coal mining operations;

(b) assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected from such operations;

(c) assure that surface mining operations are not conducted where reclamation as required by this Act is not feasible;

(d) assure that surface coal mining operations are so conducted as to protect the environment;

(e) assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations;

(f) assure that the coal supply essential to the Nation's energy requirements, and to its economic and social well-being is provided and strike a balance between protection of the environment and the Nation's need for coal as an essential source of energy.

(g) assist the States in developing and implementing a program to achieve the purposes of this Act;

(h) promote the reclamation of mined areas left without adequate reclamation prior to the enactment of this Act and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public;

(i) assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this Act;

(j) encourage the full utilization of coal resources through the development and application of underground extraction technologies;

(k) provide a means for development of the data and analyses necessary to establish effective and reasonable regulation of surface mining operations for other minerals;

(l) stimulate, sponsor, provide for and/or supplement present programs for the conduct of research investigations, experiments, and demonstrations, in the exploration, extraction, processing, development, and production of minerals and the training of mineral engineers and scientists in the fields of mining, minerals resources, and technology, and the establishment of an appropriate research and training center in various States; and

(m) wherever necessary, exercise the full reach of Federal constitutional powers to insure the protection of the public interest through effective control of surface coal mining operations.

TITLE II—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

CREATION OF THE OFFICE

SEC. 201. (a) There is established in the Department of the Interior, the Office of Surface Mining Reclamation and Enforcement (hereinafter referred to as the "Office").

(b) The Office shall have a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level V of the Executive Schedule under section 5315 of title 5 of the United States Code, and such other employees as may be required. The Director shall have the repsonsibilities provided under subsection (c) of this section and those duties and responsibilities relating to the functions of the office which the Secretary may assign, consistent with this Act. Employees of the Office shall be recruited on the basis of their professional competence and capacity to administer the provisions of this Act. No legal authority, program, or function in any Federal agency which has as its purpose promoting the development or use of coal or other mineral resources, shall be transferred to the Office.

(c) The Secretary, acting through the Office, shall—

(1) administer the programs for controlling surface coal mining operations which are required by this Act; review and approve or disapprove State programs for controlling surface coal mining operations; make those investigations and inspections necessary to insure compliance with this Act; comduct hearings, administer oaths, issue subpenas, and compel the attendance of witnesses and production of written or printed material as provided for in this Act; issue cease-and-desist orders; review and vacate or modify or approve orders and decisions; and order the suspension, revocation, or withholding of any permit for failure to comply with any of the provisions of this Act or any rules and regulations adopted pursuant thereto;

(2) publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act;

(3) administer the State grant-in-aid program for the development of State programs for surface coal mining and reclamation operations provided for in title V of this Act;

(4) administer the program for the purchase and reclamation of abandoned and unreclaimed mined areas pursuant to title IV of this Act;

(5) administer the surface mining and reclamation research and demonstration project authority provided for in this Act;

(6) consult with other agencies of the Federal Government having expertise in the control and reclamation of surface mining operations and assist States, local governments, and other eligible agencies in the coordination of such programs;

(7) maintain a continuing study of surface mining and reclamation operations in the United States;

(8) develop and maintain an Information and Data Center on Surface Coal Mining, Reclamation, and Surface Impacts of Underground Mining, which will make such data available to the public and to Federal, regional, State, and local agencies conducting or concerned with land use planning and agencies concerned with surface and underground mining and reclamation operations;

(9) assist the States in the development of State programs for surface coal mining and reclamation operations which meet the requirements of this Act and, at the same time, reflect local requirements and local environmental conditions;

(10) assist the States in developing objective scientific criteria and appropriate procedures and institutions for determining those areas of a State to be designated unsuitable for all or certain types of surface coal mining pursuant to section 522;

(11) monitor all Federal and State research programs dealing with local extraction and use and recommend to Congress the research and demonstration projects and necessary changes in public policy which are designated to (A) improve feasibility of underground coal mining, and (B) improve surface mining and reclamation techniques directed at eliminating adverse environmental and social impacts; and

(12) perform such other duties as may be provided by law and relate to the purposes of this Act.

TITLE III—STATE MINING AND MINERAL RESOURCES AND RESEARCH INSTITUTES

AUTHORIZATION OF STATE ALLOTMENTS TO INSTITUTES

SEC. 301. (a) There are authorized to be appropriated to the Secretary of the Interior sums adequate to provide for each participating State $200,000 for fiscal year 1975, $300,000 for fiscal year 1976, and $400,000 for each fiscal year thereafter for five years, to assist the States in carrying on the work of a competent and qualified mining and mineral resources research institute, or center (hereinafter referred to as "institute") at one public college or university in the State, which has in existence at the time of enactment of this title a school of mines, or division, or department conducting a program of substantial instruction and research in mining or minerals extraction or which establishes such a school of mines, or division, or department subsequent to the enactment of this title and which school of mines, or division, or department shall have been in existence of at least two years. The Advisory Committee on Mining and Minerals Resources Research as created by this title shall determine a college or university to have an eligible school of mines, or division, or department conducting a program of substantial instruction and research in mining or minerals extraction wherein education and research in the minerals engineering fields are being carried out and wherein at least five fulltime permanent faculty members are employed: *Provided*, That—

(1) such moneys when appropriated shall be made available to match, on a dollar-for-dollar basis, non-Federal funds which shall be at least equal to the Federal share to support the institute;

(2) if there is more than one such eligible college or university in a State, funds under this title shall, in the absence of a designation to the contrary by act of the legislature of the State, be paid to one such college or university designated by the Governor of the State; and

(3) where a State does not have a public college or university with an eligible school of mines, or division, or department conducting a program of substantial instruction and research in mining or minerals extraction, said advisory committees may allocate the State's allotment to one private college or university which it determines to have an eligible school of mines, or division, or department as provided herein.

(b) It shall be the duty of each such institute to plan or conduct and/or arrange for a component or components of the college university with which it is affiliated to conduct competent research, investigations, demonstrations, and experiments of either a basic or practical nature, or both, in relation to mining and mineral resources and to provide for the training of mineral engineers and scientists through such research, investigations, demonstrations, and experiments. Such research, investigations, demonstrations, experiments, and training may include, without being limited to exploration; extraction; processing; development; production of mineral resources; mining and mineral technology; supply and demand for minerals; conservation and best use of available supplies of minerals; the economic, legal, social, engineering, recreational, biological, geographic, ecological, and other aspects of mining, mineral resources, and mineral reclamation, having due regard to the interrelation on the natural environment, the varying conditions and needs of the respective States, to mining and mineral resources research projects being conducted by agencies of the Federal and State governments, and other, and to avoid any undue displacement of mineral engineers and scientists elsewhere engaged in mining and mineral resources research.

RESEARCH FUNDS TO INSTITUTES

SEC. 302. (a) There is authorized to be appropriated annually for seven years to the Secretary of the Interior the sum of $15,000,000 in fiscal year 1975, said sum increased by $2,000,000 each fiscal year thereafter for six year, which shall remain available until expended. Such moneys when appropriated shall be made available to institutes to meet the necessary expenses for purposes of:

(1) specific mineral research and demonstration projects of industrywide application, which could not otherwise be undertaken, including the expenses of planning and coordinating regional mining and mineral resources research projects by two or more institutes, and

(2) research into any aspects of mining and mineral resources problems related to the mission of the Department of the Interior, which may be deemed desirable and are not otherwise being studied.

(b) Each application for a grant pursuant to subsection (a) of this section shall, among other things, state the nature of the project to be undertaken, the period during which it will be pursued, the qualifications of the personnel who will direct and conduct it, the estimated costs, the importance of the project to the Nation, region, or State concerned, and its relation to other known research projects theretofore pursued or being pursued, and the extent to which it will provide opportunity for the training of mining and mineral engineers and scientists, and the extent of participation by nongovernmental sources in the project.

(c) The Secretary shall insofar as it is practicable, utilize the facilities of institutes designated in section 301 of this title to perform such special research, authorized by this section, and shall select the institutes for the performance of such special research on the basis of the qualifications without regard to race or sex of the personnel who will conduct and direct it, and on the basis of the facilities available in relation to the particular needs of the research project, special geographic, geologic, or climatic conditions within the immediate vicinity of the institute in relation to any special requirements of the research project, and the extent to which it will provide opportunity for training individuals as mineral engineers and scientists. The Secretary may designate and utilize such portions of the funds authorized to be appropriated by this section as he deems appropriate for the purpose of providing scholarships, graduate fellowships, and postdoctoral fellowships.

(d) No grant shall be made under subsection (a) of this section except for a project approved by the Secretary of the Interior and all grants shall be made upon the basis of merit of the project, the need for the knowledge which it is expected to produce when completed, and the opportunity it provides for the training of individuals as mineral engineers and scientists.

(e) No portion of any grant under this section shall be applied to the acquisition by purchase or lease of any land or interests therein or the rental, purchase, construction, preservation, or repair of any building.

FUNDING CRITERIA

SEC. 303. (a) Sums available to institutes under the terms of sections 301 and 302 of this title shall be paid at such times and in such amounts during each fiscal year as determined by the Secretary, and upon vouchers approved by him. Each institute shall set forth its plan to provide for the training of individuals as mineral engineers and scientists under a curriculum appropriate to the field of mineral resources and mineral engineering and related fields; set forth policies and procedures which assure that Federal funds made available under this title for any fiscal year will supplement and, to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available for purposes of this title, and in no case supplant such funds; have an officer appointed by its governing authority who shall receive and account for all funds paid under the provisions of this title and shall make an annual report to the Secretary on or before the first day of September of each year, on work accomplished and the status of projects underway, together with a detailed statement of the amounts received under any provisions of this title during the preceding fiscal year, and of its disbursements on schedules prescribed by the Secretary. If any of the moneys received by the authorized receiving officer of any institute under the provisions of this title shall by any action or contingency be found by the Secretary to have been improperly diminished, lost, or misapplied, it shall be replaced by the State concerned and until so replaced no subsequent appropriation shall be alloted or paid to any institute of such State.

(b) Moneys appropriated pursuant to this title shall be available for expenses for research, investigations, experiments, and training conducted under authority of this title. The institutes are hereby authorized and encouraged to plan and conduct programs under this title in cooperation with each other and with such other agencies and individuals as may contribute to the solution of the mining and mineral resources problems involved, and moneys appropriated pursuant to this title shall be available for paying the necessary expenses of planning, coordinating, and conducting such cooperative research.

DUTIES OF THE SECRETARY

SEC. 304. (a) The Secretary of the Interior is hereby charged with the responsibility for the proper administration of this title and, after full consultation with other interested Federal agencies, shall prescribe such rules and regulations as may be necessary to carry out its provisions. The Secretary shall furnish such advice and assistance as will best promote the purposes of this title, participate in coordinating research initiated under this title by the institutes, indicate to them such lines of inquiry as to him seem most important, and encourage and assist in the establishment and maintenance of cooperation by and between the institutes and between them and other research organizations, the United States Department of the Interior, and other Federal establishments.

(b) On or before the 1st day of July in each year after the passage of this title, the Secretary shall ascertain whether the requirements of section 303(a) have been met as to each institute and State.

(c) The Secretary shall make an annual report to the Congress of the receipts, expenditures, and work of the institutes in all States under the provisions of this title. The Secretary's report shall indicate whether any portion of an appropriation available for allotment to any State has been withheld and, if so, the reasons therefor.

AUTONOMY

SEC. 305. Nothing in this title shall be construed to impair or modify the legal relationship existing between any of the colleges or universities under whose direction an institute is established and the government of the State in which it is located, and nothing in this title shall in any way be construed to authorize Federal control or direction of education at any college or university.

MISCELLANEOUS PROVISIONS

SEC. 306. (a) The Secretary of the Interior shall obtain the continuing advice and cooperation of all agencies of the Federal Government concerned with mining and mineral resources of State and local governments, and of private institutions and individuals to assure that the programs authorized in this title will supplement and not duplicate established mining and minerals research programs, to stimulate research in otherwise neglected areas, and to contribute to a comprehensive nationwide program of mining and minerals research, having due regard for the protection and conservation of the environment. The Secretary shall make generally available information and reports on projects completed, in progress, or planned under the provisions of this title, in addition to any direct publication of information by the institutes themselves.

(b) Nothing in this title is intended to give or shall be construed as giving the Secretary of the Interior any authority over mining and mineral resources research conducted by any other agency of the Federal Government, or as repealing, superseding, or diminishing existing authorities or responsibilities of any agency of the Federal Government to plan and conduct, contract for, or assist in research in its area of responsibility and concern with mining and mineral resources.

(c) Contracts or other arrangements for mining and mineral resources research work authorized under this title with an institute, educational institution, or nonprofit organization may be undertaken without regard to the provisions of section 3684 of the Revised Statutes (31 U.S.C. 529) when, in the judgment of the Secretary of the Interior, advance payments of initial expense are necessary to facilitate such work.

(d) No research, demonstration, or experiment shall be carried out under this Act by an institute financed by grants under this Act unless all uses, products, processes, patents, and other developments resulting therefrom with such exception or limitation, if any, as the Secretary may find necessary in the public interest, be available promptly to

the general public. Nothing contained in this section shall deprive the owner of any background patent relating to any such activities of any rights which that owner may have under that patent. There are authorized to be appropriated such sums as are necessary for the printing and publishing of the results of activities carried out by institutes under the provisions of this Act and for administrative planning and direction, but such appropriations shall not exceed $1,000,000 in any fiscal year.

CENTER FOR CATALOGING

SEC. 307. The Secretary shall establish a center for cataloging current and projected scientific research in all fields of mining and mineral resources. Each Federal agency doing mining and mineral resources research shall cooperate by providing the cataloging center with information on work underway or scheduled by it. The cataloging center shall classify and maintain for public use a catalog of mining and mineral resources research and investigation projects in progress or scheduled by all Federal agencies and by such non-Federal agencies of Government, colleges, universities, private institutions, firms and individuals as may make such information available.

INTERAGENCY COOPERATION

SEC. 308. The President shall, by such means as he deems appropriate, clarify agency responsibility for Federal mining and mineral resources research and provide for interagency coordination of such research, including the research authorized by this title. Such coordination shall include—

(a) continuing review of the adequacy of the Government-wide program in mining and mineral resources research;

(b) identification and elimination of duplication and overlap between two or more agency programs;

(c) identification of technical needs in various mining and mineral resources research categories;

(d) recommendations with respect to allocation of technical effort among the Federal agencies;

(e) review of technical manpower needs and findings concerning management policies to improve the quality of the Government-wide research effort; and

(f) actions to facilitate interagency communication at management levels.

ADVISORY COMMITTEE

SEC. 309. (a) The Secretary of the Interior shall appoint an Advisory Committee on Mining and Mineral Research composed of—

(1) the Director, Bureau of Mines, or his delegate, with his consent;

(2) the Director of the National Science Foundation, or his delegate, with his consent;

(3) the President, National Academy of Sciences, or his delegate, with his consent;

(4) the President, National Academy of Engineering, or his delegate, with his consent;

(5) the Director, United States Geological Survey, or his delegate, with his consent; and

(6) not more than four other persons who are knowledgeable in the fields of mining and mineral resources research, at least one of whom shall be representative of working coal miners.

(b) The Secretary shall designate the Chairman of the Advisory Committee. The Advisory Committee shall consult with, and make recommendations to, the Secretary of the Interior on all matters involving or relating to mining and mineral resources research and such determinations as provided in this title. The Secretary of the Interior shall consult with, and consider recommendations of, such Committee on the conduct of mining and mineral resources research and the making of any grant under this title.

(c) Advisory Committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performing committee business, entitled to receive compensation at a rate fixed by the Secretary, but not in excess of the maximum rate of pay for grade GS-18 as provided in the General Schedule under section 5332 of title 5 of the United States Code, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5 of the United States Code, be fully reimbursed for travel, subsistence, and related expenses.

TITLE IV—ABANDONED MINE RECLAMATION

ABANDONED COAL MINE RECLAMATION FUND

SEC. 401. (a) There is created on the books of the Treasury of the United States a trust fund to be known as the Abandoned Mine Reclamation Fund (hereinafter referred to as the "fund") which shall be administered by the Secretary of the Interior.

(b) The fund shall consist of amounts deposited in the fund, from time to tme, derived from—

(1) the sale, lease, or rental of land reclaimed pursuant to this title;

(2) any user charge imposed on or for land reclaimed pursuant to this title, after expenditures for maintenance have been deducted; and

(3) the reclamation fees levied under subsection (d) of this section.

(c) Amounts covered into the fund shall be available for the acquisition and reclamation of land under section 405, administration of the fund and enforcement and collection of the fee as specified in subsection (d), acquisition and filling of voids and sealing of tunnels, shafts, and entryways under section 406, and for use under section 404, by the Secretary of Agriculture, of up to one-fifth of the money deposited in the fund annually and transferred by the Secretary of the Interior to the Secretary of Agriculture for such purposes. Such amounts shall be available for such purposes only when appropriated therefor; and such appropriations may be made without fiscal year limitation.

(d) All operators of coal mining operations subject to the provisions of this Act shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee of thirty-five cents per ton of coal produced by surface coal mining and twenty-five cents per ton of coal produced by underground mining, or 10 per centum of the value of the coal at the mine, as determined by the Secretary, whichever is less. Such fee shall be paid each calendar quarter occurring after the date of enactment of this Act, beginning with the first calendar quarter (or part thereof) occurring after such date of enactment and ending ten years after the date of enactment of this Act unless extended by an Act of Congress.

(e) The geographic allocation of expenditures from the fund shall reflect both the area from which the revenue was derived as well as the program needs for the funds. Fifty per centum of the funds collected annually in any State or Indian reservation shall be expended in that State or Indian reservation by the Secretary to accomplish the purposes of this title: *Provided, however,* That if such funds have not been expended within three years after being paid into the fund, they shall be available for expenditure in any area. The balance of funds collected on an annual basis may be expended in any area at the discretion of the Secretary in order to meet the purposes of this title.

OBJECTIVES OF FUND

SEC. 402. Objectives for the obligation of funds for the reclamation of previously mined areas shall reflect the following priorities in the order stated:

(a) the protection of health or safety of the public;

(b) protection of the environment from continued degradation and the conservation of land and water resources;

(c) the protection, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities and their use;

(d) the improvement of lands and water to a suitable condition useful in the economic and social development of the area affected; and

(e) research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques in all areas of the United States.

ELIGIBLE LANDS

SEC. 403. The only lands eligible for reclamation expenditures under this title are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes, and abandoning or left in an inadequate reclamation status prior to the date of enactment of this Act, and for which there is no continuing reclamation responsibility under State or other Federal laws.

RECLAMATION OF RURAL LANDS

SEC. 404. (a) In order to provide for the control and prevention of erosion and sediment damages from unreclaimed mined lands, and to promote the conservation and development of soil and water resources of unreclaimed mined lands and lands affected by mining, the Secretary of Agriculture is authorized to enter into agreements, of not more than ten years with landowners (including owners of water rights) residents and tenants, and individually or collectively, determined by him to have control for the period of the agreement of lands in question therein, providing for land stabilization, erosion, and sediment control, and reclamation through conservation treatment, including measures for the conservation and development of soil, water (excluding stream channelization), woodland, wildlife, and recreation resources, of such lands. Such agreements shall be made by the Secretary with the owners, including owners of water rights, residents, or tenants (collectively or individually) of the lands in question.

(b) The landowner, including the owner of water rights, resident, or tenant shall furnish to the Secretary of Agriculture a conservation and development plan setting forth the proposed land uses and conservation treatment which shall be mutually agreed by the Secretary of Agriculture and the landowner, including owner of water rights, resident, or tenant to be needed on the lands for which the plan was prepared. In those instances where it is determined that the water rights or water supply of a tenant, landowner, including owner of water rights, residents, or tenant have been adversely affected by a surface or underground coal mine operation which has removed or disturbed a stratum so as to significantly affect the hydrologic balance, such plan may include proposed measures to enhance water quality or quantity by means of joint action with other affected landowners, including owner of water rights, residents, or tenants in consultation with appropriate State and Federal agencies.

(c) Such plan shall be incorporated in an agreement under which the landowner, including owner of water rights, resident, or tenant shall agree with the Secretary of Agriculture to effect the land uses and conservation treatment provided for in such plan on the lands described in the agreement in accordance with the terms and conditions thereof.

(d) In return for such agreement by the landowner, including owner of water rights, resident, or tenant the Secretaray of Agriculture is authorized to furnish financial and other assistance to such landowner, including owner of water rights, resident, or tenant in such amounts and subject to such conditions as the Secretary of Agriculture determines are appropriate and in the public interest for carryiing out the land use and conservation treatment set forth in the agreement. Grants made under this section shall not exceed 80 per centum of the cost of carrying out such land uses and conservation treatment on not more than one hundred acres of land occupied by such owner including water rights owners, resident or tenant, or on not more than one hundred acres of land which has been purchased jointly by such landowners including water rights owners, residents, or tenants under an agreement for the enhancement of water quality or quantity or on land which has been acquired by an appropriate State or local agency for the purpose of implementing such agreement; except the Secretary may reduce the matching cost share where he determines that (1) the main benefits to be derived from the project are related to improving off-site water quality, off-site esthetics values, or other off-site benefits, and (2) the matching share requirement would place a burden on the landowner which would probably prevent him from participating in the program.

(e) The Secretary of Agriculture may terminate any agreement with a landowner including water rights owners, operator, or occupier by mutual agreement if the Secretary of Agriculture determines that such termination would be in the public interest, and may agree to such modification of agreements previously entered into hereunder as he deems desirable to carry out the purposes of this section or to facilitate the practical administration of the program authorized herein.

(f) Notwithstanding any other provision of law, the Secretary of Agriculture, to the extent he deems it desirable to carry out the purposes of this section, may provide in any agreement hereunder for (1) preservation for a period not to exceed the period covered by the agreement and an equal period thereafter of the cropland, crop acreage, and allotment history applicable to land covered by the agreement for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation on the production of such crop; or (2) surrender of any such history and allotments.

(g) The Secretary of Agriculture shall be authorized to issue such rules and regulations as he determines are necessary to carry out the provisions of this section.

(h) In carrying out the provisions of this section, the Secretary of Agriculture shall utilize the services of the Soil Conservation Service.

(i) Funds shall be made available to the Secretary of Agriculture for the purposes of this section, as provided in section 401(c).

ACQUISITION AND RECLAMATION OF ABANDONED AND UNRECLAIMED MINED LANDS

SEC. 405. (a)(1) The Congress hereby declares that the acquisition of any interest in land or mineral rights in order to eliminate hazards to the environment or to the health or safety of the public from mined lands, or to construct, operate, or manage reclamation facilities and projects constitutes acquisition for a public use or purpose, notwithstanding that the Secretary plans to hold the interest in land or mineral rights so acquired as an open space or for recreation, or to resell the land following completion of the reclamation facility or project.

(2) The Secretary may acquire by purchase, donation, or otherwise, land or any interest therein which has been affected by surface mining and has not been reclaimed to its approximate original condition. Prior to making any acquisition of land under this section, the Secretary shall make a thorough study with respect to those tracts of land which are available for acquisition under this section and based upon those findings he shall select lands for purchase according to the priorities established in section 402. Title to all lands or interests therein acquired shall be taken in the name of the United States. The price paid for land under this section shall take into account the unrestored condition of the land. Prior to any individual acquisition under this section, the Secretary shall specifically determine the cost of such acquisition and reclamation and the benefits to the public to be gained therefrom.

(3) For the purposes of this section, when the Secretary seeks to acquire an interest in land or mineral rights, and cannot negotiate an agreement with the owner of such interest or right he shall request the Attorney General to file a condemnation suit and take interest or right, following a tender of just compensation awarded by a jury to such person. When the Secretary determines that time is of the essence because of the likelihood of continuing or increasingly harmful effects upon the environment which would substantially increase the cost or magnitude of reclamation or of continuing or increasingly serious threats to life, safety, or health, or to property, the Secretary may take such interest or rights immediately upon payment by the United States either to such person or into a court of competent jurisdiction of such amount as the Secretary shall estimate to be the fair market value of such interest or rights; except that the Secretary shall also pay to such person any further amount that may be subsequently awarded by a jury, with interest from the date of the taking.

(4) For the purposes of this section, when the Secretary takes action to acquire an interest in land and cannot determine which person or persons hold title to such interest or rights, the Secretary shall request the Attorney General to file a condemnation suit, and give notice, and may take such interest or rights immediately upon payment into court of such amount as the Secretary shall estimate to be the fair market value of such interest or rights. If a person or persons establishes title to such interest or rights within six years from the time of their taking, the court shall transfer the payment to such person or persons and the Secretary shall pay any further amount that may be agreed to pursuant to negotiations or awarded by a jury subsequent to the time of taking. If no person or persons establish title to the interest or rights within six years from the time of such taking, the payment shall revert to the Secretary and be deposited in the fund.

(5) States are encouraged to acquire abandoned and unreclaimed mined lands within their boundaries and to transfer such lands to the Secretary to be reclaimed under appropriate Federal regulations. The Secretary is authorized to make grants on a matching basis to States in such amounts as he deems appropriate for the purpose of carrying out the provisions of this title but in no event shall any grant exceed 90 per centum of the cost of acquisition of the lands for which the grant is made. When a State has made any such land available to the Federal Government under this title, such State shall have a preference right to purchase such lands after reclamation at fair market value less the State portion of the original acquisition price. Notwithstanding the provisions of paragraph (1) of this subsection, reclaimed land may be sold to the State or local government in which it is located at a price less than fair market value, which in no case shall be less than the cost to the United States of the purchase and reclamation of the land, as negotiated by the Secretary, to be used for a valid public purpose. If any land sold to a State or local government under this paragraph is not used for a valid public purpose as specified by the Secretary in the terms of the sales agreement then all right, title, and interest in such land shall revert to the United States. Money received from such sale shall be deposited in the fund.

(6) The Secretary shall prepare specifications for the reclamation of lands acquired under this section. In preparing these specifications, the Secretary shall utilize the specialized knowledge or experience of any Federal department or agency which can assist him in the development or implementation of the reclamation program required under this title.

(7) In selecting lands to be acquired pursuant to this section and in formulating regulations for the making of grants to the States to acquire lands pursuant to this title, the Secretary shall give priority to lands in their unreclaimed state which will meet the objectives as stated in section 402 above when reclaimed. For those lands which are reclaimed for public recreational use, the revenue derived from such lands shall be used first to assure proper maintenance of such funds and facilities thereon and any remaining moneys shall be deposited in the funds.

(8) Where land reclaimed pursuant to this section is deemed to be suitable for industrial, commercial, residential, or private recreational development, the Secretary may sell such land by public sale under a system of competitive bidding, at not less than fair market value and under such other regulations as he may promulgate to insure that such lands are put to proper use, as determined by the Secretary. If any such land sold is not put to the use specified by the Secretary in the terms of the sales agreement, then all right, title, and interest in such land shall revert to the United States. Money received from such sale shall be deposited in the fund.

(9) The Secretary shall hold a public hearing, with the appropriate notice, in the county or counties or the appropriate subdivisions of the State in which lands acquired to be reclaimed pursuant to this title are located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use of the lands once reclaimed.

(b)(1) The Secretary is authorized to use money in the fund to acquire, reclaim, develop, and transfer land to any State, or any department, agency, or instrumentality of a State or of a political subdivision thereof, or to any person, firm, association, or corporation if he determines that such is an integral and necessary element of an economically feasible plan for a project to construct or rehabilitate housing for persons employed in mines or work incidental thereto, persons disabled as the result of such employment, persons displaced by governmental action, or persons dislocated as the result of natural disasters or catastrophic failure from any cause. Such activities shall be accomplished under such terms and conditions as the Secretary shall require, which may include transfers of land with or without monetary consideration: *Provided*, That, to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such person, firm, association, or corporation. Land development may include the construction of public facilities or other improvements including reasonable site work and offsite improvements such as sewer and water extensions which the Secretary determines necessary or

appropriate to the economic feasibility of a project. No part of the funds provided under this title may be used to pay the actual construction costs of housing.

(2) The Secretary may carry out the purposes of this subsection directly or he may make grants and commitments for grants, and may advance money under such terms and conditions as he may require to any State, or any department, agency, or instrumentality of a State, or any public body or nonprofit organization designated by a State.

(3) The Secretary may provide, or contract with public and private organizations to provide information, advice, and technical assistance, including demonstrations, in furtherance of this subsection.

(4) The Secretary may make expenditures to carry out the purposes of this subsection, without regard to the provisions of section 403, in any area experiencing a rapid development of its coal resources which the Secretary has determined does not have adequate housing facilities.

FILLING VOIDS AND SEALING TUNNELS

SEC. 406. (a) The Congress declares that voids and open and abandoned tunnels, shafts, and entryways resulting from mining constitute a hazard to the public health or safety. The Secretary, at the request of the Governor of any State, is authorized to fill such voids and seal such abandoned tunnels, shafts, and entryways which the Secretary determines could endanger life and property or constitute a hazard to the public health or safety.

(b) In those instances where mine waste piles are being reworked for coal conservation purposes, the incremental costs of disposing of the wastes from such operations by filling voids and sealing tunnels may be eligible for funding providing that the disposal of these wastes meet the purposes of this section.

(c) The Secretary may acquire by purchase, donation, or otherwise such interest in land as he determines necessary to carry out the provisions of this section.

FUND REPORT

SEC. 407. Not later than January 1, 1976, and annually thereafter, the Secretary shall report to the Congress on operations under the fund together with his recommendations as to future uses of the fund.

TRANSFER OF FUNDS

SEC. 408. The Secretary of the Interior may transfer funds to other appropriate Federal agencies, in order to carry out the reclamation activities authorized by this title.

TITLE V—CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING

ENVIRONMENTAL PROTECTION STANDARDS

SEC. 501. Not later than the end of the one-hundred-and-eighty-day period immediately following the date of enactment of this Act, the Secretary shall promulgate and publish in the Federal Register regulations covering a permanent regulatory procedure for surface coal mining and reclamation operations setting mining and reclamation performance standards based on and incorporating the provisions of title V and establishing procedures and requirements for preparation, submission, and approval of State programs and development and implementation of Federal programs under this title. Such regulations shall not be promulgated and published by the Secretary until he has—

(A) published proposed regulations in the Federal Register and afforded interested persons and State and local governments a period of not less than forty-five days after such publication to submit written comments thereon;

(B) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those regulations promulgated under this section which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151–1175), and the Clean Air Act, as amended (42 U.S.C. 1857); and

(C) held at least one public hearing on the proposed regulations.

The date, time, and place of any hearing held on the proposed regulations shall be set out in the publication of the proposed regulations. The Secretary shall consider all comments and relevant data presented at such hearing before final promulgation and publication of the regulations.

INITIAL REGULATORY PROCEDURES

SEC. 502. (a) No person shall open or develop any new or previously mined or abandoned site for surface coal mining operations on lands on which such operations are regulated by a State unless such person has obtained a permit from the State regulatory authority.

(b) All surface coal mining operations on lands on which such operations are regulated by a State which commence operations pursuant to a permit issued on or after the date of enactment of this Act shall comply, and such permits shall contain terms requiring compliance with the provisions of subsections 515(b)(2), 515(b)(3), 515(b)(5), 515(b)(10), 515(b)(13), 515(b)(19), and 515(d) of this Act.

(c) On and after one hundred and thirty-five days from the date of enactment of this Act, all surface coal mining operations on lands on which such operations are regulated by a State which are in operation pursuant to a permit issued before the date of enactment of this Act shall comply with the provisions of subsections 515(b)(2), 515(b)(3), 515(b)(5), 515(b)(10), 515(b)(13), 515(b)(19), and 515(d) of this Act, with respect to lands from which overburden and the coal seam being mined have not been removed.

(d) Upon the request of the permit application or permittee subsequent to a written finding by the regulatory authority and under the conditions and procedures set forth in subsection 515(c), the regulatory authority may grant variances from the requirement to restore to approximate original contour set forth in subsections 515(b)(3) and 515(d).

(e) Not later than twenty months from the date of enactment of this Act, all operators of surface coal mines in expectation of operating such mines after the date of approval of a State program, or the implementation of a Federal program, shall file an application for a permit with the regulatory authority, such application to cover those lands to be mined after the date of approval of the State program. The regulatory authority shall process such applications and grant or deny a permit within six months after the date of approval of the State program, but in no case later than thirty months from the date of enactment of this Act.

(f) No later than one hundred and thirty-five days from the date of enactment of this Act, the Secretary shall implement a Federal enforcement program which shall remain in effect in each State in which there is surface coal mining until the State program has been approved pursuant to this Act or until a Federal program has been implemented pursuant to this Act. The enforcement program shall—

(1) include inspections of surface coal mine sites which shall be made on a random basis (but at least one inspection for every site every three months), without advance notice to the mine operator and for the purpose of ascertaining compliance with the standards of subsection (b) above. The Secretary shall order any necessary enforcement action to be implemented pursuant to the Federal enforcement provision of this title to correct violations identified at the inspections;

(2) provide that upon receipt of inspection reports indicating that any surface coal mining operation has been found in violation of section (b) above, during not less than two consecutive State inspections or upon receipt by the Secretary of information which would give rise to reasonable belief that such standards are being violated by any surface coal mining operation, the Secretary shall order the immediate inspection of such operation by Federal inspectors and the necessary enforcement actions, if any, to be implemented pursuant to the Federal enforcement provisions of this title. When the Federal inspection results from information provided to the Secretary by any person, the Secretary shall notify such persons when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection;

(3) for purposes of this section, the term "Federal inspector" means personnel of the Office of Surface Mining Reclamation and Enforcement and such additional personal of the United States Geological Survey, Bureau of Land Management, or of the Mining Enforcement and Safety Administration so designated by the Secretary, or such other personnel of the Forest Service, Soil Conservation Service, or the Agricultural Stabilization and Conservation Service, or the Agricultural Stabilization and Conservation Service as arranged by appropriate agreement with the Secretary on a reimbursable or other basis;

(4) provide that the State regulatory agency file with the Secretary and with a designated Federal office centrally located in the county or area in which the inspected surface coal mine is located copies of inspection reports made;

(5) provide that moneys authorized by section 714 shall be available to the Secretary prior to the approval of a State program pursuant to this Act to reimburse the States for conducting those inspections in which the standards of this Act are enforced and for the administration of this section.

(g) Following the final disapproval of a State program, and prior to promulgation of a Federal program or a Federal lands program pursuant to this Act, including judicial review of such a program, existing surface coal mining operations may continue surface mining operations pursuant to the provisions of section 502 of this Act.

STATE PROGRAMS

SEC. 503. (a) Each State in which there is or may be conducted surface coal mining operations, and which wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations, except as provided in section 521 and title IV of this Act shall submit to the Secretary, by the end of the eighteen-month period beginning on the date of enactment of this Act, a State program which demonstrates that such Act has the capability of carrying out the provisions of this Act and meeting its purposes through—

(1) a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act and the regulations issued by the Secretary pursuant to this Act;

(2) a State law which provides sanctions for violations of State laws, regulations, or conditions of permits concerning surface coal mining and reclamation operations, which sanctions shall meet the minimum requirements of this Act, including civil and criminal actions, forfeiture of bonds, suspension, revocation, and withholding of permits, and the issuance of cease-and-desist orders by the State regulatory authority or its inspectors;

(3) a State regulatory authority with sufficient administrative and technical personnel, and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of this Act;

(4) a State law which provides for the effective implementation, maintenance, and enforcement of a permit system, meeting the requirements of this title for the regulation of surface coal mining and reclamation operations for coal on lands within the State;

(5) establishment of a process for the designation of areas as unsuitable for surface coal mining in accordance with section 522;

(6) establishment, for the purposes of avoiding duplication, of a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other Federal or State permit process applicable to the proposed operations.

(b) The Secretary shall not approve any State program submitted under this section until he has—

(1) solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed State program;

(2) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151–1175), and the Clean Air Act, as amended (42 U.S.C. 1857);

(3) held at least one public hearing on the State program within the State; and

(4) found that the State has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards.

The Secretary shall approve or disapprove a State program, in whole or in part, within six full calendar months after the date such State program was submitted to him.

(c) If the Secretary disapproves any proposed State program in whole or in part, he shall notify the State in writing of his decision and set forth in detail the reasons therefor. The State shall have sixty days in which to resubmit a revised State program, or portion thereof. The Secretary shall approve or disapprove the resubmitted State program or portion thereof within sixty days from the date of resubmission.

(d) For the purposes of this section and section 504, the inability of a State to take any action the purpose of which is to prepare, submit, or enforce a State program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result in a loss of eligibility for financial assistance under titles IV and VII of this Act or in the imposition of a Federal program. Regulation of the surface coal mining and reclamation operations covered or to be covered by the State program subject to the injunction shall be conducted by the State pursuant to section 502 of this Act, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of sections 503 and 504 shall again be fully applicable.

FEDERAL PROGRAMS

SEC. 504. (a) The Secretary shall prepare and, subject to the provisions of this section, promulgate and implement a Federal program for a State no later than thirty months after the date of enactment of this Act if such State—

(1) fails to submit a State program covering surface coal mining and reclamation operations by the end of the eighteen-month period beginning on the date of enactment of this Act;

(2) fails to resubmit an acceptable State program within sixty days of disapproval of a proposed State program: *Provided*, That the Secretary shall not implement a Federal program prior to the expiration of the initial period allowed for submission of a State program as provided for in clause (1) of this subsection; or

(3) fails to implement, enforce, or maintain its approved State program as provided for in this Act.

If State compliance with clause (1) of this subsection requires an act of the State legislature the Secretary may extend the period for submission of a State program up to an additional six months. Promulgation and implementation of a Federal program vests the Secretary with exclusive jurisdiction for the regulation and control of surface coal mining and reclamation operations taking place on lands within any State not in compliance with this Act. After promulgation and implementation of a Federal program the Secretary shall be the regulatory authority if a Federal program is implemented for a State, subsections 552(a)(c), and (d) shall not apply for a period of one year following the date of such implementation. In promulgating and implementing a Federal program for a particular State the Secretary shall take into consideration the nature of that State's terrain, climate, biological, chemical, and other relevant physical conditions.

(b) In the even that a State has a State program for surface coal mining, and is not enforcing any part of such program, the Secretary may provide for the Federal enforcement, under the provisions of section 521, of that part of the State program not being enforced by such State.

(c) Prior to promulgation and implementation of any proposed Federal program, the Secretary shall give adequate public notice and hold a public hearing in the affected State.

(d) Permits issued pursuant to an approved State program shall be valid but reviewable under a Federal program. Immediately following promulgation of a Federal program, the Secretary shall undertake to review such permits to determine that the requirements of this Act are not violated. If the Secretary determines any permit to have been granted contrary to the requirements of this Act, he shall so advise the permittee and provide him a reasonable opportunity for submission of a new application and reasonable time to conform on-going surface mining and reclamation operations to the requirements of the Federal program.

(e) A State which has failed to obtain the approval of a State program prior to implementation of a Federal program may submit a State program at any time after such implementation. Upon the submission of such a program, the Secretary shall follow the procedures set forth in section 503(b) and shall approve or disapprove the State program within six months after its submittal. Approval of a State program shall be based on the determination that the State has the capability of carrying out the provisions of this Act and meeting its purposes through the criteria set forth in section 503 (a) (1) through (6). Until a State program is approved as provided under this section, the Federal program shall remain in effect and all actions taken by the Secretary pursuant to such Federal program, including the terms and conditions of any permit issued thereunder, shall remain in effect.

(f) Permits issued pursuant to the Federal program shall be valid but reviewable under the approved State program. The State regulatory authority may review such permits to determine that the requirements of this Act and the approved State program are not violated. If the State regulatory authority determines any permit to have been granted contrary to the requirements of this Act or the approved State program, he shall so advise the permittee and provide him a reasonable opportunity for submission of a new application and reasonable time to conform ongoing surface mining and reclamation operations to the requirements of this Act or approved State program.

(g) Whenever a Federal program is promulgated for a State pursuant to this Act, any statutes or regulations of such State which are in effect to regulate surface mining and reclamation operations subject to this Act shall, insofar as they interfere with the achievement of the purposes and the requirements of this Act and the Federal program, be preempted and superseded by the Federal program.

(h) Any Federal program shall include a process for coordinating the review and issuance of permits for surface mining and reclamation operations with any other Federal or State permit process applicable to the proposed operation.

STATE LAWS

SEC. 505. (a) No State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of this Act or any regulation issued pursuant thereto, except insofar as such State law or regulation is inconsistent with the provisions of this Act.

(b) Any provision of any State law or regulation in effect upon the date of enactment of this Act, or which may become effective thereafter, which provides for more stringent land use and environmental controls and regulations of surface coal mining and reclamation operations than do the provisions of this Act or any regulation issued pursuant thereto shall not be construed to be inconsistent with this Act. Any provision of any State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, which provides for the control and regulation of surface mining and reclamation operations for which no provision is contained in this Act shall not be construed to be inconsistent with this Act.

(c) Nothing in this Act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable State law, his interest in water resources affected by a surface coal mining operation.

PERMITS

SEC. 506. (a) After six months from the date of approval of the State program or the implementation of the Federal program, no person shall engage in or carry out on lands within a State any surface coal mining operations unless such person has first obtained a permit issued by such State pursuant to an approved State program or by the Secretary pursuant to a Federal program; except a person conducting surface coal mining operations under a valid permit from the State regulatory atuhority may conduct such operations beyond such period if an application for a permit has been filed in accordance with the provisions of this Act, but the initial administrative decision has been rendered.

(b) All permits issued pursuant to the requirements of this Act shall be issued for a term not to exceed five years and shall be nontransferable: Provided, That a successor in interest to a permittee who applies for a new permit within thirty days of succeeding to such interest and who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

(c) Unless otherwise provided in the

permit, a permit shall terminate if the permittee has not commenced the surface coal mining and reclamation operations covered by such permit within three years of the issuance of the permit.

(d)(1) Any valid permit issued pursuant to this Act shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holder of the permit may apply for renewal and such renewal shall be issued, subsequent to public hearing upon the following requirements and written finding by the regulatory authority that—

(A) the terms and conditions of the existing permit are being satisfactorily met;

(B) the present surface coal mining and reclamation operation is in full compliance with the environmental protection standards of this Act and the approved State plan pursuant to this Act;

(C) the renewal requested does not jeopardize the operator's continuing responsibility on existing permit areas;

(D) the operator has provided evidence that the performance bond in effect for said operation will continue in full force and effect for any renewal requested in such application as well as any additional bond the regulatory authority might require pursuant to section 509; and

(E) any additional revised or updated information required by the regulatory authority has been provided. Prior to the approval of any extension of permit the regulatory authority shall provide notice to the appropriate public authorities.

(2) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for revision of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new applications under this Act.

(3) Any permit renewal shall be for a term not to exceed the period of the original permit established by this Act. Application for permit renewal shall be made at least one hundred and twenty days prior to the expiration of the valid permit.

APPLICATION REQUIREMENTS

SEC. 507. (a) Each application for a surface coal mining and reclamation permit pursuant to an approved State program or a Federal program under the provisions of this Act shall be accompanied by a fee as determined by the regulatory authority. Such fee shall be based as nearly as possible upon the actual or anticipated cost of reviewing, administering, and enforcing such permit issued pursuant to a State or Federal program. The regulatory authority may develop procedures so as to enable the cost of the fee to be paid over the term of the permit.

(b) The permit application shall be submitted in a manner satisfactory to the regulatory authority and shall contain, among other things—

(1) the names and addresses of (A) the permit applicant; (B) every legal owner of record of the property (surface and mineral) to be mined; (C) the holders of record of any leasehold interest in the property; (D) any purchaser of record of the property under a real estate contract; (E) the operator if he is a person different from the applicant; and (F) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers and resident agent;

(2) the names and addresses of the owners of record of all surface and subsurface areas within five hundred feet of any part of the permit areas;

(3) a statement of any current or previous surface coal mining permits in the United States held by the applicant and the permit identification;

(4) if the applicant is a partnership, corporation, association, or other business entity, the following where applicable: the names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant, together with the name and address of any person owning, of record or beneficially either alone or with associates, 10 per centum or more of any class of stock of the applicant and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface mining operation within the United States;

(5) a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant, has ever held a Federal or State mining permit which subsequent to 1960 has been suspended or revoked or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(6) a copy of the applicant's advertisement to be published in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks, and which includes the ownership, a description of the exact location and boundaries of the proposed site sufficient so that the proposed operation is readily locatable by local residents, and the location of where the application is available for public inspection;

(7) a description of the type and method of coal mining operation that exists or is proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used;

(8) the anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be affected;

(9) evidence of the applicant's legal right to enter and commence surface mining operations on the area affected;

(10) the name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged;

(11) a determination of the hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding area so that an assessment can be made of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability;

(12) when requested by the regulatory authority, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges;

(13) an accurate map or plan to an appropriate scale clearly showing (A) the land to be affected as of the date of application and (B) all types of information set forth on topographical maps of the United States Geological Survey of a scale of 1:24,000 or larger, including all manmade features and significant known archeological sites existing of the date of application. Such a map or plan shall among other things specified by the regulatory authority show all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas abutting the permit area, and the location of all buildings within one thousand feet of the permit area;

(14) cross-section maps or plans of the land to be affected including the actual area to be mined, prepared by or under the direction of and certified by a registered professional engineer, or registered land surveyor and a professional geologist (when specific subsurface information is deemed essential and requested by the regulatory authority), showing pertinent elevation and location of test borings or core samplings and depicting the following information: the nature and depth of the various strata of overburden; the location of subsurface water, if encountered, and its quality; the nature and thickness of any coal or rider seam above the coal seam to be mined; the nature of the stratum immediately beneath the coal seam to be mined; all mineral crop lines and the strike and dip of the coal to be mined within the area of land to be affected; existing or previous surface mining limits; the location and extent of known workings or any underground mines, including mine openings to the surface; the location of aquifers; the estimated elevation of the water table; the location of spoil, waste, or refuse areas and topsoil preservation areas; the location of all impoundments for waste or erosion control; any settling or water treatment facilities; constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan;

(15) a statement of the results of test borings or core samplings from the permit area, including logs of the drill holes; the thickness of the coal seam found, an analysis of the chemical properties of such coal; the sulfur content of any coal seam; chemical analysis of potentially acid or toxic forming sections of the overburden; and chemical analysis of the stratum lying immediately underneath the coal to be mined; and

(16) information pertaining to coal seams, test borings, or core samplings as required by this section shall be made available to any person with an interest which is or may be adversely affected: *Provided*, That information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record.

(c) Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought, or evidence that the applicant has satisfied other State or Federal self-insurance requirements. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations and entitled to compensation under the applicable provisions of State law. Such policy shall be maintained in full force and effect during the term of the permit or any renewal, including the length of all reclamation operations.

(d) Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a reclamation plan which shall meet the requirements of this Act.

(e) Each applicant for a surface coal mining and reclamation permit shall file a copy of his application for public inspection with the recorder at the courthouse of the county or an appropriate official approved by the regulatory authority where the mining is proposed to occur, except for that information pertaining to the coal seam itself.

RECLAMATION PLAN REQUIREMENTS

SEC. 508. (a) Each reclamation plan submitted as part of a permit applicant pursuant to any approved State program or a Federal program under the provisions of this

Act shall include, in the degree of detail necessary to demonstrate that reclamation required by the State or Federal program can be accomplished, a statement of:

(1) the identification of the entire area to be mined and affected over the estimated life of the mining operation and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought;

(2) the condition of the land to be covered by the permit prior to any mining including:

(A) the uses existing at the time of the application, and if the land has a history of previous mining, the uses which preceded any mining; and

(B) the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover;

(3) the use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any State and local governments or agencies thereof which would have to approve or authorize the proposed use of the land following reclamation;

(4) a detailed description of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(5) the engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan, where appropriate, for backfilling, soil stabilization, and compacting, grading, and appropriate revegetation (where vegetation existed immediately prior to mining); an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in section 515;

(6) the steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

(7) the consideration which has been given to developing the reclamation plan in a manner consistent with local, physical environmental, and climatological conditions and current mining and reclamation technologies;

(8) the consideration which has been given to insuring the maximum practicable recovery of the mineral resource;

(9) a detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(10) the consideration which has been given to making the surface mining and reclamation operations consistent with applicable State and local land use plans and programs;

(11) all lands, interests in lands, or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(12) the results of test borings which the applicant has made at the area to be covered by the permit, including the location of subsurface water, and an analysis of the chemical properties including acid forming properties of the mineral and overburden: *Provided*, That information about the mineral shall be withheld by the regulatory authority if the applicant so requests;

(13) a detailed description of the measures to be taken during the mining and reclamation process to assure the protection of (A) the quantity and quality of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process, and (B) the rights of present users to such water; and

(14) such other requirements as the regulatory authority shall prescribe by regulation.

(b) Any information required by this section which is not on public file pursuant to State law shall be held in confidence by the regulatory authority.

PERFORMANCE BONDS

"SEC. 509. (a) After a surface coal mining and reclamation permit application has been approved but before such a permit is issued, the applicant shall file with the regulatory authority, on a form prescribed and furnished by the regulatory authority, a bond for performance payable, as appropriate, to the United States or to the State, and conditional upon faithful performance of all the requirements of this Act and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the regulatory authority an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit and shall be determined by the regulatory authority on the basis of at least two independent estimates. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by a third party in the event of forfeiture and in no case shall the bond be less than $10,000.

(b) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with operator's responsibility for vegetation requirements in section 515.

The bond shall be executed by the operator and a corporate surety licensed to do business in the State where such operation is located, except that the operator may elect to deposit cash, negotiable bonds of the United States Government or such State, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

(c) The regulatory authority may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the regulatory authority the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount.

(d) Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable certificate of deposit.

(e) The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the regulatory authority from time to time as affected land acreages are increased or decreased or where the cost of future reclamation obviously changes.

PERMIT APPROVAL OR DENIAL

SEC. 510. (a) Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by this Act and pursuant to an approved State program or Federal program under the provisions of this Act, including public notification and an opportunity for a public hearing as required by section 513, the regulatory authority shall grant or deny the application for a permit and notify the applicant in writing. Within ten days after the granting of a permit, the regulatory authority shall notify the State and the local official who has the duty of collecting real estate taxes in the local political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

(b) No permit, revision, or renewal application shall be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval, and made available to the applicant, that—

(1) all the requirements of this Act and the State or Federal program have been complied with;

(2) the applicant has demonstrated that reclamation as required by this Act and the State or Federal program can be accomplished under the reclamation plan contained in the permit application;

(3) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in section 507(b) has been made and the proposed operation thereof has been designed to prevent to the maximum extent possible, using the best available technology, irreparable offsite impacts to hydrologic balance;

(4) the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to section 522 of this Act or is not within an area being considered for such designation (unless in such area as to which an administrative proceeding has commenced pursuant to section 522(a)(4)(D) of this Act, the operator making the permit application demonstrates that, prior to September 1, 1974, he made substantial legal and financial commitments in relation to the operation for which he is applying for a permit); and

(5) the proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would not have a substantial adverse effect on farming or ranching operations being conducted on alluvial valley floors where such valley floors are significant to such operations.

(c) The applicant shall file with his permit application a schedule listing any and all notices of violations of this Act and any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the one-year period prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation. Where the schedule or other information available to the regulatory authority indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this Act or such other laws referred to in this subsection, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation.

REVISION OF PERMITS

SEC. 511. (a)(1) During the term of the permit the permittee may submit an application, together with a revised reclamation plan, to the regulatory authority for a revision of the permit.

(2) An application for a revision of a permit shall not be approved unless the regulatory authority finds that reclamation as required by this Act and the State or Federal program can be accomplished under the revised Reclamation Plan. The revision shall be approved or disapproved within a period

of time established by the State or Federal program. The regulatory authority shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply: *Provided*, That any revisions which propose a substantial change in the intended future use of the land or significant alterations in the Reclamation Plan shall, at a minimum be subject to notice and hearing requirements.

(3) Any extensions to the area covered by the permit except incidental boundary revisions must be made by application for another permit.

(b) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this Act shall be made without the written approval of the regulatory authority.

(c) The regulatory authority may require reasonable revision or modification of the permit provisions during the term of such permit: *Provided*, That such revision or modification shall be subject to notice and hearing requirements established by the State or Federal program.

COAL EXPLORATION PERMITS

SEC. 512. (a) Each State program or Federal program shall include a requirement that coal exploration operations which substantially disturb the natural land surface be conducted under a permit issued by the regulatory authority.

(b) Each application for a coal exploration permit pursuant to an approved State or Federal program under the provisions of this Act shall be accompanied by a fee established by the regulatory authority. Such fee shall be based, as nearly as possible, upon the actual or anticipated cost of reviewing, administering, and enforcing such permit issued pursuant to a State or Federal program. The application and supporting technical data shall be submitted in a manner satisfactory to the regulatory authority and shall include a description of the purpose of the proposed exploration project. The supporting technical data shall include, among other things:

(1) a general description of the existing environment;

(2) the location of the area of exploration by either metes or bounds, lot, tract, range, or section, whichever is most applicable, including a copy of the pertinent United States Geological Survey topographical map or maps with the area to be explored delineated thereon;

(3) a description of existing roads, railroads, utilities, and rights-of-way, if not shown on the topographical map;

(4) the location of all surface bodies of water, if not shown on the topographical map;

(5) the planned approximate location of any access roads, cuts, drill holes, and necessary facilities that may be constructed in the course of exploration, all of which shall be plotted on the topographical map;

(6) the estimated time of exploration;

(7) the ownership of the surface land to be explored;

(8) a statement describing the right by which the applicant intends to pursue his exploration activities and a certification that notice of intention to pursue such activities has been given to the surface owner;

(9) provisions for reclamation of all land disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment; and

(10) such other information as the regulatory authority may require.

(c) Specifically identified information submitted by the applicant in the application and supporting technical data as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the applicant shall not be available for public examination.

(d) If an applicant is denied a coal exploration permit under this Act, or if the regulatory authority fails to act within a reasonable time, then the applicant may seek relief under the appropriate administrative procedures.

(e) Any person who conducts any coal exploration activities in connection with surface coal mining operations under this Act without first having obtained a permit to explore from the appropriate regulatory authority or shall fail to conduct such exploration activities in a manner consistent with his approved coal exploration permit, shall be subject to the provisions of section 518.

PUBLIC NOTICE AND PUBLIC HEARINGS

SEC. 513. (a) At the time of submission of an application for a surface coal mining and reclamation permit, or revision of an existing permit, pursuant to the provisions of this Act or an approved State program, the applicant shall submit to the regulatory authority a copy of his advertisement of the ownership, precise location, and boundaries of the land to be affected. At the time of submission such advertisement shall be placed in a local newspaper of general circulation in the locality of the proposed surface mine at least once a week for four consecutive weeks. The regulatory authority shall notify various local governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the proposed surface mining will take place, notifying them of the operator's intention to surface mine a particularly described tract of land and indicating the application's permit number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities, or companies have obligation to submit written comments within thirty days on the mining applications with respect to the effect of the proposed operation on the environment which are within their area of responsibility. Such comments shall be made available to the public at the same locations as are the mining applications.

(b) Any person with a valid legal interest or the officer or head of any Federal, State, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operation with the regulatory authority within thirty days after the last publication of the above notice. If written objections are filed and a hearing requested, the regulatory authority shall then hold a public hearing in the locality of the proposed mining within a reasonable time of the receipt of such objections. The date, time, and location of such public hearing shall be advertised by the regulatory authority in a newspaper of general circulation in the locality at least once a week for three consecutive weeks prior to the scheduled hearing date. The regulatory authority may arrange with the applicant upon request by any party to the administrative proceeding access to the proposed mining area for the purpose of gathering information relevant to the proceeding. At this public hearing, the applicant for a permit shall have the burden of establishing that his application is in compliance with the applicable State and Federal laws. Not less than ten days prior to any proposed hearing, the regulatory authority shall respond to the written objections in writing. Such response shall include the regulatory authority's preliminary proposals as to the terms and conditions, and amount of bond of a possible permit for the area in question and answers to material factual questions presented in the written objections. The regulatory authority's responsibility under this subsection shall in any event be to make publicly available its estimate as to any other conditions of mining or reclamation which may be required or contained in the preliminary proposal. In the event all parties requesting the hearing stipulate agreement prior to the requested hearings, and withdraw their request, such hearings need not be held.

(c) For the purpose of such hearing, the regulatory authority may administer oaths, subpena witnesses, or written or printed materials, compel attendance of the witnesses, or production of the materials, and take evidence including but not limited to site inspections of the land to be affected and other surface coal mining operations carried on by the applicant in the general vicinity of the proposed operation. A verbatim transcript and complete record of each public hearing shall be ordered by the regulatory authority.

DECISIONS OF REGULATORY AUTHORITY AND APPEALS

SEC. 514. (a) If a public hearing has been held pursuant to section 513(b), the regulatory authority shall issue and furnish the applicant for a permit and persons who are parties to the administrative proceedings with the written finding of the regulatory authority, granting or denying the permit in whole or in part and stating the reasons therefor, within thirty days of said hearings.

(b) If there has been no public hearing held pursuant to section 513(b), the regulatory authority shall notify the applicant for a permit within a reasonable time, taking into account the time needed for proper investigation of the site, the complexity of the permit application and whether or not written objection to the application has been filed, whether the application has been approved or disapproved. If the application is approved, the permit shall be issued. If the application is disapproved, specific reasons therefor must be set forth in the notification. Within thirty days after the applicant is notified that the permit or any portion thereof has been denied, the applicant may request a hearing on the reasons for the said disapproval. The regulatory authority shall hold a hearing within thirty days of such request and provide notification to all interested parties at the time that the applicant is so notified. Within thirty days after the hearing the regulatory authority shall issue and furnish the applicant, and all persons who participated in the hearing, with the written decision of the regulatory authority granting or denying the permit in whole or in part and stating the reasons therefor.

(c) Any applicant or any person who has participated in the administrative proceedings as an objector, and who is aggrieved by the decision of the regulatory authority, or if the regulatory authority fails to act within a reasonable period of time, shall have the right of appeal for review by a court of competent jurisdiction in accordance with State or Federal law.

ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

SEC. 515. (a) Any permit issued under any approved State or Federal program pursuant to this Act to conduct surface coal mining operations shall require that such surface coal mining operations will meet all applicable performance standards of this Act, and such other requirements as the regulatory authority shall promulgate.

(b) General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operation as a minimum to—

(1) conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future through surface coal mining can be minimized;

(2) restore the land affected to a condition at least fully capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is a reasonable likelihood, so long as such use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable

threat of water diminution or pollution, and the permit applicants' declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of Federal, State, or local law;

(3) with respect to all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this Act): *Provided, however,* That in surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region: *And provided further,* That in surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall after restoring the approximate contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this Act;

(4) stabilize and protect all surface areas including spoil piles affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution;

(5) remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner such other strata which is best able to support vegetation;

(6) restore the topsoil or the best available subsoil which has been segregated and preserved;

(7) protect offsite areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area;

(8) create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that—

(A) the size of the impoundment is adequate for its intended purposes;

(B) the impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566 (16 U.S.C. 1006);

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality in the receiving stream;

(D) the level of water will be reasonably stable;

(E) final grading will provide adequate safety and access for proposed water users; and

(F) such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

(9) fill all auger holes with an impervious and noncombustible material in order to prevent drainage;

(10) minimize the disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by—

(A) avoiding acid or other toxic mine drainage by such measures as, but not limited to—

(i) preventing or removing water from contact with toxic producing deposits;

(ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface waters;

(B) conducting surface coal mining operations so as to prevent to the maximum extent possible, using the best available technology, additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions as measured prior to any mining, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(C) removing temporary or large siltation structures from drainways after disturbed areas are revegetated and stabilized.

(D) restoring recharge capacity of the mined area to approximate premining conditions;

(E) replacing the water supply of an owner of any interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream channel where such supply has been affected by contamination, diminution, or interruption proximately resulting from mining;

(F) preserving to the maximum extent possible, using the best available technology, throughout the mining and reclamation process the hydrologic integrity of alluvial valley floors in the arid and semi-arid areas of the country; and

(G) such other actions as the regulatory authority may prescribe;

(11) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavations, stabilize all waste piles in designated areas through construction in compacted layers including the use of incombustible and impervious materials if necessary and assure the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this Act;

(12) Refrain from surface coal mining within five hundred feet from active and abandoned underground mines in order to prevent break-throughs and to protect health or safety of miners: *Provided,* That the regulatory authority shall permit an operator to mine closer to an abandoned underground mine: *Provided,* That this does not create hazards to the health and safety of miners; or shall permit an operator to mine near, through or partially through an abandoned underground mine working where such mining through will achieve improved resource recovery, abatement of water pollution or elimination of public hazards and such mining shall be consistent with the provisions of this Act;

(13) with respect to the use of existing or new impoundments for the disposal of coal mine wastes, coal processing wastes, or other liquid or solid wastes, incorporate the best engineering practices for the design and construction of water retention facilities and construct or reconstruct such facilities to insure that the construction will be so designed to achieve necessary stability with an adequate margin of safety to protect the health and safety of the public and which at a minimum, is compatible with that of structures constructed under Public Law 83-566 (16 U.S.C. 1006); that leachate will not pollute surface or ground water, and that no mine waste such as coal fines and slimes determined as unsuitable for construction constituents by sound engineering methods and design practices are used in the construction of water impoundments, water retention facilities, dams, or settling ponds; and that the location will not endanger public health and safety should failure occur;

(14) insure that all debris, acid forming materials, toxic materials, or materials constituting a fire hazard are treated or disposed of in a manner designed to prevent contamination of ground or surface waters or sustained combustion;

(15) insure that explosives are used only in accordance wth existing State and Federal law and the regulations promulgated by the regulatory authority, which shall include provisions to—

(A) provide adequate advance written notice by publication and/or posting of the planned blasting schedule to local governments and to residents who might be affected by the use of such explosives and maintain for a period of at least two years a log of the magnitudes and times of blasts; and

(B) limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent (i) injury to persons, (ii) damage to public and private property outside the permit area, (iii) adverse impacts on any underground mine, and (iv) change in the course, channel, or availability of ground or surface water outside the permit area;

(16) insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations;

(17) insure that the construction, maintenance, and postmining conditions of access road into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property: *Provided,* That the regulatory authority may permit the retention after mining

of certain access roads where consistent with State and local land use plans and programs and where necessary may permit a limited exception to the restoration of approximate original contour for that purpose;

(18) refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(19) establish on the regraded areas, and all other lands affected, a diverse, effective and permanent vegetative cover native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except, that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan;

(20) assume the responsibility for successful revegetation, as required by paragraph (19) above, for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with paragraph (19) above, except in those areas or regions of the country where the annual average precipitation is twenty-six inches or less, then the operator's assumption of responsibility and liability will extend for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation, or other work: *Provided*, That when the regulatory authority approves a long-term intensive agricultural postmining land use, the applicable five- or ten-year period of responsibility for revegetation shall commence at the date of initial planting for such long-term intensive agricultural postmining land use: *Provided further*, That when the regulatory authority issues a written finding approving a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan, the authority may grant exception to the provisions of paragraph (19) above; and

(21) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this Act, taking into consideration the physical, climatological, and other characteristics of the site, and to insure the maximum practicable recovery of the mineral resources.

(c)(1) Each State program may and each Federal program shall include procedures pursuant to which the regulatory authority may permit variances for the purposes set forth in paragraph (3) of this subsection.

(2) Where an applicant meets the requirements of paragraphs (3) and (4) of this subsection a variance from the requirement to restore to approximate original contour set forth in subsection 515(b)(3) or 515(d) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in subsection (c)(4)(A) hereof) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accord with the requirements of this subsection.

(3) In cases where an industrial, commercial (including commercial agricultural), residential or public facility (including recreational facilities) development is proposed for the postmining use of the affected land, the regulatory authority may grant a variance for a surface mining operation of the nature described in subsection (c)(2) where—

(A) after consultation with the appropriate land use planning agencies, if any, the proposed development is deemed to constitute an equal or better economic or public use of the affected land, as compared with the premining use;

(B) the equal or better economic or public use can be obtained only if one or more exceptions to the requirements of section 515(b)(3) are granted;

(C) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be—

(i) compatible with adjacent land uses;

(ii) obtainable according to data regarding expected need and market;

(iii) assured of investment in necessary public facilities;

(iv) supported by commitments from public agencies where appropriate;

(v) practicable with respect to private financing capability for completion of the proposed development;

(vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(vii) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(D) the proposed use would be consistent with adjacent land uses, and existing State and local land use plans and programs;

(E) the regulatory authority provides the governing body of the unit of general-purpose government in which the land is located and any State or Federal agency which the regulatory agency, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use;

(F) a public hearing is held in the locality of the proposed surface coal mining operation prior to the grant of any permit including a variance; and

(G) all other requirements of this Act will be met.

(4) In granting any variance pursuant to this subsection the regulatory authority shall require that—

(A) the top of the lowest coal seam mined and the overburden associated with it are retained in place as a barrier to slides and erosion;

(B) the reclaimed area is stable;

(C) the resulting plateau or rolling contour drains inward from the outslopes except at specified points;

(D) no damage will be done to natural watercourses;

(E) all other requirements of this Act will be met.

(5) The regulatory authority shall promulgate specific regulations to govern the granting of variances in accord with the provisions of this subsection, and may impose such additional requirements as he deems to be necessary.

(6) All exceptions granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(d) The following performance standards shall be applicable to steep-slope surface coal mining and shall be in addition to those general performance standards required by this section: *Provided, however*, That the provisions of this subsection (d) shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area:

(1) Insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the downslope below the bench or mining cut, except that where necessary soil or spoil material from the initial block or short linear cut of earth necessary to obtain initial access to the coal seam in a new surface coal mining operation can be placed on a limited and specified area of the downslope below the initial cut if the permittee demonstrates that such soil or spoil material will not slide and that the other requirements of this subsection can still be met: *Provided*, That spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of paragraphs 515(b)(3) or 515(d)(2) or excess spoil from a surface coal mining operation granted a variance under subsection 515(c) may be permanently stored at such offsite spoil storage areas as the regulatory authority shall designate and for the purpose of this Act such areas shall be deemed in all respects to be part of the lands affected by surface coal mining operations. Such offsite spoil storage areas shall be designed by a registered engineer in conformance with professional standards established to assure the stability drainage, and configuration necessary for the intended use of the site.

(2) Complete backfilling with spoil material shall be required to cover completely the highwall and return to the site to the approximate original contour, which material will maintain stability following mining and reclamation.

(3) The operator may not disturb land above the top of the highwall unless the regulatory authority finds that such disturbance will facilitate compliance with the environmental protection standards of this section: *Provided, however*, That the land disturbed above the highway shall be limited to that amount necessary to facilitate said compliance.

(4) For the purposes of this section, the term "steep-slope" is any slope above twenty degrees or such lesser slope as may be defined by the regulatory authority after consideration of soil, climate, and other characteristics of a region or State.

SURFACE EFFECTS OF UNDERGROUND COAL MINING OPERATIONS

SEC. 516. (a) The Secretary shall promulgate rules and regulations directed toward the surface effects of underground coal mining operations, embodying the following requirements and in accordance with the procedures established under section 501 of this Act.

(b) Each permit issued under any approved State or Federal program pursuant to this Act and relating to underground coal mining shall require the operator to—

(1) adopt measures consistent with known technology in order to prevent subsidence to the extent technologically and economically feasible, maximize mine stability, and maintain the value and use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: *Provided*, That nothing in this subsection shall be construed to prohibit the standard method of room and pillar continuous mining;

(2) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed for the conduct of the mining operations;

(3) fill or seal exploratory holes no longer necessary for mining, maximizing to the extent practicable return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations;

(4) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the permittee from current operations through construction in compacted layers including the use of incombustible and impervious materials if necessary and assure that the leachate will not

pollute surface or ground waters and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(5) with respect to the use of existing or new impoundments for the disposal of coal mine wastes, coal processing wastes, or other liquid or solid wastes, incorporate the best engineering practices for the design and construction of water retention facilities and construct or reconstruct such facilities to insure that the construction will be so designed to achieve necessary stability with an adequate margin of safety to protect the health and safety of the public and which, at a minimum, is compatible with that of structures constructed under Public Law 83-566 (16 U.S.C. 1006); that leachate will not pollute surface or ground water, and that no mine waste such as coal fines and slimes determined as unsuitable for construction constituents by sound engineering methods and design practices are used in the construction of water impoundments, water retention facilities, dams, or settling ponds and that the location will not endanger public health and safety should failure occur:

(6) establish on regraded areas and all other lands affected, a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area;

(7) protect offsite areas from damages which may result from such mining operations;

(8) eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(9) minimize the disturbance to the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quality and quantity of water in surface ground water systems both during and after coal mining operations and during reclamation by—

(A) avoiding acid or other toxic mine drainage by such measures as, but not limited to—

(i) preventing or removing water from contact with toxic producing deposits;

(ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface waters; and

(B) conducting surface coal mining operations so as to prevent the maximum extent possible, using the best available technology, additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions as measured prior to any mining, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.

(c) In order to protect the stability of the land, the regulatory authority shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

(d) The provisions of title V of this Act relating to State and Federal programs, permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to surface coal mining and reclamation operations incident to underground coal mining with such modifications to the permits application requirements, permit approval or denial procedures, and bond requirements, as are deemed necessary by the Secretary due to the differences between surface and underground coal mining. The Secretary shall promulgate such modifications in accordance with the rulemaking procedure established in section 501 of this Act.

INSPECTIONS AND MONITORING

SEC. 517. (a) The Secretary shall cause to be made such inspections of any surface coal mining and reclamation operations as are necessary to evaluate the administration of approved State programs, or to develop or enforce any Federal program, and for such purposes authorized representatives of the Secretary shall have a right of entry to, upon, or through any surface coal mining and reclamation operations.

(b) For the purpose of developing or assisting in the development, administration, and enforcement of any approved State or Federal program under this Act or in the administration and enforcement of any permit under this Act, or of determining whether any person is in violation of any requirement of any such State or Federal program or any other requirement of this Act—

(1) the regulatory authority shall require any permittee to (A) establish and maintain appropriate records, (B) make monthly reports to the regulatory authority, (C) install, use, and maintain any necessary monitoring equipment or methods, (D) evaluate results in accordance with such methods, at such locations, intervals, and in such manner as a regulatory authority shall prescribe, and (E) provide such other information relative to surface coal mining and reclamation operations as the regulatory authority deems reasonable and necessary;

(2) for those surface coal mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the regulatory authority shall specify those—

(A) monitoring sites to record the quantity and quality of surface drainage above and below the minesite as well as in the potential zone of influence;

(B) monitoring sites to record level, amount, and samples of ground water and aquifers potentially affected by the mining and also directly below the lower most (deepest) coal seam to be mined;

(C) records of well logs and borehole data to be maintained; and

(D) monitoring sites to record precipitation.

The monitoring, data collection, and analysis required by this section shall be conducted according to standards and procedures set forth by the regulatory authority in order to assure their reliability and validity; and

(3) the authorized representatives of the regulatory authority, without advance notice and upon presentation of appropriate credentials (A) shall have the right of entry to, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under paragraph (1) of this subsection are located; and (B) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this Act

(c) The inspections by the regulatory authority shall (1) occur on an irregular basis averaging not less than one inspection per month for the surface coal mining and reclamation operations for coal covered by each permit; (2) occur without prior notice to the permittee or his agents or employees; and (3) include the filing of inspection reports adequate to enforce the requirements of any to carry out the terms and purposes of this Act and the regulatory authority shall make copies of such inspection reports immediately and freely available to the public at a central location in the pertinent geographic area of mining. The Secretary or regulatory authority shall establish a system of continual rotation of inspectors so that the same inspector does not consistently visit the same operations.

(d) Each permittee shall conspicuously maintain at the entrances to the surface coal mining and reclamation operations a clearly visible sign which sets forth the name, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.

(e) Each inspector, upon detection of each violation of any requirement of any State or Federal program or of this Act, shall forthwith inform the operator in writing, and shall report in writing any such violation to the regulatory authority.

(f) Copies of any records, reports, inspection materials, or information obtained under this title by the regulatory authority shall be made immediately available to the public at central and sufficient locations in the county, multicounty, and State area of mining so that they are conveniently available to residents in the areas of mining.

PENALTIES

SEC. 518. (a) In the enforcement of a Federal program or Federal lands program, or during Federal enforcement pursuant to section 502 or during Federal enforcement of a State program pursuant to section 521 of this Act, any permittee who violates any permit condition or who violates any other provision of this title, may be assessed a civil penalty by the Secretary, except that if such violation leads to the issuance of a cessation order under section 521, the civil penalty shall be assessed. Such penalty shall not exceed $5,000 for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the appropriateness of such penalty to the size of the business of the permittee charged; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

(b) A civil penalty shall be assessed by the Secretary only after the person charged with a violation described under subsection (a) of this section has been given an opportunity for a public hearing. Where such a public hearing has been held, the Secretary shall make findings of fact and he shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Secretary shall consolidate such hearings with other proceedings under section 521 of this Act. Any hearing under this section shall be of record and shall be subject to section 554 of title 5 of the United States Code. Where the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Secretary after the Secretary has determined that a violation did occur, and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be paid.

(c) If no complaint, as provided in this section, is filed within thirty days from the date of the final order or decision issued by the Secretary under subsection (b) of this section, such order and decision shall be conclusive.

(d) Interest at the rate of 6 per centum per annum *or at the prevailing Department of the Treasury borrowing rate, whichever is greater,* shall be charged against a person on

any unpaid civil penalty assessed against him pursuant to the final order of the Secretary, said interest to be computed from the thirty-first day after issuance of such final assessment order.

(e) Civil penalties owed under this Act, either pursuant to subsection (c) of this section or pursuant to an enforcement order entered under section 526 of this Act, may be recovered in a civil action brought by the Attorney General at the request of the Secretary in any appropriate district court of the United States.

(f) Any person who willfully and knowingly violates a condition of a permit issued pursuant to a Federal program, a Federal lands program or Federal enforcement pursuant to section 502 or during Federal enforcement of a State program pursuant to section 525 of this Act or fails or refuses to comply with any order issued under section 525 or section 526 of this Act, or any order incorporated in a final decision issued by the Secretary under this Act, except an order incorporated in a decision issued under subsection (b) of this section or section 703 of this Act, shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than one year or both.

(g) Whenever a corporate permittee violates a condition of a permit issued pursuant to a Federal program, a Federal lands program or Federal enforcement pursuant to section 502 or Federal enforcement of a State program pursuant to section 521 of this Act or fails or refuses to comply with any order issued under section 521 of this Act, or any order incorporated in a final decision issued by the Secretary under this Act except an order incorporated in a decision issued under subsection (b) of this section or section 703 of this Act, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (f) of this section.

(h) Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to a Federal program or a Federal lands programs or any order or decision issued by the Secretary under this Act, shall, upon conviction be punished by a fine of not more than $10,000, or by imprisonment for not more than one year or both.

(i) As a condition of approval of any State program submitted pursuant to section 503 of this Act, the civil and criminal penalty provisions thereof shall, at a minimum, incorporate penalties no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto.

RELEASE OF PERFORMANCE BONDS OR DEPOSITS

SEC. 519. (a) The permittee may file a request with the regulatory authority for the release of all or part of a performance bond or deposit. Within thirty days after any application for bond or deposit release has been filed with the regulatory authority, the operator shall submit a copy of an advertisement placed on five successive days in a newspaper of general circulation in the locality of the surface coal mining operation. Such advertisement shall be considered part of any bond release application and shall contain a notification of the location of the land affected, the number of acres, the permit number and the date approved, the amount of the bond filed and the portion sought to be released, and the type and the approximate dates of reclamation work performed, and a description of the results achieved as they relate to the operator's approved reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the surface coal mining and reclamation activities took place, notifying them of his intention to seek release from the bond.

(b) Upon receipt of the notification and request, the regulatory authority shall within a reasonable time conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of such pollution, and the estimated cost of abating such pollution.

(c) The regulatory authority may release in whole or in part said bond or deposit if the authority is satisfied that reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this Act according to the following schedule:

(1) When the operator completes the backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, the release of 60 per centum of the bond or collateral for the applicable permit area;

(2) After revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the regulatory authority shall retain that amount of bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing vegetation and for the period specified for operator responsibility in section 515 of reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area above natural levels and seasonal flow conditions as set forth in the permit.

(3) When the operator has completed successfully all surface coal mining and reclamation activities, but not before the expiration of the period specified for operator responsibility in section 515:

Provided, however, That no bond shall be fully released until all reclamation requirements of this Act are fully met.

(d) If the regulatory authority disapproves the application for release of the bond or portion thereof, the authority shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release.

(e) With any application for total or partial bond release filed with the regulatory authority, the regulatory authority shall notify the municipality in which a surface coal mining operation is located by certified mail at least thirty days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest or the officer or head of any Federal, State, or local governmental agency shall have the right to file written objections to the proposed release from bond to the regulatory authority within thirty days after the last publication of the above notice. If written objections are filed, and a hearing requested, the regulatory authority shall inform all the interested parties, of the time and place of the hearing, and hold a public hearing in the locality of the surface coal mining operation proposed for bond release within thirty days of the request for such hearing. The date, time, and location of such public hearings shall be advertised by the regulatory authority in a newspaper of general circulation in the locality twice a week for two consecutive weeks.

(g) For the purpose of such hearing the regulatory authority shall have the authority and is hereby empowered to administer oaths, subpena witnesses, or written or printed materials, compel the attendance of witnesses, or production of the materials, and take evidence including but not limited to inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim transcript and a complete record of each public hearing shall be ordered by the regulatory authority.

CITIZEN SUITS

SEC. 520. (a) Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action on his own behalf—

(1) against any person including—

(A) the United States, and

(B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution who is alleged to be in violation of the provisions of this Act or the regulation promulgated thereunder, or order issued by the regulatory authority; or

(2) against the Secretary or the appropriate State regulatory authority to the extent permitted by the eleventh amendment to the Constitution where there is alleged a failure of the Secretary or the appropriate State regulatory authority to perform any act or duty under this Act which is not discretionary with the Secretary or with the appropriate State regulatory authority.

(b) No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice in writing under oath of the violation (i) to the Secretary, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the provisions, regulations, or order; or

(B) if the Secretary or the State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the provisions of this Act or the regulations thereunder, or the order, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice in writing under oath of such action to the Secretary, in such manner as the Secretary shall by regulation prescribe, or to the appropriate State regulatory authority, except that such action may be brought immediately after such notification in the case where the violation or order or lack of order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(c)(1) Any action respecting a violation of this Act or the regulations thereunder may be brought only in the judicial district in which the surface coal mining operation complained of is located.

(2) In such action under this section, the Secretary, or the State regulatory authority, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nothing in this section shall restrict

any right which any person (or class of persons) may have under this or any statute or common law to seek enforcement of any of the provisions of this Act and the regulations thereunder, or to seek any other relief (including relief against the Secretary or the appropriate State regulatory authority).

(f) Any resident of the United States who is injured in any manner through the failure of any operator to comply with the provisions of this Act, or of any regulation, order, permit, or plan of reclamation issued by the Secretary, may bring an action for damage (including attorney fees) in an appropriate United States district court.

ENFORCEMENT

SEC. 521. (a)(1) Whenever, on the basis of any information available to him, including receipt of information from any person, the Secretary has reason to believe that any person is in violation of any requirement of this Act or any permit condition required by this Act, the Secretary shall notify the State regulatory authority, if one exists, in the State in which such violation exists. If no such State authority exists or the State regulatory authority fails within ten days after notification to take appropriate action to cause said violation to be corrected or to show good cause for such failure and transmit notification of its action to the Secretary, the Secretary shall immediately order Federal inspection of the surface coal mining operation at which the alleged violation is occurring unless the information available to the Secretary is a result of a previous Federal inspection of such surface coal mining operation. When the Federal inspection results from information provided to the Secretary shall notify such person when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection.

(2) When, on the basis of any Federal inspection, the Secretary or his authorized representative determines that any condition or practices exist, or that any permittee is in violation of any requirement of this Act or any permit condition required by this Act, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the Secretary or his authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. Such cessation order shall remain in effect until the Secretary or his authorized representative determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the Secretary or his authorized representative pursuant to subparagraph (a)(5) of this section.

(3) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program or a Federal lands program, Federal inspection pursuant to section 502, or section 504(b) or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that any permittee is in violation of any requirement of this Act or any permit condition required by this Act, but such violation does not create an imminent danger to the health or safety of the public, or cause or can be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, the Secretary or authorized representative shall issue a notice to the permittee or his agent fixing a reasonable time but not more than ninety days for the abatement of the violation.

If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the Secretary or his authorized representative, the Secretary or his authorized representative finds that the violation has not been abated, he shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the Secretary or his authorized representative determines that the violation has been abated, or until modified, vacated, or terminated by the Secretary or his authorized representative pursuant to subparagraph (a)(5) of this section.

(4) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program or a Federal lands program, Federal inspection pursuant to section 502 or section 504(b) or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that a pattern of violations of any requirements of this Act or any permit conditions required by this Act exists or has existed, and if the Secretary or his authorized representative also find that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this Act or any permit conditions, or that such violations are willfully caused by the permittee, the Secretary or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the Secretary or his authorized representative shall forthwith suspend or revoke the permit.

(5) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the Secretary or his authorized representative who issues such notice or order, and all such notices and orders shall be in writing and shall be signed by such authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the Secretary or his authorized representative. A copy of any such order or notice shall be sent to the State regulatory authority in the State in which the violation occurs.

(b) Whenever the Secretary finds that violations of an approved State program appear to result from a failure of the State to enforce such State program effectively, he shall so notify the State. If the Secretary finds that such failure extends beyond thirty days after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Secretary that it will enforce this Act, the Secretary shall enforce any permit condition required under this Act, shall issue new or revised permits in accordance with requirements of this Act, and may issue such notices and orders as are necessary for compliance therewith.

(c) The Secretary may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the surface coal mining and reclamation operation is located or in which the permittee thereof has his principal office, whenever such permittee or his agent (A) violates or fails or refuses to comply with any order or decision issued by the Secretary under this Act, or (B) interferes with, hinders, or delays the Secretary or his authorized representatives in carrying out the provisions of this Act, or (C) refuses to admit such authorized representative to the mine, or (D) refuses to permit inspection of the mine by such authorized representative, or (E) refuses to furnish any information or report requested by the Secretary in furtherance of the provisions of this Act, or (F) refuses to permit access to, and copying of, such records as the Secretary determines necessary in carrying out the provisions of this Act. Such court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure, as amended. Any relief granted by the court to enforce an order under clause (A) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this title, unless, prior thereto, the district court granting such relief sets it aside or modifies it.

(d) As a condition of approval of any State program submitted pursuant to section 503 of this Act, the enforcement provisions thereof shall, at a minimum, incorporate sanctions no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto.

DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING

SEC. 522. (a)(1) To be eligible to assume primary regulatory authority pursuant to section 503, each State shall establish a planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of a State are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in paragraphs (2) and (3) of this subsection but such designation shall not prevent the mineral exploration pursuant to the Act of any area so designated.

(2) Upon petition pursuant to subsection (c) of this section, the State regulatory authority shall designate an area as unsuitable for all or certain types of surface coal mining operations if the State regulatory authority determines that reclamation pursuant to the requirements of this Act is not feasible.

(3) Upon petition pursuant to subsection (c) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will—

(A) be incompatible with existing land use plans or programs; or

(B) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or

(C) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or

(D) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

(4) To comply with this section, a State must demonstrate it has developed or is developing a process which includes—

(A) a State agency responsible for surface coal mining lands review;

(B) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the State

to support and permit reclamation of surface coal mining operations;

(C) a method or methods for implementing land use planning decisions concerning surface coal mining operations; and

(D) proper notice, opportunities for public participation, including a public hearing prior to making any designation or redesignation, pursuant to this section, and measures to protect the legal interests of affected individuals in all aspects of the State planning process.

(5) Determinations of the unsuitability of land for surface coal mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the Federal, State, and local levels.

(6) The requirements of this section shall not apply to lands on which surface coal mining operations are being conducted on the date of enactment of this Act or under a permit issued pursuant to this Act, or where substantial legal and financial commitments in such operations are in existence prior to September 1, 1974.

(7) The regulatory authority shall render a decision upon a petition within one year from the date of submittal pursuant to this section. Failure of the regulatory authority to render a decision, however, shall not prevent the issuance of a permit.

(b) The Secretary shall conduct a review of the Federal lands to determine, pursuant to the standards set forth in paragraphs (2) and (3) of subsection (a) of this section, whether there are areas on Federal lands which are unsuitable for all or certain types of surface coal mining operations: *Provided, however,* That the Secretary may permit surface coal mining on Federal lands prior to the completion of this review. When the Secretary determines an area on Federal lands to be unsuitable for all or certain types of surface coal mining operations, he shall withdraw such area or condition any mineral leasing or mineral entries in a manner so as to limit surface coal mining operations on such area. Where a Federal program has been implemented in a State pursuant to section 504, the Secretary shall implement a process for designation of areas unsuitable for surface coal mining for non-Federal lands within such State and such process shall incorporate the standards and procedures of this section.

(c) Any person having an interest which is or may be adversely affected shall have the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. As soon as practicable after receipt of the petition the regulatory authority shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty days after such hearing, the regulatory authority shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all the petitioners stipulate agreement prior to the requested hearing, and withdraw their request such hearing need not be held.

(d) Prior to designating any land areas as unsuitable for surface coal mining operations, the regulatory authority shall prepare a detailed statement on (i) the potential coal resource of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy, and the supply of coal.

(e) Subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted—

(1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by Act of Congress;

(2) on any Federal lands within the boundaries of any national forest except surface operations and impacts incident to an underground coal mine;

(3) which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site;

(4) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the regulatory authority may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or

(5) within three hundred feet from any occupied dwellings, unless waived by the owner thereof, nor within three hundred feet of any public building, school, church, community, or institutional building, public park, or within one hundred feet of a cemetery.

FEDERAL LANDS

SEC. 523. (a) No later than six months after the date of enactment of this Act, the Secretary shall promulgate and implement a Federal lands program which shall be applicable to all surface coal mining and reclamation operations taking place pursuant to any Federal law on any Federal lands: *Provided,* That except as provided in section 712 the provisions of this Act shall not be applicable to Indian lands. The Federal lands program shall, at a minimum, incorporate all of the requirements of this Act and shall take into consideration the diverse physical, climatological, and other unique characteristics of the Federal lands in question. Where Federal lands in a State with an approved State program are involved, the Federal lands program shall, at a minimum, include the requirements of the approved State program.

(b) The requirements of this Act and the Federal lands program shall be incorporated by reference or otherwise in any Federal mineral lease, permit, or contract issued by the Secretary which may involve surface coal mining and reclamation operations. Incorporation of such requirements shall not, however, limit in any way the authority of the Secretary to subsequently issue new regulations, revise the Federal lands program to deal with changing conditions or changed technology, and to require any surface mining and reclamation operations to conform with the requirements of this Act and the regulations issued pursuant to this Act.

(c) The Secretary may enter into agreements with a State or with a number of States to provide for a joint Federal-State program covering a permit or permits for surface coal mining and reclamation operations on land areas which contain lands within any State and Federal lands which are interspersed or checkerboarded and which should, for conservation and administrative purposes, be regulated as a single management unit. To implement a joint Federal-State program the Secretary may enter into agreements with the States, may delegate authority to the States, or may accept a delegation of authority from the States for the purpose of avoiding quality of administration of a single permit for surface coal mining and reclamation operations.

(d) Except as specifically provided in subsection (c) this section shall not be construed as authorizing the Secretary to delegate to the States any authority or jurisdiction to regulate or administer surface coal mining and reclamation operations or other activities taking place on the Federal lands.

(e) The Secretary shall require as one of the terms and conditions of any permit, lease, or contract to surface mine coal owned by the United States, that the lessee, permittee, or contractor give satisfactory assurances that no class of purchasers of the mined coal shall be unreasonably denied purchase thereof.

PUBLIC AGENCIES, PUBLIC UTILITIES, AND PUBLIC CORPORATIONS

SEC. 524. Any agency, unit, or instrumentality of Federal, State, or local government, including any publicly owned utility or publicly owned corporation of Federal, State, or local government, which proposes to engage in surface coal mining operations which are subject to the requirements of this Act shall comply with the provisions of title V.

REVIEW BY SECRETARY

SEC. 525. (a) (1) A permittee issued a notice or order by the Secretary pursuant to the provisions of subparagraphs (a) (2) and (3) of section 521 of this title, or pursuant to a Federal program or the Federal lands program or any person having an interest which is or may be adversely affected by such notice or order or by any modification, vacation, or termination of such notice or order, may apply to the Secretary for review of the notice or order within thirty days of receipt thereof or within thirty days of its modification, vacation, or termination. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation, or termination thereof. The filing of an application for review under this subsection shall not operate as a stay or any order or notice.

(2) The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior thereto. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code.

(b) Upon receiving the report of such investigation, the Secretary shall make findings of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the notice or order, or the modification, vacation, or termination of such notice or order complained of and incorporate his findings therein.

(c) Pending completion of the investigation required by this section, the applicant may file with the Secretary a written request that the Secretary grant temporary relief from any notice or order issued under section 521 of this title, a Federal program or the Federal lands program together with a detailed statement giving reasons for granting such relief. The Secretary may grant such relief, under such conditions as he may prescribe, if—

(1) a hearing has been held in the locality of the permit area on the request for tem-

porary relief in which all parties were given an opportunity to be heard;

(2) the applicant shows that there is substantial likelihood that the findings of the Secretary will be favorable to him; and

(3) such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(d) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to section 521, the Secretary shall hold a public hearing after giving written notice of the time, place, and date thereof. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Within sixty days following the public hearing, the Secretary shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. If the Secretary revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the Secretary, or the Secretary shall declare as forfeited the performance bonds for the operation.

JUDICIAL REVIEW

SEC. 526. (a)(1) Any action of the Secretary to approve or disapprove a State program or to prepare and promulgate a Federal program pursuant to this Act shall be subject to judicial review only by the appropriate United States Court of Appeals upon the filing in such court within sixty days from the date of such action of a petition by any person who participated in the administrative proceedings related thereto and who is aggrieved by the action praying that the action be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Secretary, and the Attorney General and thereupon the Secretary shall certify, and the Attorney General shall file in such court the record upon which the action complained of was issued, as provided in section 2112 of title 28, United States Code.

(2) All other orders or decisions issued by the Secretary pursuant to this Act shall be subject to judicial review only in the United States district court for the locality in which the surface coal mining operation is located. Such review shall be in accordance with the Federal Rules of Civil Procedure. In the case of a proceeding to review an order or decision issued by the Secretary under the penalty section of this Act, the court shall have jurisdiction to enter an order requiring payment or any civil penalty assessment enforced by its judgment. The availability of review established in this subsection shall not be construed to limit the operation of the rights established in section 520.

(b) The court shall hear such petition or complaint solely on the record made before the Secretary. The findings of the Secretary if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

(c) In the case of a proceeding to review any order or decision issued by the Secretary under this Act, except an order or decision pertaining to any order issued under section 521 of this title, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if—

(1) all parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(2) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(3) such relief will not adversely affect the public health or safety or cause significant imminent environment harm to land, air, or water resources.

(d) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order or decision of the Secretary.

(e) Action of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by the court of competent jurisdiction in accordance with State law, but the availability of such review shall not be construed to limit the operation of the rights established in section 520.

SPECIAL BITUMINOUS COAL MINES

SEC. 527. The regulatory authority is authorized to and shall issue separate regulations for those special bituminous coal surface mines located west of the one hundredth meridian west longitude which meet the following criteria:

(a) the excavation of the specific mine pit takes place on the same relatively limited site for an extended period of time;

(b) the excavation of the specific mine pit follows a coal seam having an inclination of fifteen degrees or more from the horizontal, and continues in the same area proceeding downward with lateral expansion of the pit necessary to maintain stability or as necessary to accommodate the orderly expansion of the total mining operation;

(c) the excavation of the specific mine pit involves the mining of more than one coal seam and mining has been initiated on the deepest coal seam contemplated to be mined in the current operation;

(d) the amount of material removed is large in proportion to the surface area disturbed;

(e) there is no practicable alternative method of mining the coal involved;

(f) there is no practicable method to reclaim the land in the manner required by this Act; and

(g) the coal being mined has been owned or controlled by the operator of the mine since February 27, 1975; and

(h) the specific mine pit has been actually producing coal since January 1, 1972, in such manner as to meet the criteria set forth in this section, and, because of past duration of mining, is substantially committed to a mode of operation which warrants exceptions to some provisions of this title.

Such alternative regulations shall pertain only to the standards governing onsite handling of spoils, elimination of depressions capable of collecting water, creation of impoundments, and regrading to the approximate original contour and shall specify that remaining highwalls are stable. All other performance standards in this title shall apply to such mines.

SURFACE MINING OPERATIONS NOT SUBJECT TO THIS ACT

SEC. 528. The provisions of this Act shall not apply to any of the following activities:

(1) the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him; and

(2) the extraction of coal for commercial purposes where the surface mining operation affects two acres or less.

TITLE VI—DESIGNATION OF LANDS UNSUITABLE FOR NONCOAL MINING

DESIGNATION PROCEDURES

SEC. 601. (a) With respect to Federal lands within any State, the Secretary of Interior may, and if so requested by the Governor of such State, shall review any area within such lands to assess whether it may be unsuitable for mining operations for minerals or materials other than coal, pursuant to the criteria and procedures of this section.

(b) An area of Federal lands may be designated under this section as unsuitable for mining operations if (1) such area consists of Federal land of a predominantly urban or suburban character, used primarily for residential or related purposes, the mineral estate of which remains in the public domain, or (2) such area consists of Federal land where mining operations would have an adverse impact on lands used primarily for residential or related purposes.

(c) Any person having an interest which is or may be adversely affected shall have the right to petition the Secretary to seek exclusion of an area from mining operations pursuant to this section or the redesignation of an area or part thereof as suitable for such operations. Such petition shall contain allegations of fact with supporting evidence which would tend to substantiate the allegations. The petitioner shall be granted a hearing within a reasonable time and finding with reasons therefor upon the matter of their petition. In any instance where a Governor requests the Secretary to review an area, or where the Secretary finds the national interest so requires, the Secretary may temporarily withdraw the area to be reviewed from mineral entry or leasing pending such review: *Provided, however*, That such temporary withdrawal be ended as promptly as practicable and in no event shall exceed two years.

(d) In no event is a land area to be designated unsuitable for mining operations under this section on which mining operations are being conducted prior to the holding of a hearing on such petition in accordance with subsection (c) hereof. Valid existing rights shall be preserved and not affected by such designation. Designation of an area as unsuitable for mining operations under this section shall not prevent subsequent mineral exploration of such area, except that such exploration shall require the prior written consent of the holder of the surface estate, which consent shall be filed with the Secretary. The Secretary may promulgate, with respect to any designated area, regulations to minimize any adverse effects of such exploration.

(e) Prior to any designation pursuant to this section, the Secretary shall prepare a detailed statement on (i) the potential mineral resources of the area, (ii) the demand for such mineral resources, and (iii) the impact of such designation or the absence of such designation on the environment, economy, and the supply of such mineral resources.

(f) When the Secretary designates an area of Federal lands as unsuitable for all or certain types of mining operations for minerals and materials other than coal pursuant to this section he may withdraw such area from mineral entry or leasing, or condition such entry or leasing so as to limit such mining operations in accordance with his determination, if the Secretary also determines, based on his analysis pursuant to subsection 601(e), that the benefits resulting from such designation, would be greater than the benefits to the regional or national economy which could result from mineral development of such area.

(g) Any party with a valid legal interest who has appeared in the proceedings in connection with the Secretary's determination pursuant to this section and who is aggrieved by the Secretary's decision (or by his failure to act within a reasonable time) shall have the right of appeal for review by the United States district court for the district in which the pertinent area is located.

TITLE VII—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

DEFINITIONS

SEC. 701. For the purposes of this Act—

(1) "Secretary" means the Secretary of the Interior, except where otherwise described;

(2) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

(3) "Office" means the Office of Surface Mining, Reclamation, and Enforcement established pursuant to title II;

(4) "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States, or between a State and any other place outside thereof, or between points in the same State which directly or indirectly affect interstate commerce;

(5) "surface coal mining operations" means—

(A) activities conducted on the surface of lands in connection with a surface coal mine or surface operations and impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site: *Provided, however,* That such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percentum of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to section 512 of this Act; and

(B) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities;

(6) "surface coal mining and reclamation operations" means surface mining operations and all activities necessary and incident to the reclamation of such operations after the date of enactment of this Act;

(7) "lands within any State" or "lands within such State" means all lands within a State other than Federal lands and Indian lands;

(8) "Federal lands" means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except Indian lands;

(9) "Indian lands" means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by any Indian tribe;

(10) "Indian tribe" means any Indian tribe, band, group, or community having a governing body recognized by the Secretary;

(11) "State program" means a program established by a State pursuant to section 503 to regulate surface coal mining and reclamation operations, on lands within such State in accordance with the requirement of this Act and regulations issued by the Secretary pursuant to this Act;

(12) "Federal program" means a program established by the Secretary pursuant to section 504 to regulate surface coal mining and reclamation operations on lands within a State in accordance with the requirements of this Act;

(13) "Federal lands program" means a program established by the Secretary pursuant to section 523 to regulate surface coal mining and reclamation operations on Federal lands;

(14) "reclamation plan" means a plan submitted by an applicant for a permit under a State program or Federal program which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to section 508;

(15) "State regulatory authority" means the department or agency in each State which has primary responsibility at the State level for administering this Act;

(16) "regulatory authority" means the State regulatory authority where the State is administering this Act under an approved State program or the Secretary where the Secretary is administering this Act under a Federal program;

(17) "person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization;

(18) "permit" means a permit to conduct surface coal mining and reclamation operations issued by the State regulatory authority pursuant to a State program or by the Secretary pursuant to a Federal program;

(19) "permit applicant" or "applicant" means a person applying for a permit;

(20) "permittee" means a person holding a permit;

(21) "fund" means the Abandoned Mine Reclamation Fund established pursuant to section 401;

(22) "other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the Earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form;

(23) "approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and depressions eliminated except that water impoundments may be permitted where the regulatory authority determines that they are in compliance with section 515(b)(21) of this Act;

(24) "operator" means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than two hundred and fifty tons of coal from the Earth by coal mining within twelve consecutive calendar months in any one location;

(25) "permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by section 509 of this Act and shall be readily identifiable by appropriate markers on the site;

(26) "unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care;

(27) "alluvial valley floors" means the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities;

(28) "imminent danger to the health or safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this Act in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated.

OTHER FEDERAL LAWS

SEC. 702. (a) Nothing in this Act shall be construed as superseding, amending, modifying, or repealing the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a), the National Environmental Policy Act of 1969 (42 U.S.C. 4321–47), or any of the following Acts or with any rule or regulation promulgated thereunder, including, but not limited to—

(1) The Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721–740).

(2) The Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742).

(3) The Federal Water Pollution Control Act (79 Stat. 903), as amended, the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality.

(4) The Clean Air Act, as amended (42 U.S.C. 1857).

(5) The Solid Waste Disposal Act (42 U.S.C. 3251).

(6) The Refuse Act of 1899 (33 U.S.C. 407).

(7) The Fish and Wildlife Coordination Act of 1934 (16 U.S.C. 661–666c).

(b) Nothing in this Act shall affect in any way the authority of the Secretary or the heads of other Federal agencies under other provisions of law to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate surface coal mining and reclamation operations on lands under their jurisdiction.

(c) To the greatest extent practicable each Federal agency shall cooperate with the Secretary and the States in carrying out the provisions of this Act.

(d) Approval of the State programs, pursuant to section 503(b), promulgation of Federal programs, pursuant to section 504, and implementation of the Federal lands programs, pursuant to section 523 of this Act, shall constitute a major action within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

EMPLOYEE PROTECTION

SEC. 703. (a) No person shall discharge, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(b) Any employee or representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary for a review of such firing or alleged discrimination. A copy of the application shall be sent to the person or operator who will be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to the alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of

the United States Code. Upon receiving the report of such investigation the Secretary shall make findings of fact. If he finds that a violation did occur, he shall issue a decision incorporating therein and his findings in an order requiring the party committing the violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no violation, he shall issue a finding. Orders issued by the Secretary under this subsection shall be subject to judicial review in the same manner as orders and decisions of the Secretary are subject to judicial review under this Act.

(c) Whenever an order is issued under this section to abate any violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the persons committing the violation.

(d) The Secretary shall conduct continuing evaluations of potential losses or shifts of employment which may result from the enforcement of this Act or any requirement of this Act including, where appropriate, investigating threatened mine closures or reductions in employment allegedly resulting from such enforcement or requirement. Any employee who is discharged or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of the enforcement or requirement of this Act, or any representative of such employee, may request the Secretary to conduct a full investigation of the matter. The Secretary shall thereupon investigate the matter, and, at the request of any interested party, shall hold public hearings on not less than five days' notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such limitation or order on employment and on any alleged discharge, layoff, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary shall promptly make findings of fact as to the effect of such enforcement or requirement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Secretary or a State to modify or withdraw any enforcement action or requirement.

PROTECTION OF GOVERNMENT EMPLOYEES

SEC. 704. Section 1114, title 18, United States Code, is hereby amended by adding the words "or of the Department of the Interior" after the words "Department of Labor" contained in that section.

GRANTS TO THE STATES

SEC. 705. (a) The Secretary is authorized to make annual grants to any State for the purpose of assisting such State in developing, administering, and enforcing State programs under this Act. Such grants shall not exceed 80 per centum of the total costs incurred during the first year, 60 per centum of total costs incurred during the second year, and 40 per centum of the total costs incurred during the third and fourth years.

(b) The Secretary is authorized to cooperate with and provide assistance to any State for the purpose of assisting it in the development, administration, and enforcement of its State programs. Such cooperation and assistance shall include—

(1) technical assistance and training including provision of necessary curricular and instruction materials, in the development, administration, and enforcement of the State programs; and

(2) assistance in preparing and maintaining a continuing inventory of information on surface coal mining and reclamation operations for each State for the purposes of evaluating the effectiveness of the State programs. Such assistance shall include all Federal departments and agencies making available data relevant to surface coal mining and reclamation operations and to the development, administration, and enforcement of State programs concerning such operations.

ANNUAL REPORT

SEC. 706. The Secretary shall submit annually to the President and the Congress a report concerning activities conducted by him, the Federal Government, and the States pursuant to this Act. Among other matters, the Secretary shall include in such report recommendations for additional administrative or legislative action as he deems necessary and desirable to accomplish the purposes of this Act.

PREFERENCE FOR PERSONS ADVERSELY AFFECTED BY THE ACT

SEC. 707. (a) In the award of contracts for the reclamation of abandoned and unreclaimed mined areas pursuant to title IV and for research and demonstration projects pursuant to section 715 of this Act the Secretary shall develop regulations which will accord a preference to surface coal mining operators who can demonstrate that their surface coal mining operations, despite good-faith efforts to comply with the requirements of this Act, have been adversely affected by the regulation of surface coal mining and reclamation operations pursuant to this Act.

(b) Contracts awarded pursuant to this section shall require the contractor to afford an employment preference to individuals whose employment has been adversely affected by this Act.

EMPLOYMENT IMPACT AND UNEMPLOYMENT ASSISTANCE

SEC. 708. (a) The President shall take into consideration and shall minimize, to the fullest extent practicable, any adverse impact of actions taken pursuant to this Act upon employment. All agencies of Government shall cooperate fully under this existing statutory authority to minimize any such adverse impact

(b) (1) The Secretary of Labor shall make grants, in accordance with regulations prescribed by him, to States to provide cash benefits to any individual who loses his job in the coal mining industry as a direct result of the closure of a mine which closed as a direct result of the administration and enforcement of this Act, and who is not eligible for unemployment assistance or who has exhausted his rights to such assistance (within the meaning of paragraph (4) (B)).

(2) Regulations of the Secretary of Labor under paragraph (1) may require that States enter into agreements as such regulations—

(A) shall provide that—

(i) a benefit under this subsection shall be available to any individual who is unemployed as a result of the administration and enforcement of this Act as defined in subsection (b) (1) of this section, and who is not eligible for unemployment assistance;

(ii) a benefit provided to such an individual shall be available to such individual for any week of unemployment which begins after the date on which this Act is enacted;

(iii) the amount of a benefit with respect to a week of unemployment shall be equal to—

(I) in the case of an individual who has exhausted his eligibility for unemployment compensation payment for which he was most eligible; or

(II) in the case of any other individual, an amount which shall be set by the State in which the individual was last employed at a level which shall take into account the benefit levels provided by State law for persons covered by the State's unemployment compensation program, but which shall not be less than the minimum weekly amount, nor more than the maximum weekly amount, under the unemployment compensation law of the State; and

(B) may provide that individuals eligible for a benefit under this subsection have been employed for up to one month in the fifty-two-week period preceding the filing of a claim for benefits under this subsection.

(3) Unemployment resulting from the administration and enforcement of this Act shall be defined in regulations of the Secretary of Labor, consistent with the provisions of subsection (b) (1) of this section. Such regulations shall provide that such unemployment includes unemployment clearly attributable to such administration and enforcement. The determination as to whether an individual is unemployed as a result of such administration and enforcement (within the meaning of such regulations) shall be made by the State in which the individual was last employed in accordance with such industry, business, or employer certification process or such other determination procedure (or combination thereof) as the Secretary of Labor shall, consistent with the purposes of paragraph (1) of this subsection, determine as most appropriate to minimize administrative costs, appeals, or other delay, in paying to individuals the cash allowances provided under this section.

(4) For purposes of this subsection—

(A) an individual shall be considered unemployed in any week if he is—

(i) not working

(ii) able to work, and

(iii) available for work,

within the meaning of the State unemployment compensation law in effect in the State in which such individual was last employed, and provided that he would not be subject to disqualification under that law for such week, if he were eligible for benefits under such law;

(B) (i) the phrase "not eligible" for unemployment assistance means not eligible for compensation under any State or Federal unemployment compensation law (including the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.)) with respect to such week of unemployment, and is not receiving compensation with respect to such week of unemployment under the unemployment compensation law of Canada; and

(ii) the phrase "exhausted his rights to such assistance" means exhausted all rights to regular, additional, and extended compensation under all State unemployment compensation laws and chapter 85 of title 5, United States Code, and has no further rights to regular, additional, or extended compensation under any State or Federal unemployment compensation law (including the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.)) with respect to such week of unemployment, and is not receiving compensation with respect to such week of unemployment under the unemployment compensation law of Canada.

SEVERABILITY

SEC. 709. If any provision of this Act or the applicability thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision

to other persons or circumstances shall not be affected thereby.

ALASKAN SURFACE COAL MINE STUDY

SEC. 710. (a) The Secretary is directed to contract with the National Academy of Sciences-National Academy of Engineering for an in-depth study of surface coal mining conditions in the State of Alaska in order to determine which, if any, of the provisions of this Act should be modified with respect to surface coal mining operations in Alaska.

(b) The Secretary shall report on the findings of the study to the President and Congress no later than two years after the date of enactment of this Act.

(c) The Secretary shall include in his report a draft of legislation to implement any changes recommended to this Act.

(d) Until one year after the Secretary has made this report to the President and Congress, or three years after the date of enactment of this Act, whichever comes first, the Secretary is authorized to suspend the applicability of any provision of this Act, or any regulation issued pursuant thereto, to any surface coal mining operation in Alaska in existence on the date of the enactment of this Act if he determines that it is necessary to insure the continued operation of such surface coal mining operation. The Secretary may exercise his suspension authority only after he has (1) published a notice of proposed suspension in the Federal Register and in a newspaper of general circulation in the area of Alaska in which the affected surface coal mining operation is located, and (2) held a public hearing on the proposed suspension in Alaska.

(e) There is hereby authorized to be appropriated for the purpose of this section $250,000.

STUDY OF RECLAMATION STANDARDS FOR SURFACE MINING OF OTHER MINERALS

SEC. 711. (a) The Chairman of the Council on Environmental Quality is directed to contract with the National Academy of Sciences-National Academy of Engineering, other Government agencies or private groups as appropriate, for an in-depth study of current and developing technology for surface and open pit mining and reclamation for minerals other than coal designed to assist in the establishment of effective and reasonable regulation of surface and open pit mining and reclamation for minerals other than coal. The study shall—

(1) assess the degree to which the requirements of this Act can be met by such technology and the costs involved;

(2) identify areas where the requirements of this Act cannot be met by current and developing technology;

(3) in those instances describe requirements most comparable to those of this Act which could be met, the costs involved, and the differences in reclamation results between these requirements and those of this Act; and

(4) discuss alternative regulatory mechanisms designed to insure the achievement of the most beneficial post-mining land use for areas affected by surface and open-pit mining.

(b) The study together with specific legislative recommendations shall be submitted to the Prsident and the Congress no later than eighteen months after the date of enactment of this Act: *Provided*, That, with respect to surface or open pit mining for sand and gravel the study shall be submitted no later than twelve months after the date of enactment of this Act.

(c) There are hereby authorized to be appropriated for the purpose of this section $500,000.

INDIAN LANDS

SEC. 712. (a) The Secretary is directed to study the question of the regulation of surface mining on Indian lands which will achieve the purpose of this Act and recognize the special jurisdictional status of these lands. In carrying out this study the Secretary shall consult with Indian tribes. The study report shall include proposed legislation designed to allow Indian tribes to elect to assume full regulatory authority over the administration and enforcement of regulation of surface mining of coal on Indian lands.

(b) The study report required by subsection (a) together with drafts of proposed legislation and the view of each Indian tribe which would be affected shall be submitted to the Congress as soon as possible but not later than January 1, 1976.

(c) On and after one hundred and thirty-five days from the enactment of this Act, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by subsections 515(b)(2), 515(b)(3), 515(b)(5), 515(b)(10), 515(b)(13), 515(b)(19), and 515(d) of this Act and the Secretary shall incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands.

(d) On and after thirty months from the enactment of this Act, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by sections 507, 508, 509, 510, 515, 516, 517, and 519 of this Act and the Secretary shall incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands.

(e) With respect to leases issued after the date of enactment of this Act, the Secretary shall include and enforce terms and conditions in addition to those required by subsections (c) and (d) as may be requested by the Indian tribe in such leases.

(f) Any change required by subsection (c) or (d) of this section in the terms and conditions of any coal lease on Indian lands existing on the date of enactment of this Act, shall require the approval of the Secretary.

(g) The Secretary shall provide for adequate participation by the various Indian tribes affected in the study authorized in this section and not more than $700,000 of the funds authorized in section 714(a) shall be reserved for this purpose.

EXPERIMENTAL PRACTICES

SEC. 713. In order to encourage advances in mining and reclamation practices, the regulatory authority may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under sections 515 and 516 of this Act. Such departures may be authorized if (i) the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required by promulgated standards; (ii) the mining operation is no larger than necessary to determine the effectiveness and economic feasibility of the experimental practices; and (iii) the experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

AUTHORIZATION OF APPROPRIATIONS

SEC. 714. There is authorized to be appropriated to the Secretary for the purposes of this Act the following sums, and all such funds appropriated shall remain available until expended:

(a) For the implementation and funding of sections 502, 552, 405(b)(3), and 712, contract authority is granted to the Secretary of the Interior for the sum of $10,000,000 to become available immediately upon enactment of this Act and $10,000,000 for each of the two succeeding fiscal years.

(b) For administrative and other purposes of this Act, except as otherwise provided for in this Act, authorization is provided for the sum of $10,000,000 for the fiscal year ending June 30, 1975, for each of the two succeeding fiscal years the sum of $20,000,000 and $30,000,000 for each fiscal year thereafter.

RESEARCH AND DEMONSTRATION PROJECTS ON ALTERNATIVE COAL MINING TECHNOLOGIES

SEC. 715. (a) The Secretary is authorized to conduct and promote the coordination and acceleration of, research, studies, surveys, experiments, demonstration projects, and training relative to—

(1) the development and application of coal mining technologies which provide alternatives to surface disturbance and which maximizes the recovery of available coal resources, including the improvement of present underground mining methods, methods for the return of underground mining wastes to the mine void, methods for the underground mining of thick coal seams and very deep seams; and

(2) safety and health in the application of such technologies methods and means.

(b) In conducting the activities authorized by this section, the Secretary may enter into contracts with and make grants to qualified institutions, agencies, organizations, and persons.

(c) There are authorized to be appropriated to the Secretary, to carry out the purposes of this section, $35,000,000 for each fiscal year beginning with the fiscal year 1976, and for each year thereafter for the next four years.

SURFACE OWNER PROTECTION

SEC. 716. (a) The provisions and procedures specified in this section shall apply where coal owned by the United States under land the surface rights to which are owned by a surface owner as defined in this section is to be mined by methods other than underground mining techniques. In order to minimize disturbance to surface owners from surface coal mining of Federal coal deposits, the Secretary shall, in his discretion but, to the maximum extent practicable, refrain from leasing such coal deposits for development by methods other than underground mining techniques.

(b) Any coal deposits subject to this section shall be offered for lease pursuant to section 2(a) of the Mineral Leasing Act of 1920 (30 U.S.C. 201a), except that no award shall be made by any method other than competitive bidding.

(c) Prior to placing any deposit subject to this section in a leasing tract, the Secretary shall give o any surface owner whose land is to be included in the proposed leasing tract actual written notice of his intention to place such deposits under such land in a leasing tract.

(d) The Secretary shall not enter into any lease of such coal deposits until the surface owner has given written consent and the Secretary has obtained such consent, to enter and commence surface mining operations, and the applicant has agreed to pay in addition to the rental and royalty and other obligations due the United States the money value of the surface owner's interest as determined according to the provisions of subsection (e).

(e) The value of the surface owner's interest shall be fixed by the Secretary based on appraisals made by three appraisers. One such appraiser shall be appointed by the Secretary, one appointed by the surface owner concerned, and one appointed jointly by the appraisers named by the Secretary and such surface owner. In computing the value of the surface owner's interest, the appraisers shall first fix and determine the fair market value of the surface estate and they shall then determine and add the value of such of the following losses and costs to the extent that such losses and costs arise from the surface coal mining operations:

(1) loss of income to the surface owner during the mining and reclamation process;

(2) cost to the surface owner for relocation or dislocation during the mining and reclamation process;

(3) cost to the surface owner for the loss of livestock, crops, water or other improvements;

(4) any other damage to the surface reasonably anticipated to be caused by the surface mining and reclamation operations; and

(5) such additional reasonable amount of compensation as the Secretary may determine is equitable in light of the length of the tenure of the ownership: *Provided*, That such additional reasonable amount of compensation may not exceed the value of the losses and costs as established pursuant to this subsection and in paragraphs (1) through (4) above, or one hundred dollars ($100.00) per acre, whichever is less.

(f) All bids submitted to the Secretary for any such lease shall, in addition to any rental or royalty and other obligations, be accompanied by the deposit of an amount equal to the value of the surface owner's interest computed under subsection (e). The Secretary shall pay such amount to the surface owner either upon the execution of such lease or upon the commencement of mining, or shall require posting of bond to assure installment payments over a period of years acceptable to the surface owner, at the option of the surface owner. At the time of initial payment, the surface owner may request a review of the initial determination of the amount of the surface owner's interest for the purpose of adjusting such amount to reflect any increase in the Consumer Price Index since the initial determination. The lessee shall pay such increased amount to the Secretary to be paid over to the surface owner. Upon the release of the performance bonds or deposits under section 519, or at an earlier time as may be determined by the Secretary, all rights to enter into and use the surface of the land subject to such lease shall revert to the surface owner.

(g) For the purpose of this section the term "surface owner" means the natural person or persons (or corporation, the majority stock of which is held by a person or persons who meet the other requirements of this section) who—

(1) hold legal or equitable title to the land surface;

(2) have their principal place of residence on the land or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface coal mining operations; or receive directly a significant portion of their income, if any, from such farming or ranching operations; and

(3) have met the conditions of paragraphs (1) and (2) for a period of at least three years prior to the granting of the consent.

In computing the three-year period the Secretary may include periods during which title was owned by a relative of such person by blood or marriage during which period such relative would have met the requirements of this subsection.

(h) Where surface lands over coal subject to this section are owned by any person who meets the requirements of paragraphs (1) and (2) of subsection (g) but who does not meet the requirements of paragraph (3) of subsection (g), the Secretary shall not place such coal deposit in a leasing tract unless such person has owned such surface lands for a period of three years. After the expiration of such three-year period such coal deposit may be leased by the Secretary, provided that if such person qualifies as a surface owner as defined by subsection (g) his consent has been obtained pursuant to the procedures set forth in this section.

(i) Nothing in this section shall be construed as increasing or diminishing any property rights held by the United States or by any other landowner.

(j) The determination of the value of the surface owner's interest fixed pursuant to subsection (e) or any adjustment to that determination made pursuant to subsection (f) shall be subject to judicial review only in the United States district court for the locality in which the leasing tract is located.

(k) At the end of each two-year period after the date of enactment of this Act, the Secretary shall submit to the Congress a report on the implementation of the Federal coal leasing policy established by this section. The report shall include a list of the surface owners who have (1) given their consent, (2) received payments pursuant to this section, (3) refused to give consent, and (4) the acreage of land involved in each category. The report shall also indicate the Secretary's views on the impact of the leasing policy on the availability of Federal coal to meet national energy needs and on receipt of fair market value for Federal coal.

(l) This section shall not apply to Indian lands.

(m) Any person who gives, offers or promises anything of value to any surface owner or offers or promises any surface owner to give anything of value to any other person or entity in order to induce such surface owner to give the Secretary his written consent pursuant to this section, and any surface owner who accepts, receives, or offers or agrees to receive anything of value for himself or any other person or entity, in return for giving his written consent pursuant to this section shall be subject to a civil penalty of one and a half times the monetary equivalent of the thing of value. Such penalty shall be assessed by the Secretary and collected in accordance with the procedures set out in subsections 518(b), 518(c), 518(d), and 518(e) of this Act.

(n) Any Federal coal lease issued subject to the provisions of this section shall be automatically terminated if the lessee, before or after issuance of the lease, gives, offers or promises anything of value to the surface owner or offers or promises any surface owner to give anything of value to any other person or entity in order to (1) induce such surface owner to give the Secretary his written consent pursuant to this section, or (2) compensate such surface owner for giving such consent. All bonuses, royalties, rents and other payments made by the lessee shall be retained by the United States.

(o) The provisions of this section shall become effective on February 1, 1976. Until February 1, 1976, the Secretary shall not lease any coal deposits owned by the United States under land the surface rights to which are not owned by the United States, unless the Secretary has in his possession a document which demonstrates the acquiescence prior to February 27, 1975, of the owner of the surface rights to the extraction of minerals within the boundaries of his property by current surface coal mining methods.

FEDERAL LESSEE PROTECTION

SEC. 717. In those instances where the coal proposed to be mined by surface coal mining operations is owned by the Federal Government and the surface is subject to a lease or a permit issued by the Federal Government, the application for a permit shall include either:

(1) the written consent of the permittee or lessee of the surface lands involved to enter and commence surface coal mining operations on such land, or in lieu thereof;

(2) evidence of the execution of a bond or undertaking to the United States or the State, whichever is applicable, for the use and benefit of the permittee or lessee of the surface lands involved to secure payment of any damages to the surface estate which the operations will cause to the crops, or to the tangible improvements of the permittee or lessee of the surface lands as may be determined by the parties involved, or as determined and fixed in an action brought against the operator or upon the bond in a court of competent jurisdiction. This bond is in addition to the performance bond required for reclamation under this Act.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that no rollcall votes occur on Monday next prior to the hour of 3:30 p.m.

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

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

S. 621. A bill to prohibit for a period of 90 days the lifting of all price controls on domestic oil, and to thereafter require the submission to, and the right of review and disapproval of the Congress of such action within 30 days (minority views filed) (Rept. No. 94-32).

By Mr. CANNON, from the Committee on Rules and Administration:

S. Res. 103. A resolution relating to members on the part of the Senate of the Joint Committee on Printing and the Joint Committee of Congress on the Library. Placed on the Calendar.

REPORT ENTITLED "PROTECTING OLDER AMERICANS AGAINST OVERPAYMENT OF INCOME TAXES"—REPORT OF THE SPECIAL COMMITTEE ON AGING (S. REPORT NO. 94-31)

Mr. CHURCH. Mr. President, the Special Committee on Aging has recently issued a "Checklist of Itemized Deductions" for older persons. This checklist, "Protecting Older Americans Against Overpayment of Income Taxes," has attracted considerable interest throughout the country. The demand for this publication has been overwhelming: consequently; the supply is exhausted. In order to make this valuable report more widely available and distributed to libraries, I ask unanimous consent that it be published as a Senate Report.

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

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. MOSS (for himself, Mr. MAGNUSON, Mr. ABOUREZK, Mr. CHURCH, Mr. GRAVEL, Mr. MCGEE, Mr. MCGOVERN, Mr. HUMPHREY, Mr. CASE, Mr. TUNNEY, Mr. MCINTYRE, and Mr. NELSON):

S. 997. A bill to amend the Fair Packaging and Labeling Act to require the disclosure by retail distributors of retail unit prices of consumer commodities, and for other purposes. Referred to the Committee on Commerce.

By Mr. MOSS:

S. 998. A bill to amend title 44, United States Code, to strengthen the authority of the Administrator of General Services and National Archives and Records Service with

respect to records management by Federal agencies, and for other purposes. Referred to the Committee on Government Operations.

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

S. 999. A bill to designate the Federal office building located in Dover, Del., as the "J. Allen Frear Building". Referred to the Committee on Public Works.

By Mr. MOSS (by request):

S. 1000. A bill to amend the Consumer Product Safety Act to improve the Consumer Product Safety Commission, to authorize new appropriations, and for other purposes. Referred to the Committee on Commerce.

By Mr. MOSS:

S. 1001. A bill to authorize Federal agencies administering lands and waters for recreational and other public purposes to acquire rights-of-way essential to the enjoyment and utilization of such lands and waters. Referred to the Committee on Interior and Insular Affairs.

By Mr. ABOUREZK:

S. 1002. A bill to provide for the creation of the Indian Trust Counsel Authority, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. PERCY (for himself, Mr. GOLDWATER, Mr. CURTIS, Mr. MCGOVERN, Mr. YOUNG, and Mr. HRUSKA):

S. 1003. A bill to name the synthetic gas pilot plant located in Rapid City, S. Dak., the "Karl E. Mundt Gasification Pilot Plant". Referred to the Committee on Interior and Insular Affairs.

By Mr. HUGH SCOTT:

S. 1004. A bill to amend the Wild and Scenic Rivers Act of 1968 by designating a portion of the Allegheny River, Pennsylvania, for potential addition to the National Wild and Scenic Rivers System. Referred to the Committee on Interior and Insular Affairs.

S. 1005. A bill to extend the volunteer fire companies and volunteer ambulance and rescue companies the rates of postage on second-class and third-class bulk mailings applicable to certain nonprofit organizations. Referred to the Committee on Post Office and Civil Service.

By Mr. MATHIAS:

S. 1006. A bill to extend the authorization for the American Revolution Bicentennial Administration. Referred to the Committee on the Judiciary.

By Mr. DOLE:

S. 1007. A bill to prohibit the Consumer Product Safety Commission from restricting the sale or manufacture of firearms or ammunition. Referred to the Committee on Commerce.

By Mr. PACKWOOD:

S. 1008. A bill for the relief of Robert H. Schmidt. Referred to the Committee on the Judiciary.

Mr. STONE (for himself, Mr. MCGEE, Mr. CANNON, Mr. CHILES, Mr. CRANSTON, Mr. DOMENICI, Mr. HANSEN, Mr. HASKELL, Mr. MONTOYA, and Mr. STEVENS):

S. 1009. A bill to amend title 13 of the United States Code to require the compilation of current data on total population between censuses and to require the use of such current data in the administration of Federal laws in which population is a factor. Referred to the Committee on Post Office and Civil Service.

By Mr. HASKELL:

S. 1010. A bill to clarify authorization for the approval by the Administrator of the Federal Aviation Agency of the exchange of a portion of real property conveyed to the city of Grand Junction, Colo., for airport purposes. Referred to the Committee on Commerce.

By Mr. HASKELL (for Mr. JACKSON and Mr. FANNIN) (by request):

S. 1011. A bill to designate the Aldo Leopold Wilderness, Gila National Forest, N. Mex.

S. 1012. A bill to designate the Blue Range Wilderness, Apache National Forest, in the States of Arizona and New Mexico;

S. 1013. A bill to designate the Eagles Nest Wilderness, Arapaho and White River National Forest, in the State of Colorado;

S. 1014. A bill to designate the Flat Tops Wilderness, Routt and White River National Forests, in the State of Colorado;

S. 1015. A bill to designate the Glacier Wilderness, Shoshone National Forest, in the State of Wyoming;

S. 1016. A bill to designate the High Uintas Wilderness, Ashley and Wasatch National Forests, in the State of Utah;

S. 1017. A bill to designate the Spanish Peaks Wilderness, Gallatin National Forest, in the State of Montana;

S. 1018. A bill to designate the Beartooth Wilderness, Custer and Gallatin National Forests in the State of Montana;

S. 1019. A bill to designate the Big Blue Wilderness, Courthouse Mountain Wilderness, Dolores Park Wilderness, Mount Sneffels Wilderness, and Mount Wilson Wilderness, San Juan and Uncompahgre National Forests in the State of Colorado;

S. 1020. A bill to designate the Cloud Peak Wilderness, Big Horn National Forest, in the State of Wyoming;

S. 1021. A bill to designate the Gila Primitive Area as a part of the Gila Wilderness, Gila National Forest, N. Mex., and for other purposes;

S. 1022. A bill to designate the Monarch Wilderness Sequoia, and Sierra National Forest in the State of California;

S. 1023. A bill to designate the Popo Agie Wilderness, Shoshone National Forest, in the State of Wyoming;

S. 1024. A bill to designate the Idaho Wilderness, Boise, Challis, Payette, and Salmon National Forests, Idaho and the Salmon River Wilderness, Bitterroot, Nezperce, and Salmon National Forests, Idaho;

S. 1025. A bill to designate the Trinity Alps Wilderness, Klamath, Shasta-Trinity, and Six Rivers National Forests in the State of California;

S. 1026. A bill to designate certain lands in the Chassahowitzka National Wildlife Refuge, Citrus County, Fla., as wilderness;

S. 1027. A bill to designate certain lands in the Crab Orchard National Wildlife Refuge, Jackson, Union and Williamson Counties, Ill., as wilderness;

S. 1028. A bill to designate certain lands in the Crescent Lake National Wildlife Refuge, Garden County, Nebr., as wilderness;

S. 1029. A bill to designate certain lands in the Hart Mountain National Antelope Refuge, Lake County, Oreg., as wilderness;

S. 1030. A bill to designate certain lands in the Havasu National Wildlife Refuge, San Bernardino County, Calif., as wilderness;

S. 1031. A bill to designate certain lands in the Hawaiian Islands National Wildlife Refuge, city and county of Honolulu, Hawaii, as wilderness;

S. 1032. A bill to designate certain lands in the Imperial National Wildlife Refuge, Yuma County, Ariz., and Imperial County, Calif., as wilderness;

S. 1033. A bill to designate certain lands in the Malheur National Wildlife Refuge, Harney County, Oreg., as wilderness;

S. 1034. A bill to designate certain lands in the Rice Lake National Wildlife Refuge, Minn., and the entire Mille Lacs National Wildlife Refuge, Minn., as wilderness;

S. 1035. A bill to designate certain lands in the Mingo National Wildlife Refuge, Wayne and Stoddard Counties, Mo., as wilderness;

S. 1036. A bill to designate certain lands in the Missisquoi National Wildlife Refuge, Franklin County, Vt., as wilderness;

S. 1037. A bill to designate certain islands of the Oregon Islands National Wildlife Refuge, Clatsop, Tillamook, Lincoln Lane, Coos and Curry Counties, Oreg., as wilderness;

S. 1038. A bill to designate certain lands in the Red Rock Lakes National Wildlife Refuge, Beaverhead County, Mont., as wilderness;

S. 1039. A bill to designate certain lands in the Matia Island and San Juan National Wildlife Refuges, San Juan and Skagit Counties, Wash., as wilderness;

S. 1040. A bill to designate all of the Semidi National Wildlife Refuge, 3rd Judicial Division, Alaska, as wilderness.

S. 1041. A bill to designate certain lands in the Simeonof National Wildlife Refuge, Third Judicial District, Alaska, as wilderness;

S. 1042. A bill to designate certain lands in the Tamarac National Wildlife Refuge, Becker County, Minn., as wilderness;

S. 1043. A bill to designate certain lands in the Aleutian Islands National Wildlife Refuge, Third Judicial Division, Alaska, as wilderness;

S. 1044. A bill to designate certain lands in the Valentine National Wildlife Refuge, Cherry County, Nebr., as wilderness;

S. 1045. A bill to designate certain lands in the White River National Wildlife Refuge, Desha County, Ark., as wilderness;

S. 1046. A bill to designate certain lands within the Agassiz National Wildlife Refuge in Marshall County, Minn., as wilderness;

S. 1047. A bill to designate certain lands in the Aleutian Islands National Wildlife Refuge, Third Judicial Division, Alaska, as wilderness;

S. 1048. A bill to designate all of the Anaho Island National Wildlife Refuge, Washoe County, Nev., as wilderness;

S. 1049. A bill to designate certain lands in the Chincoteague National Wildlife Refuge, and Assateague Island National Seashore, Accomack County, Va., and Worcester County, Md., as wilderness;

S. 1050. A bill to designate certain lands in the Back Bay National Wildlife Refuge, Princess Anne County, Va., as wilderness;

S. 1051. A bill to designate certain lands in the Big Lake National Wildlife Refuge, Mississippi County, Ark., as wilderness;

S. 1052. A bill to designate certain lands in the Bombay Hook National Wildlife Refuge, Kent County, Del., as wilderness;

S. 1053. A bill to designate certain lands in the Cedar Island National Wildlife Refuge, Carteret County, N.C., as wilderness;

S. 1054. A bill to designate certain lands in the J. N. "Ding" Darling National Wildlife Refuge, Lee County, Fla., as wilderness;

S. 1055. A bill to designate certain lands in the Fort Niobrara National Wildlife Refuge, Cherry County, Nebr., as wilderness;

S. 1056. A bill to designate certain lands in the Kenai National Moose Range, Kenai Peninsula Borough, Alaska, as wilderness;

S. 1057. A bill to designate certain lands in the Lacassine National Wildlife Refuge, Cameron Parish, La., as wilderness;

S. 1058. A bill to designate certain lands in the Lake Woodruff National Wildlife Refuge, Lake and Volusia Counties, Fla., as wilderness;

S. 1059. A bill to designate certain lands in the Mattamuskeet National Wildlife Refuge, Hyde County, N.C., as wilderness;

S. 1060. A bill to designate certain lands in the Medicine Lake National Wildlife Refuge, Sheridan and Roosevelt Counties, Mont., as wilderness;

S. 1061. A bill to designate certain lands in the Noxubee National Wildlife Refuge, Oktibbeha County, Miss., as wilderness;

S. 1062. A bill to designate certain lands in the Parker River National Wildlife Refuge, Essex County, Mass., as wilderness;

S. 1063. A bill to designate certain lands within the Pea Island National Wildlife Refuge, Dare County, N.C., as wilderness;

S. 1064. A bill to designate certain lands in the Santee National Wildlife Refuge, Clarendon County, S.C., as wilderness;

S. 1065. A bill to designate certain lands in the Sheldon National Antelope Refuge, Washoe County, Nev., as wilderness;

S. 1066. A bill to designate certain lands in the Swanquarter National Wildlife Refuge, Hyde County, N.C., as wilderness;

S. 1067. A bill to designate certain lands in the UL Bend National Wildlife Refuge, Phillips County, Mont., as wilderness;

S. 1068. A bill to designate certain lands in the Badlands National Monument, S. Dak., as wilderness;

S. 1069. A bill to designate certain lands in the Bandelier National Monument, N. Mex., as wilderness;

S. 1070. A bill to designate certain lands in the Big Bend National Park, Texas, as wilderness;

S. 1071. A bill to designate certain lands in the Black Canyon of the Gunnison National Monument, Colo., as wilderness;

S. 1072. A bill to designate certain lands in the Bryce Canyon National Park, Utah, as wilderness;

S. 1073. A bill to designate certain lands in the Carlsbad Caverns National Park, N. Mex., as wilderness;

S. 1074. A bill to designate as wilderness certain lands within Cedar Breaks National Monument in the State of Utah;

S. 1075. A bill to designate certain lands in the Chiricahua National Monument, Ariz., as wilderness;

S. 1076. A bill to designate certain lands in the Colorado National Monument, Colo., as wilderness;

S. 1077. A bill to designate certain lands in the Crater Lake National Park, Oreg., as wilderness;

S. 1078. A bill to designate certain lands in the Cumberland Gap National Historical Park, Tennessee, Virginia, and Kentucky, as wilderness;

S. 1079. A bill to designate certain lands in the Glacier National Park, Mont., as wilderness;

S. 1080. A bill to designate certain lands in the Grand Canyon National Park and in the Grand Canyon and Marble Canyon National Monuments, Ariz., as wilderness;

S. 1081. A bill to designate certain lands in the Grand Teton National Park, Wyo., as wilderness;

S. 1082. A bill to designate certain lands in the Great Sand Dunes National Monument, Colo., as wilderness;

S. 1083. A bill to designate certain lands in the Guadalupe Mountains National Park, Tex., as wilderness;

S. 1084. A bill to designate certain lands in the Haleakala National Park, Hawaii, as wilderness;

S. 1085. A bill to designate as wilderness certain lands within Isle Royale National Park, in the State of Michigan;

S. 1086. A bill to designate certain lands in the Joshua Tree National Monument, Calif., as wilderness;

S. 1087. A bill to designate certain lands in the Katmai National Monument, Alaska, as wilderness;

S. 1088. A bill to designate as wilderness certain lands within Sequoia and Kings Canyon National Parks, in the State of California;

S. 1089. A bill to designate certain lands in the Mesa Verde National Park, Colo., as wilderness;

S. 1090. A bill to designate certain lands in the North Cascades National Park and in the Ross Lake and Lake Chelan National Recreation Areas, Wash., as wilderness;

S. 1091. A bill to designate certain lands in the Olympic National Park, Wash., as wilderness;

S. 1092. A bill to designate certain lands in the Pinacles National Monument in California as wilderness;

S. 1093. A bill to designate certain lands in the Point Reyes National Seashore, Calif., as wilderness;

S. 1094. A bill to designate certain lands in the Rocky Mountain National Park, Colo., as wilderness;

S. 1095. A bill to designate certain lands in the Saguaro National Monument, Ariz., as wilderness;

S. 1096. A bill to designate certain lands in the Shenandoah National Park, Va., as wilderness;

S. 1097. A bill to designate certain lands in the Theodore Roosevelt National Memorial Park, N. Dak., as wilderness;

S. 1098. A bill to designate certain lands in the Yellowstone National Park, Idaho-Wyoming-Montana, as wilderness;

S. 1099. A bill to designate certain lands in the Yosemite National Park, Calif., as wilderness;

S. 1100. A bill to designate certain lands in the Zion National Park as wilderness;

S. 1101. A bill to designate certain lands in the Death Valley Monument, California and Nevada, as wilderness;

S. 1102. A bill to designate certain lands in the Dinosaur National Monument, Utah and Colorado, as wilderness;

S. 1103. A bill to designate certain lands in the Everglades National Park, Fla., as wilderness;

S. 1104. A bill to designate certain lands in the Great Smoky Mountains National Park, Tennessee and North Carolina, as wilderness.

S. 1105. A bill to designate certain lands in the Hawaii Volcanoes National Park, Hawaii, as wilderness;

S. 1106. A bill to designate certain lands in the Mount Ranier National Park, Wash., as wilderness; and

S. 1107. A bill to designate certain lands in the Organ Pipe National Monument, Ariz., as wilderness. Referred to the Committee on Interior and Insular Affairs.

By Mr. PROXMIRE (for himself, Mr. RANDOLPH, Mr. BIDEN, Mr. MAGNUSON, Mr. MONDALE, Mr. HUMPHREY, Mr. MCGOVERN, Mr. ABOUREZK, Mr. TUNNEY, Mr. HATHAWAY, Mr. HOLLINGS, Mr. MONTOYA, and Mr. HARTKE):

S. 1108. A bill to establish an emergency mortgage credit program to reduce unemployment and aid middle-income home buyers. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. BURDICK (for himself, Mr. PHILIP A. HART, Mr. HOLLINGS, Mr. HRUSKA, Mr. KENNEDY, Mr. PERCY, Mr. RANDOLPH, and Mr. MUSKIE):

S. 1109. A bill to amend title 18, United States Code, relating to parole, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. NUNN (for himself, Mr. ALLEN, and Mr. GARN):

S. 1110. A bill to establish a Council on Judicial Tenure in the judicial branch of the Government, to establish a procedure in addition to impeachment for the retirement of disabled Justices and judges of the United States, and the removal of Justices and judges whose conduct is or has been inconsistent with the good behavior required by article III, section 1 of the Constitution, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. HUGH SCOTT (for himself, Mr. BAKER, Mr. CRANSTON, Mr. HARTKE, Mr. TUNNEY, Mr. WILLIAMS, and Mr. BAYH):

S. 1111. A bill to amend the Copyright Act of 1909, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. GRAVEL:

S. 1112. A bill to establish an Energy Trust Fund funded by a tax on energy sources, to provide for the development of domestic sources of energy and for the more efficient utilization of energy, and for other purposes. Referred to the Committee on Finance.

By Mr. HATFIELD:

S. 1113. A bill to authorize the Secretary of the Interior to establish, on certain public lands of the United States, national petroleum reserves, the development of which needs to be regulated in a manner consistent with the total energy needs of the Nation, and for other purposes. Referred to the Committee on Armed Services, the Committee on Interior and Insular Affairs, and the Committee on Banking, Housing and Urban Affairs, jointly, by unanimous consent.

By Mr. CHURCH:

S. 1114. A bill to provide that time spent by American civilians in enemy prisoner-of-war camps and similar places shall be creditable (as though it were military service) toward pensions, annuities, or similar benefits under various Federal retirement programs. Referred to the Committee on Finance, the Committee on Labor and Public Welfare, the Committee on Post Office and Civil Service, and the Committee on Armed Services, jointly, by unanimous consent.

By Mr. DOMENICI (for himself, Mr. BAKER, Mr. RANDOLPH, Mr. BELLMON, Mr. HUMPHREY, and Mr. TAFT):

S. 1115. A bill to amend the Federal Nonnuclear Energy Research and Development Act of 1974, so as to authorize research, development, and demonstration in the field of ground propulsion systems. Referred to the Committee on Commerce and the Committee on Interior and Insular Affairs, by unanimous consent.

By Mr. STEVENSON (for himself and Mr. CRANSTON):

S.J. Res. 51. A joint resolution to disapprove Export-Import Bank Financing of a nuclear reactor sale to South Korea. Referred to the Committee on Banking, Housing and Urban Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MOSS (for himself, Mr. MAGNUSON, Mr. ABOUREZK, Mr. CHURCH, Mr. GRAVEL, Mr. MCGEE, Mr. MCGOVERN, Mr. HUMPHREY, Mr. CASE, Mr. TUNNEY, Mr. MCINTYRE, and Mr. NELSON):

S. 997. A bill to amend the Fair Packaging and Labeling Act to require the disclosure by retail distributors of retail unit prices of consumer commodities, and for other purposes. Referred to the Committee on Commerce.

PRICE DISCLOSURE ACT

Mr. MOSS. Mr. President, for myself, Mr. MAGNUSON, Mr. ABOUREZK, Mr. CHURCH, Mr. GRAVEL, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, and Mr. NELSON, I introduce for appropriate reference a bill to amend the Fair Packaging and Labeling Act to require the disclosure by retail distributors of retail unit prices of consumer commodities, and for other purposes.

Mr. President, the purpose of the legislation which I introduce today and which will be introduced on Monday by Congressman ROSENTHAL and some 35 additional Members of the House, is to

insure that, first, prices be marked on consumer commodities, second, unit pricing information be available to consumers, and third, the Federal Trade Commission effectively enforces the Fair Packaging and Labeling Act as amended by this measure.

On a number of occasions since the original Fair Packaging and Labeling Act was passed, Members of the Congress have introduced legislation to require unit pricing. Now, however, a thorough need for providing comprehensive pricing information has been amply demonstrated.

The General Accounting Office filed with the Congress on January 29, a report which clearly demonstrated that the costs of instituting unit pricing are more than offset by the consumer savings attributable to using unit pricing. Needless to say, this information is a major contribution to our understanding of the need for unit pricing and the economic viability of such a system.

Additionally, with the advent of the Universal Product Coding system—UPC—it has become evident that additional savings will be forthcoming to retailers who make use of this computer assisted automated check-out procedure. But such savings, cannot take place at the expense of the consumer. A number of retailers have indicated that they will not place price information on the product which the consumer buys. How will the consumer be able to compare prices within a store from aisle to aisle? The suggestion has been made that consumers should be given a grease pencil with which to mark prices on individual items. Enough said about unworkable suggestions. Clearly the retailer making use of UPC will still save money if there is price marking on each individual item. Just as important, however, is the out-of-store price comparison. How can the consumer compare prices once he takes his products home? Today, he can look at the items next to each other on the shelf at home and clearly see cost comparisons. Under UPC, without price marking, the consumer would have to be bookkeeper and filing clerk, collecting the various cash register tapes, remembering which products were purchased at which stores, and then having to decipher the identification of the item from the register tape.

Lastly, Mr. President, the Fair Packaging and Labeling Act has not been a great success. Diverse and conflicting jurisdictional guidance, halfhearted effort, and a singular lack of enthusiasm about this legislation has resulted in its being a less than effective measure. Therefore, we propose that all jurisdiction for regulating under the Fair Packaging and Labeling Act be transferred to the Federal Trade Commission and appropriate language is included in the legislation to accomplish this objective.

Mr. President, much thought has gone into the development of this bill. The Committee on Commerce held a symposium in December on the Universal Product Code. The General Accounting Office has done a report on Unit Pricing. And the Consumer Federation has prepared an excellent question and answer analysis of UPC.

Mr. President, I ask unanimous consent that there be printed in the RECORD the section of the GAO report concerning unit pricing, the CFA publication on Universal Product Code, and the text of the bill which we are introducing today.

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

S. 997

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Price Disclosure Act".

PRICE MARKING REQUIREMENTS

SEC. 2. Section 4 of the Fair Packaging and Labeling Act (15 U.S.C. 1453) is amended by adding at the end thereof the following new subsection:

"(c) No person engaged in business in the sale at retail of any packaged consumer commodity which has been distributed in commerce, or the distribution of which affects commerce, shall sell, offer for sale, or display for sale any such commodity unless—

"(1) the total selling price of such commodity is plainly marked by a stamp, tag, or label affixed to a panel of the package; and

"(2) the retail unit price of such commodity is plainly marked by—

"(A) a stamp, tag, or label affixed to principal display panel of the package, or

"(B) a label or sign in close proximity to the point of display of such package, which label or sign shall also contain the name and quantity of contents of such commodity."

EXEMPTIONS

SEC. 3. Section 5(b) of such Act (15 U.S.C. 1454(b)) is amended by inserting "(1)" after "(b)", and by adding at the end thereof the following new paragraph:

"(2) The following entities shall be exempt from the operation of section 4(c) of this Act:

"(A) Any individual retail outlet which sells or offers for sale packaged consumer commodities and whose total gross sales do not exceed $250,000 per annum, unless such an outlet is one of a number of outlets owned substantially or whose inventory is supplied substantially, by a single person, partnership, or corporation whose total gross sales exceed $500,000 per annum.

"(B) Any retail outlet in any State which has enacted a mandatory unit pricing law and such law is determined by the Commission to be in full force and effect and comparable in scope and comprehensiveness to the requirements of this section; except that retailers (including chainstores and affiliated stores) who operate outlets in any such State shall be subject to the provisions of section 4(c)(2) of this Act if they also operate outlets in any other State. The Commission shall, upon application by an appropriate and adequately-staffed State agency, or agencies, certify a plan if the requirements of such plan (1) do not unduly burden interstate commerce; (2) afford equivalent or greater price disclosure to an equivalent or greater number of consumers in such State than is afforded by the provisions of this Act; (3) include adequate provision for enforcement; and (4) provide for periodic evaluation of the effectiveness of such price disclosure requirements, in cooperation with the Commission. Such certification shall be reviewed periodically, but not less than once every three years, by the Commission, and shall be renewed if such plan (A) continues to meet or exceed the provisions of this Act; and (B) is administered and enforced effectively by the State involved.".

DEFINITIONS

SEC. 4. (a) The first sentence of section 10(a) of the Fair Packaging and Labeling Act (15 U.S.C. 1459(a)) is amended by—

(1) striking out the word "consumption" the first time it appears in such sentence and inserting in lieu thereof the word "use"; and

(2) striking ", or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use", and inserting in lieu thereof the following: "in or around the household, but shall not include durable goods which are customarily not expended or consumed during the first year of use".

(b) Section 10 of such Act (15 U.S.C. 1459) is amended by adding at the end thereof the following new subsection:

"(g) The term 'retail unit price', when used in relation to the contents of a package of any consumer commodity, means the retail prices of the contents of that package expressed in terms of the retail price of such contents per single whole unit of weight, volume, or measure.".

ENFORCEMENT AUTHORITY

SEC. 5. (a) Section 5(a) of the Fair Packaging and Labeling Act (15 U.S.C. 1454(a)) is amended by (1) striking out the words "(A) the Secretary of Health, Education, and Welfare (referred to hereinafter as the 'Secretary') with respect to any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); and (B)", and striking out the words "with respect to any other consumer commodity".

(b) Section 5(b) of such Act (15 U.S.C. 1454(b)) is amended by striking out the words "the Secretary or".

(c) Section 5(d) of such Act (15 U.S.C. 1454(d)) is amended to read as follows: "Whenever the Commission determines that there is undue proliferation of the weights, measures, or quantities in which any consumer commodity or reasonably comparable consumer commodities are being distributed in packages for sale at retail and such undue proliferation impairs the reasonable ability of consumers to make value comparisons with respect to such consumer commodity or commodities, the Commission shall request and the Secretary of Commerce shall initiate a voluntary product standard for such commodity or commodities under the procedures for the development of voluntary products standards established by the Secretary of Commerce pursuant to section 2 of the Act of March 3, 1901 (31 Stat. 1449, as amended; 15 U.S.C. 272). Such procedures shall provide adequate manufacturer, packer, distributor, and consumer representation.".

(d) Section 5(e) of such Act (15 U.S.C. 1454(e)) is amended by striking out the word "the" after "(2)" and all that follows before the end of the sentence, and inserting in lieu thereof "the Commission determines that it has not been observed, the Commission shall prescribe such rules as may be necessary to eliminate such undue proliferation of weights, measures, or quantities in which any consumer commodity or reasonably comparable consumer commodities are being distributed in packages for sale at retail.".

(e) Section 6 of such Act (15 U.S.C. 1455) is amended by—

(1) Striking out subsections "(a)" and "(b)", redesignating subsections "(c)" and "(d)" as subsections "(b)" and "(c)", respectively, and inserting the following new subsection:

"(a) Regulations promulgated by the Commission under section 4 or section 5 of this Act shall be prescribed in accordance with section 553 of title 5, United States Code; except that the Commission shall give interested persons an opportunity for oral presentations of data, views, and arguments, in addition to written submissions. A tran-

script shall be kept of any oral presentation. Any such rule shall be subject to judicial review under section 18(e) of the Federal Trade Commission Act (as amended by the Magnuson-Moss Act, Public Law 93-637) in the same manner as rules prescribed under section 18(a)(1)(B) of such Act, except that section 18(e)(3)(B) of such Act shall not apply.", and

(2) Inserting at the end of subsection (b) as redesignated by paragraph (1) of this subsection the following new sentence: "In connection with the training by the Commission of any individual who is an officer or employee of any State or any political subdivision of a State, duly commissioned by the Commission as an officer of the Commission to conduct examinations, investigations, or perform other functions, for the purposes of carrying out this Act, the Commission may allow such individual travel expenses to and from the place of such training, including per diem in lieu of subsistence while in travel status and during such training, in the same manner as such expenses are authorized by section 5703 of title 5, United States Code, for individuals in the Government service employed intermittently: *Provided*, That the individual's training is conducted under an agreement between the Commission and a State, or a political subdivision of a State, pursuant to which such individual, upon completion of the training, will be employed by such State, or political subdivision to conduct examinations or investigations to carry out the purposes of this Act.".

(f) Section 7 of such Act (15 U.S.C. 1456) is amended by (1) striking out subsections "(a)" and "(b)", (2) redesignating subsection "(c)" as subsection "(b)", and (3) inserting the following new subsection:

"(a) Any violation of any of the provisions of this Act or the regulations issued pursuant to the Act, with respect to any consumer commodity delivered for introduction in commerce, or sold at retail, offered for sale at retail, or displayed for sale at retail, shall constitute an unfair or deceptive act or practice affecting commerce in violation of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) and shall be subject to enforcement under section 5(b) and penalties under section 5(l) and section 5(m) of such Act, as amended.".

(g) Section 8 of such Act (15 U.S.C. 1457) is amended by (1) striking the beginning of the sentence beginning with the word "Each" up to and through the word "Act,", and by inserting in lieu thereof "The Commission", and (2) striking the words "that officer or agency for" and by inserting in lieu thereof "the Commission in".

(h) Section 9(a) of such Act (15 U.S.C. 1458(a)) is amended by—

(1) striking the words "to the Secretary of Commerce, who shall (1) transmit copies thereof" and inserting in lieu thereof "by the Commission", and

(2) striking the words "agencies, and (2) furnish to such State officers and agencies" and inserting in lieu thereof "which shall also be furnished with".

EFFECTIVE DATE

SEC. 6. The amendments made by this Act shall take effect on the first day of the seventh month after its date of enactment, except that the requirements of section 4(c)(1) of the Fair Packaging and Labeling Act, as amended by section 2 of this Act, shall take effect on the first day of the first month after the date of enactment of this Act. The amendments made by sections 5(e) and 5(f) of this Act shall take effect, with regard to the promulgation of regulations and the enforcement of section 4(c)(1) of the Fair Packaging and Labeling Act, on the first day of the first month after the date of enactment of this Act.

[REPORT TO THE CONGRESS]

FOOD LABELING: GOALS, SHORTCOMINGS, AND PROPOSED CHANGES

(By the Comptroller General of the United States)

COMPTROLLER GENERAL
OF THE UNITED STATES,
JANUARY 29, 1975.

To the President of the Senate and the Speaker of the House of Representatives:

This is our report on the implementation of the Fair Packaging and Labeling Act and related food labeling laws and the improvements needed by the Food and Drug Administration, Department of Health, Education, and Welfare; the National Bureau of Standards, Department of Commerce; and the Agricultural Marketing Service, the Animal and Plant Health Inspection Service, and the Economic Research Service, Department of Agriculture, to provide the consumer with more usable information for making the value comparisons contemplated by the Congress and for determining which brands are best suited to their specific needs or preferences.

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Director, Office of Management and Budget; the Secretary of Health, Education, and Welfare; the Secretary of Agriculture; and the Secretary of Commerce.

ELMER B. STAATS,
Comptroller General of the United States.

CHAPTER 7.—UNIT PRICING—OLD IDEA, NEW APPLICATION

To compare the value of competing commodities, consumers must be able to readily compare the prices. However, studies of consumer abilities to compare prices showed that—despite FPLA—consumers make inaccurate price comparisons 40 percent or more of the time. The presentation of unit prices—which has been done for years on fresh meats—could facilitate price comparisons of each brand and size of competing commodities. Studies have shown that unit prices can reduce price comparison errors. However, FPLA currently does not require retail grocery stores to provide unit pricing.

FPLA provisions fail to overcome obstacles in comparing prices

To facilitate consumer price comparisons FPLA provides that labels of all consumer commodities show net quantity of contents and a voluntary program be established to standardize and reduce the number of package sizes for consumer commodities.

The House of Representatives report on FPLA (H. Rept. 2076, 89th Cong., 2d sess.) stated that the purpose of the requirement for providing information on the net quantity of package contents was:

"* * * to provide a total ounce statement which will facilitate the computation of costs per ounce and thus aid the consumer in making value comparisons among comparable commodities."

The Senate version of the FPLA bill (S. 985, 89th Cong., 2d sess.) stated that, before using the voluntary program to standardize and reduce the number of package sizes for a product, it should be determined that the weights or quantities in which the commodity is being sold are likely to impair consumers' ability to compare prices per unit. Although the final version of FPLA substituted "value" for "price" throughout, the Conference Report of the House and Senate (H. Rept. 2286, 89th Cong., 2d sess.) explained this change by stating that price comparison is "* * * a very important factor in making a value comparison."

Surveys of consumer abilities to compare prices showed consumers often could not compare prices correctly. In October 1968,[1] five college-educated housewives were asked to buy from a Sacramento supermarket[2] the package for each of 14 grocery products that, in their judgment, offered the best unit price. Thirty-eight or 54 percent, of the 70 choices were incorrect.

In May 1969, a similar survey[3] required two groups of shoppers to select the lowest unit-priced item for several grocery products in New York City. A group of 16 shoppers made a total of 196 choices from the list of products and were incorrect on 85, or 43 percent. A group of 10 shoppers made a total of 111 choices and were incorrect on 50, or 45 percent.

In addition, Department of Commerce officials testified on March 23, 1970, in the Consumer Subcommittee, Senate Committee on Commerce, hearing on FPLA, that the package size standardization program was not removing all major obstacles to value comparisons as was hoped. They stated it was not practical to reduce the number of package sizes and have a mathematically desirable relationship which would facilitate price comparisons.

The package sizes for heavy duty, normal density, dry detergents, for example, had been reduced from 22 sizes to 6; however, because of packingcase requirements the sizes were not evenly divisible. For example, the three most popular sizes are 20, 42, and 84 ounces. Although the reduction in package sizes made cross brand price comparisons for each size easier, the comparison, for example, of the prices for 20-ounce and 84-ounce boxes of detergent still required a complicated calculation.

A more detailed study[4] also found that the efforts to standardize package sizes offered little assistance to shoppers who attempt to compare prices. The study tested how effectively price comparison problems could be solved by selected shoppers of an inner-city supermarket and a suburban supermarket in the Washington, D.C., area.

Each responding shopper was asked which of two differing package sizes for each of five products cost less per measure, and how much less. Two groups of shoppers were tested on evenly divisible package sizes (e.g., each package size being a whole multiple of the smallest package size). One group was tested with singly priced items (e.g. 24 cents each) and the other with multiple priced items (e.g. 2 for 49 cents). Another two groups of shoppers were tested on unevenly divisible package sizes—one with singly priced items and the other with multiple priced items. The following table shows the number of responding shoppers in each group and the average percentage of correct answers.

	Inner city		Suburban	
	Number of respondents	Percent of correct answers	Number of respondents	Percent of correct answers
Evenly divisible package sizes:				
Single priced	84	16	89	38
Multiple priced	80	14	90	32
Unevenly divisible package sizes:				
Singly priced	82	10	80	14
Multiple priced	85	16	86	12

The preceding study only required shoppers to compare prices between two package sizes. In a typical supermarket, shoppers would have to consider two or more package sizes among several competing brands. For example, our survey of heavy duty, normal density, dry detergents available in 6 Detroit area supermarkets showed shoppers would

Footnotes at end of article.

have as many as 4 unevenly divisible package sizes (20, 49, 84, and 171 ounce) and from 9 to 13 brands to choose from. The stores we surveyed averaged 22 selections of detergent.

Unit pricing reduces price comparison errors

A method for facilitating consumers' price comparisons would be to present unit prices for each brand and size of competing products. Unit pricing eliminates complicated mathematical computations. Studies have shown that unit price information significantly reduces consumers' price comparison errors.

Unit pricing provides a common denominator—such as price per ounce, pound, pint, etc.—for comparing prices of products which come in various package sizes, have several competing brands, and are subject to multiple-item pricing. It has been used for many years to facilitate price comparisons of store-packaged meat, poultry, and fish because of the randomness of the package weights. For example, packages of ground beef show the price per pound as well as the total price.

The study which tested shoppers' price comparison ability in an inner-city and a suburban supermarket in the Washington, D.C., area also found that unit pricing would have significantly improved the percentage of correct answers for the products in evenly and unevenly divisible package sizes.

In the study a group of selected shoppers in each store was asked to compare the prices of two selections for each of five products in a simulated unit pricing situation (simply comparing the package prices for two selections of the same size packages). Eighty-five inner-city shoppers answered correctly 56 percent of the time and 91 suburban shoppers answered correctly 86 percent of the time. The director of the study believed that the other groups of shoppers mentioned earlier could have done as well if unit prices had been available for the evenly and unevenly divisible package sizes.

In a 1970 study[5] a sample of 53 housewives was randomly divided among 3 different supermarkets with instructions to buy the most economical brand and size in each of 13 products. One store provided unit pricing while the others emphasized either singly priced items or multiple priced items. The shoppers with unit pricing bought the minimum unit price item on an average of 64 percent of their choices. The other shoppers were successful on an average of only about 50 percent of their choices. Also, there was a greater difference in cost between the item purchased and the minimum unit price item in the stores without unit pricing, especially those emphasizing multiple pricing.

A study[6] of consumer behavior in a simulated supermarket shopping situation showed that the average percentage of correct choices was not only higher when unit pricing was provided, but the average shopping time was significantly less. Seventy-five volunteers—64 of whom were women—were assigned randomly to 3 groups of 25 each. Each volunteer was told "to choose that package which gave the most quantity for the money" from each of nine product groups. One group of volunteers was given unit prices, one group used a computational device[7] to determine unit prices, and one group had only the net weight and/or servings and the total price on each package. The following table shows the average results for volunteers in each group.

Information used	Average percent of correct choices	Average shopping time (minutes)
Unit prices	89	4
Package prices	64	24
Computational device	66	32

Footnotes at end of article.

In another experiment,[8] 200 randomly selected housewives were asked to choose among different sizes of their regular brands of detergents and soft drinks, first when only package price was given and then when unit price was added. The study concluded that prices were of clear importance in the selection of package size, but many housewives did not have a clear idea of the relative prices of different sizes, measured in terms of cents per pound or the like. When unit pricing was provided many housewives switched to sizes which had lower unit prices.

Availability of unit pricing

Since June 1970, many grocery stores have voluntarily instituted unit pricing in response to the consumer movement or because of State or local laws. Our survey as well as other surveys indicate that unit pricing is being instituted primarily by supermarket chains (firms with 11 or more stores). About half of the chain supermarkets have unit pricing.

The "Progressive Grocer," a trade magazine, surveyed the availability of unit pricing among chains for 1971 and 1972 as well as independent retail stores and wholesalers for 1971 through 1973. The following table shows the percent of respondents in each category that had unit pricing.

Category	Number responding	Percent with unit pricing
1971:		
Chains	126	45
Independent stores	1,578	34
Wholesalers	269	20
1972:		
Chains	120	48
Independent stores	1,315	36
Wholesalers	203	23
1973:		
Chains	(1)	
Independent stores	1,410	39
Wholesalers	196	26

[1] No survey.

In 1971, the Super Market Institute, Inc., a research and education institute of the grocery industry, surveyed the availability of unit pricing among supermarkets with annual sales of $1 million or more. Most of these supermarkets were operated by chains. The survey showed that 37 percent of the 7,093 responding stores had unit pricing.

The availability of unit pricing in grocery stores has been due to some extent to laws requiring unit pricing. As of September 1973, five States and at least three cities required unit pricing in some of their stores.

State and local unit pricing laws are generally directed at grocery stores but certain types or sizes are excluded. The most frequent exemptions pertain to owner-operated single stores and stores with limited sales volumes. In this last category, the New York City law exempts any retail entity (one or more stores) with annual sales of less than $2 million. Seattle and Maryland exempt stores with annual sales of less than $750,000, and Vermont exempts stores with annual sales of less than $500,000.

The following table shows the States or cities, the effective dates of the laws, and the estimated number of stores covered by each law.

State or city	Effective date	Number of stores
Massachusetts	Jan. 1, 1971	2,000
Connecticut	Oct. 1, 1971	4,500
Maryland	Jan. 1, 1972	100
Vermont	July 1, 1972	75
Rhode Island	Oct. 1, 1972	(1)
New York City	Mar. 31, 1971	1,200
Seattle	Aug 1, 1972	91
Ann Arbor	June 12, 1973	35
Total		8,001

[1] No estimate furnished.

To obtain information on the availability of unit pricing in areas where it is not required by law, we surveyed supermarket chains in 10 metropolitan areas during July and August 1973. The 10 "standard metropolitan statistical areas" had a combined population of 34.5 million in the 1970 census. We identified the supermarket chains from a 1972 directory, "Supermarket Grocery and Convenience Store Chains," published by Business Guides, Inc., an affiliate of Chain Store Age. Only about a third of these chains provided unit pricing to their shoppers. The survey results follow.

Metropolitan area	Number of supermarket chains contacted	Number of supermarket chains with unit pricing
Atlanta, Ga	5	1
Chicago, Ill	9	3
Dallas, Tex	9	2
Denver, Colo	5	3
Detroit, Mich	6	3
Los Angeles-Long Beach, Calif	23	5
Newark, N.J	11	4
Philadelphia, Pa.-N.J	6	3
San Francisco-Oakland, Calif	12	3
St. Louis, Mo.-Ill	6	1
Total	92	28

During March through July 1973, we surveyed members of the National Association of Food Chains (NAFC) and the National Association of Retail Grocers of the U.S., Inc. (NARGUS), to determine the number of stores providing unit pricing or planning to provide it within 18 months. We received responses from 110 chains and 303 independents. Sixty percent of the chains and 17 percent of the independents had unit pricing in some or all of their stores. The following table recaps the responses. An estimated 95 percent of these stores are supermarkets.

	Total stores	Stores with unit pricing	Percent of total
Chains	16,553	7,904	48
Independents	706	142	20

Each respondent was also asked its plans through 1974 for beginning unit pricing or expanding it to more stores. Nineteen chains and 18 independents plan to have unit pricing in a total of 1,153 and 34 more stores, respectively. This would increase the percentage of stores providing unit pricing from 48 to 55 percent for chainstores and from 20 to 25 for independent stores.

Need to improve presentation of unit pricing

Many supermarkets have installed unit pricing programs to provide consumers additional information to facilitate consumer value comparisons. Improvements are needed, however, to insure that unit pricing information is more effectively presented. Success of these programs depends on the extent of unit pricing coverage, the design of the shelf label, the maintenance of shelf labels, the unit of measure used, and the promotion and explanatory material provided consumers.

Extent of unit pricing coverage

Although unit pricing has been used for many years on random weight products sold in the meat and produce department of a supermarket, the major categories[9] of products suitable for the new application of unit pricing are generally found in the dry grocery and frozen food departments. Dry groceries average about 41 percent and frozen foods about 3 percent of supermarket sales.[10] Dry groceries include packaged, canned, and bottled food products for people and pets; alcoholic and nonalcoholic beverages; to-

bacco products; household cleaning compounds and supplies; laundry supplies; soap and detergent products; and paper products.

The size of each of these departments varies among supermarkets. For example, NAFC and NARGUS members' responses to our survey showed the number of items (different brands and/or sizes of products) ranged from 2,600 to 10,800 for dry groceries and from 200 to 2,600 for frozen foods. However, the extent of unit pricing in the dry grocery and frozen food departments and in many of the product categories which comprise these departments varied considerably.

Based on the questionnaires received from NAFC and NARGUS members who provide unit pricing, the percentage of items in the dry grocery and frozen food departments which were unit priced ranged from 10 to 100 percent with a median of 82 percent for dry groceries. About 40 percent of the respondents stated that no frozen food products were being unit priced.

We also visited 100 supermarkets throughout the 10 major metropolitan areas that were providing unit pricing on a voluntary basis. We observed the extent of unit pricing in each of 36 dry grocery product categories and each of 7 frozen food product categories. (See app. IV for list of categories.)

For the most part, industry practices were consistent in the product categories for which unit pricing was provided. Most of the stores were providing unit pricing for 26 dry grocery product categories. In two other product categories—alcoholic beverages and tobacco products—unit pricing was not provided by most of the stores surveyed. However, in the eight remaining categories—candy and chewing gum, cookies, crackers and toasted products, dried fruit, household supplies, snacks, soft drinks, and dry vegetables—unit pricing coverage varied considerably.

We estimate that at least 58 supermarkets were either not applying unit pricing to any of the 7 product categories in the frozen food department or had applied it to only a few items in each category. The seven categories were baked goods, fish products, fruits, fruit juices, prepared foods, potatoes, and other vegetables. An industry spokesman said one of the reasons for not unit pricing frozen foods was the many problems with mounting shelf labels on the supermarket frozen food displays. He stated that there is a big technical problem caused by the cold humid air; ink runs, labels frost over, labels fall off, etc.

In 1971 the National Conference on Weights and Measures sponsored by the Department of Commerce, National Bureau of Standards, adopted the Model State Unit Pricing Regulation. This model was to provide a uniform approach to unit pricing for those jurisdictions choosing to require unit pricing.

Our comparison of State and local laws and the Model State Unit Pricing Regulation as to which product categories should be covered by unit pricing programs showed several differences among the laws and the model regulation for the 36 dry grocery categories and the 7 frozen food categories. There was:

Complete agreement on 17 dry grocery categories; 14 categories should be covered; 3 should not.

General agreement (less than 3 laws in conflict) on 12 dry grocery categories; 9 categories should be covered; 3 should not.

Inconsistency between model regulation and laws on 4 dry grocery categories.

General disagreement on 3 dry grocery categories.

As for frozen foods, six laws and the model regulation required unit pricing of fruits and vegetables, and juices and drinks; but generally did not require it for baked goods; fish, meat, and poultry products; and prepared foods. The New York City unit-pricing law excludes frozen foods from unit pricing. (See app. IV for the detailed results of our comparison of laws governing frozen food and dry grocery categories.)

Display of and readability of unit price data

The shelf tag or label affixed to the edges of display shelves has been the most popular method of displaying unit price. The label also contains other data, such as the unit of measure, product description and weight, and the retail price, which is essential to the consumer's use. However, in the 100 supermarkets we visited, the data on the labels was often poorly displayed and/or hard to read. This could make the labels difficult for consumers to understand and use.

Because of the thin shelf edge, the label has limited space for data which is essential to the consumer. The space problem was further complicated on some labels by including store names or slogans or by accentuating stock data which is of interest only to store personnel. See examples A and B on page 64.

Retail and unit prices appearing on labels are sometimes left unexplained and some labels use obscure abbreviations to describe the product. See examples C and D on page 64.

The legibility of the essential data is poor on some labels because the printing is small or numbers are made up of dots or dashes. In addition, the visibility of the unit price is sometimes considerably less than that of the retail price due to the difference in the size of print. See examples E and F on page 64.

Two studies of consumers' use of unit pricing have also touched on the problems consumers face in trying to read some shelf labels. During a study [11] in Toledo, Ohio, some shoppers complained they could not read the label because the print was too small.

During another study [12] in Arlington, Virginia, the difficulty shoppers have in reading labels aided observers in determining which shoppers actually use unit pricing. The study report stated that use of unit pricing was:

"* * * readily detectable because of the small, computer print size displaying the unit-price information on the labels. Since the labels were located on the shelf moldings below the appropriate product, shoppers often had to bend down (to the point of hands and knees for products on the bottom shelf), to go up on their toes, step closer to the molding, use their fingers to aid in reading the labels * * *."

The model regulation contains no requirements on the layout and legibility of the shelf label. Five State and three local laws contain some requirements on these matters. The most frequent requirements included

Color of labels (six laws),

Location of unit price on labels (four laws),

Specific identification of unit pricing (seven laws), and

Minimum size of print for the unit price (seven laws).

If unit pricing is to be understood and used by consumers, we believe that improvements must be made in the shelf label's display of essential data and its legibility. "Money" [13] magazine proposed a model label which we believe does a good job of accomplishing this. See example G on page 64.

Maintenance of shelf labels

The maintenance of shelf labels is also important in the success of the unit pricing program. Our survey of 12 products in 100 stores showed missing labels for some brands and sizes of products was the most prominent maintenance problem. The total number of missing labels for all 100 stores ranged from 10 to 20 percent among the 12 products reviewed.

Other problems with maintaining some labels included:

Labels obscured from consumer view by overhanging shelves or merchandise.

Labels in poor physical condition.

Labels not adjacent to the product.

Discrepancies between retail prices or net weights shown on the labels and those on the product.

Substitutions for out-of-stock brands without changing the labels.

The total number of labels with these problems for all 100 stores ranged from 7 to 30 percent among the 12 products reviewed.

Other surveys have found similar problems. In September and October 1971, a study [14] on maintaining shelf labels was completed in New York City. Again the problems of adjacency, discrepancies in net weight, and discrepancies in prices were found.

In February 1972, the President's Office of Consumer Affairs surveyed 12 supermarkets with unit pricing in the Washington, D.C., metropolitan area. Its findings also included:

Missing labels,

Labels not adjacent to products, and

Dirty and "dog-eared" labels.

This survey also found that problems of cleanliness and maintenance of unit pricing labels were more pronounced in older stores.

Supermarket management personnel indicate that some of the causes for the maintenance problems are:

Shoppers (especially children) removing labels from the shelf.

Shoppers (especially children) moving labels so that labels are no longer adjacent to the products.

Stores personnel making mistakes in matching the labels with the products.

Shoppers (especially children) defacing the labels.

Labels not provided for products delivered to the stores from manufacturers rather than from the retailer's central warehouse.

The store's policy to replace all labels periodically (e.g. every six months) despite the frequency of marred or lost shelf labels.

Some of these problems are inherent in the shelf label method, and regulation of unit pricing will not, by itself, solve them. Store management must require an active maintenance program by its employees to insure proper presentation of unit pricing information.

Unit of measure affects unit pricing

The unit of measure used to show the unit price should enable shoppers to properly determine price differences between brands or sizes. The model regulation and the State and local laws have generally established units of measure which should assist the shopper.

In the study of unit pricing performed in Toledo, the following rationale was used to determine the applicability of units of measure:

The unit must be the one commonly used to measure the product.

It should most accurately reflect price differences in the usual sizes purchased.

The study suggests, for example, that unit prices for dry or liquid products be quoted on a per-ounce basis only if all sizes of the product are less than a pound or pint, respectively.

However, our analysis of 10 products in the 100 supermarkets throughout the country voluntarily providing unit pricing showed that, although the products were packaged in some sizes which exceeded a pound or a pint, these products were not always unit priced by pound or by pint. The following table shows the percentage of selecber of missing labels for all 100 stores

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Footnotes at end of article.

tions from all stores that used inappropriate units of measure.

Percent of selections with inappropriate measures

Product:	
Ketchup	51
Peanut butter	37
Pork and beans	34
Pancake syrup	27
Canned corn	25
Applesauce	21
Elbow macaroni	20
Coffee	20
Tomato juice	16
Laundry detergent	13

When selections of a product exceed a pound or a pint but show their unit prices on a per ounce basis, the price differences between brands and/or sizes is deemphasized. It also requires consumers to comprehend fractional cents or three place decimals when reading price per ounce. For example, in one store, the prices per ounce for 49- and 84-ounce sizes of a brand of laundry detergent were $0.018 and $0.014, respectively, or a difference of $0.004. If the unit price for each size had been by pound, the unit prices would have been 29 cents and 22 cents, respectively. The difference of 7 cents per pound would appear to be more easily understandable by most consumers.

Promotion and explanatory material

In-store promotion and explanatory material was not present on a continuing basis in many stores which had unit pricing. Only 26 of the 100 supermarkets had some form of explanatory or promotional material available to consumers on the day of our visit to each store. Some store personnel told us such materials were provided when unit pricing was introduced in their stores, but none was provided on a continuing basis.

In addition, the President's Office of Consumer Affairs' survey of unit pricing stores noted a total lack of promotional or explanatory materials in 10 of the 12 stores it surveyed.

While the model regulation and six of the State and local unit pricing laws do not require promotional or explanatory materials, New York City and Seattle do. In New York, stores are required to post explanatory signs for every 2,000 square feet of sales area with no less than two and no more than five signs in each store. In Seattle, stores are required to provide conspicuous explanation of the use of unit pricing in each grocery store or department.

Conclusions

Facilitating the consumer's ability to compare the price of competing products is an important step in achieving the objective of FPLA—facilitating consumer value comparisons. Despite the provisions of FPLA and Commerce's efforts in reducing the proliferation of package sizes, consumers still find it difficult to accurately compare prices. Studies show that consumers, when trying to select the lowest priced product, make inaccurate selections at least 40 percent of the time.

Although unit pricing does not take into account differences in the quality of competing products, studies have shown it can significantly reduce consumer price comparison errors if effectively presented.

Our analysis showed about 50 percent of the chain supermarkets and 25 percent of the independent supermarkets were providing unit pricing information. Although unit pricing data is available in many stores it has not been as successful as it could or should be because of the problems of presenting and explaining the data. Problems and variations in the extent of coverage, the design of shelf labels, the maintenance of shelf labels, the unit of measure, and the lack of promotion and explanatory materials have all contributed to the problems consumers have in trying to understand and use unit pricing.

CHAPTER 3.—UNIT PRICING—IMPACT ON CONSUMER AND RETAILER

The impact of present-day unit-pricing programs on the consumer and retail grocer has been studied in terms of their benefits in facilitating consumer price comparisons and their costs (passed on by retailers to consumers in higher food prices). Our analysis of the results of these studies and our comments on other factors related to the effectiveness of current unit pricing programs are discussed in this chapter.

Benefits of unit pricing

For consumers to use unit pricing they first must be aware of and understand the unit pricing labels, and to benefit they must apply it in making their buying decisions. Several surveys of consumers where unit pricing was available have shown, however, that consumers lack an awareness and understanding of unit pricing. The following table shows the results of these studies.

Investigator or sponsor [1]	Percentage of samples: Sample size	Not aware	Aware but not understanding	Not aware or not understanding
In-store survey:				
Jewel Food Stores:				
Test I	517	53	(2)	
Test II	429	37	(2)	
Monroe Peter Friedman:				
Inner city	798	48	21	69
Suburban	878	40	12	52
T. David McCullough and Daniel I. Padberg	1,584	34	17	51
McCann-Erickson Advertising Ltd., and Elliott Research Corp	200	(2)	(2)	58
Robert Aitchison:				
New York City	350	(2)	(2)	79
Upstate New York	530	(2)	(2)	80
Telephone surveys [3]:				
Lawrence M. Lamont, James T. Rothe and Charles C. Slater	816	18	(2)	
Consumer Research Institute, Inc	338	35	(2)	
Mail survey [4]: Supermarket News	8,923	12	(2)	

[1] See app. III for specific study acknowledgements.
[2] Not surveyed or not separately determined.
[3] Represents that part of the total sample who shopped in stores offering unit pricing.
[4] The mail survey did not determine if consumers questioned patronized stores offering unit pricing.

Although none of the studies attempted to determine the causes for the lack of awareness or understanding, several studies concluded there was a strong association between the consumers' education, income, and age levels and their awareness and understanding of unit pricing. For example, the survey by T. David McCullough and Daniel I. Padberg [16] showed the percentage of those surveyed with a grade school education that were aware of unit pricing but did not understand it was more than three times greater than the percentage of college graduates. In the case of income, the percentage of respondents with low incomes (less than $4,000) who did not understand unit pricing almost doubled the percentage of respondents with incomes over $16,000 that did not understand unit pricing. Over 50 percent of the respondents 60 years or older were not aware of unit pricing, while only 29 percent 39 years or younger were not aware of it. The following table shows the results of their analysis.

[In percent]

	Percent unaware of labels [1]	Percent not understanding labels [2]
Education of respondent:		
Grade school	50	52
Some high school	39	29
High school graduate	31	25
Some college	32	19
College graduate	28	17
Annual family income:		
Less than $4,000	54	37
$4,000 to $7,999	39	24
$8,000 to $16,000	27	24
Over $16,000	28	19
Age:		
18 to 29	29	24
30 to 39	29	24
40 to 59	34	28
60 and over	52	31

[1] Based on all respondents.
[2] Based only on respondents who were aware of labels.

The Jewel Food Store Test II [17] also showed that, generally, lack of awareness increased with less education, diminishing income, or age. The survey was conducted in three stores—each in a different neighborhood. The following table shows the respondents' average demographic characteristics by store and the percent of respondents in each store who were unaware of the unit-pricing program.

Store No. and education	Income	Age	Percent unaware
1. 2.1 yr of college	$15,090	36.0	0.8
2. 1.1 yr of college	9,057	34.5	32.2
3. 3.1 yr of high school	6,735	45.5	71.4

One of the telephone surveys [18] also found indications that consumer awareness of unit pricing was significantly related to income. The most knowledgeable consumers had a family head, who was a white collar professional or manager, with an annual income of $10,000 or more.

Consumers use

Researchers have used a variety of methods to determine the extent of consumer usage of unit pricing. Some researchers interviewed consumers in stores; others used

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telephone or mail surveys; and one researcher even disguised his interviewers as shoppers so the consumers being interviewed were not aware they were participating in a survey.

Our analysis of surveys of consumer usage of unit pricing showed a considerable range (9 to 68) in the percentage of shoppers claiming any use of unit pricing, with the average percentage only 34.4 percent.

One of the main reasons for this limited use has been the lack of awareness and understanding of unit pricing as discussed above. For example, one study [19] showed of those that reported not using unit pricing, 28 percent said they were not aware of the system.

The study also showed that for many products, consumers decide what to buy before they go shopping, on the basis of personal preference, family preference, and inability to store larger sizes. Of the 48 respondents who used unit pricing, 42 did not use it on all products. The most frequently cited reasons were previous purchase experiences and preconceived buying decisions. Twenty-two of the respondents stated they did not use unit pricing on certain items because they already knew the best or most economical buy on the brand they preferred. The study concluded that consumers do not make brand or size decisions each time they purchase a product, but rely on their initial decision most of the time.

Further evidence of this conclusion was found in the Monroe Peter Friedman study. Of the shoppers who had noticed labels but had declined to use them, 23 percent in the inner-city store and 36.5 percent in the suburban store stated they knew what brands and sizes they wanted and had no need for unit pricing labels.

One problem with the preceding surveys of consumer usage, however, is that they are based on consumer claims of usage which may be exaggerated. For example, the John Paul Rowe survey [20] compared usage claimed by a sample of consumers with the actual usage reported by trained observers who watched as consumers selected products from the shelves. Of the sample of 100 shoppers, 43 claimed to have used unit pricing in their selections. However, the trained observers found only 11 of the 43 shoppers had actually used it.

Also, the Monroe Peter Friedman survey found that claims of use of unit pricing to compare prices for different package sizes of two products for which there were no shelf labels were made by 5.6 and 6.8 percent of the shoppers in the suburban sample.

Consumer claims of benefits

Consumers who claim to use unit pricing have been asked whether it changed their buying decisions. They gave various answers. In one telephone survey,[21] 72 percent of the unit pricing users claimed they had purchased a different size of the same product, and 52 percent claimed to have switched brands because of unit pricing.

The T. David McCullough and Daniel I. Padberg in-store survey found that 28 percent of the unit pricing users in their survey could name the product on which they had switched from their usual brand or size as a result of unit pricing. Another 22 percent thought they had switched products because of unit pricing but could not remember which product.

In this same survey unit pricing users were also asked the ways the labels had benefited them. About 78 percent believed it made price comparisons easier, 24 percent thought it saved shopping time in the store, and 22 percent said it had helped them save money.

Studies of consumer savings

In addition to determining awareness, understanding, and usage, studies have also attempted to determine whether unit pricing information resulted in savings for consumers. The McCullough and Padberg study [22] and the Isakson and Maurizi study [23] are, in our opinion, of sufficient scope and depth to be worth noting. The results of these two studies, however, are contradictory and, therefore, the picture concerning consumer savings remains clouded.

Each of the two studies generally used the same technique and based their analysis on the same assumption—shifts in purchases to lower unit priced brands and/or sizes of products result in consumer savings. The studies compared selected sales data for unit pricing and non-unit pricing stores.

The McCullough and Padberg study compared unit and non-unit pricing stores in both high and low income neighborhoods. The study showed that product movement in unit and non-unit pricing stores was very similar. It concluded that the availability of unit pricing information did not cause consumers to shift to unit pricing selections in either the high or low income neighborhoods and therefore would not result in any consumer savings.

The Isakson and Maurizi study included unit and non-unit pricing stores in low, middle, and high income areas. The comparison of sales movement data between unit and non-unit pricing stores led to the following results:

Middle and high income shoppers were taking advantage of the unit price information to pay lower unit prices (regardless of brand) than their counterparts in the non-unit-pricing stores.

Middle income shoppers also tended to purchase lower unit priced sizes within specific brands.

Low income shoppers generally were not paying lower unit prices than their counterparts in the non-unit pricing stores.

Industry benefits from unit pricing

Unit pricing programs can improve a store's operating efficiencies and public image even though the extent of consumer usage may be small. Although unit pricing has been intended to benefit the consumer, many grocery retailers have noted benefits to their operations.

A representative of one of the largest grocery chains, commenting on its unit pricing program stated: [24]

"Our internal studies showed (that) while there were definite additional costs in going into dual pricing [unit pricing], there were some compensatory savings in the program, too. It has been estimated that by having the product code numbers on the shelf, some labor savings in stocking would result. Also, these code numbers would be helpful in inventory control, re-ordering, and in training new employees."

An official of a local grocery chain in Iowa, which was one of the first grocery retailers to adopt unit pricing on a chain-wide basis, also commented on how unit pricing helped them get a firm grip on the prices of products delivered directly to their stores and where pricing was the responsibility of store managers.[25] He stated:

"I used to think we had good control in this area, but when we started centralized pricing of store deliveries to accommodate * * * [unit pricing] we found out how chaotic it was. Retail prices were very irregular, and we even found we were selling some items below cost. Now, with direct delivery cost and retail price centrally recorded on computer, we have real control in this area for the first time. In a sense, this one side-benefit may be better for us than * * * [unit pricing] itself."

Many of the grocery retailers who responded to our questionnaire on unit pricing gave reasons for operational benefits similar to those stated above. The primary reasons were improved pricing accuracy and improved shelf space allocation.

In its press release on the results of its consumer reaction surveys, Jewel Food Stores commented that their unit pricing program had been most successful in terms of customer response and interest. It, therefore, had been a good marketing tool, creating customer satisfaction and assuring customers of Jewel's interest in providing them with helpful information.

Some grocery retailers responding to our questionnaire had similar views on unit pricing's effect on a store's public image.

Cost of unit pricing

Studies concerning the costs of current pricing programs have estimated the annual cost of providing unit pricing to be as much as 0.17 percent of grocery sales for an average supermarket. Most State and local governments which have unit pricing laws have reportedly been able to implement enforcement programs generally without a major increase in cost and staff.

Cost to the grocery store

Two studies which estimated the nationwide costs of unit pricing in grocery stores based their estimates on the shelf label method of unit pricing. Each estimated the one-time-only cost to install and the annual cost to maintain unit pricing. The McCullough and Padberg study based its estimates on a test of unit pricing in six chain company supermarkets in Toledo, during a 16-week period—February 21 through June 13, 1970.

The second study by A. T. Kearney and Company, Inc., dated July 1971, covered both major chains and independent stores. Its estimated cost of unit pricing in food chains was based on the actual experience of seven major chains. The costs of unit pricing for independent stores were obtained by an industrial-engineering-type approach in 21 stores, which is discussed on page 79.

McCullough/Padberg study

In this study, computer-printed shelf labels were installed and maintained on about 5,000 items in each store. The sales for each store exceeded $1 million a year. The following table shows the direct costs for unit pricing, including division level as well as store level costs, determined during the study. Salaries of management officials were not considered in the direct cost of the chain's unit pricing operation.

One-time installation:	
Division (allocated to stores)	$8,885.64
Store	449.15
Annual maintenance:	
Division (allocated to stores)	11,873.26
Store	2,073.24

The estimated cost of unit pricing for all U.S. grocery stores was developed from these costs on the basis that most grocery sales occur through stores whose operations benefit from a fairly close cooperation with a distribution center, such as chain companies and independents which are affiliated with wholesalers.

On the basis of 60 stores per distribution center, the computed annual weighted average cost of unit pricing across the entire retail grocery industry was 0.59 percent of sales. However, supermarkets, which account for about three-fourths of grocery sales for the Nation, had a weighted average cost of 0.17 percent of sales.

The study concluded that the cost of unit pricing for small stores (sales less than $150,000 a year) would be very discriminatory because there would be a significant cost to sales disadvantage. However, these stores have only about 12 percent of nationwide

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grocery sales. The study also concluded that cost levels for unit pricing were apparently lower than industry expectations, but large in relation to the very narrow margins typical for food distributors. It also stated that the burden of keeping unit price labels readable, accurate, and in proper location is not trivial and that regulatory enforcement would have to recognize reasonable tolerances.

Kearney study

The objectives of this study were to conduct a thorough study of the impact of unit pricing on all types of retail grocery stores and to estimate the costs to the various types, ranging from large chain operations to small, unaffiliated independent stores.

In developing its cost estimates the study applied the following assumptions:

The shelf tag or label method would be used to display unit prices.

All U.S. stores would unit price 80 percent of grocery and frozen food items but would not unit price any meat, produce, dairy, bakery, or nonfood items beyond those already unit priced.

The costs of maintaining a unit pricing system depend, in part, on the number of labels subject to change each week.

If unit pricing became subject to regulation, it would—

Permit labels or tags to be printed on a press, computer-printed, or typed;

Not require stores to advertise or conduct educational programs; and

Give stores a reasonable time to comply so as to avoid higher costs of a crash program.

The following table shows the range of costs and the median cost—estimated by seven major supermarket chain companies which had unit pricing—for system installation and annual system maintenance per store. Each store was unit pricing 5,000 items except for 1 chain where 4,000 items were unit priced in each store.

	System installation	System maintenance
Range	$283-$667	$260-$3,474
Median	521	1,476

The wide range of installation costs between chains was attributed to differences in (1) the number of stores in the chain, (2) management time and expense, (3) computer programs, (4) computer time and cost, and (5) mix of labor and labor rates. The wide range of maintenance costs was caused by the degree to which unit pricing procedures could be substituted for, or incorporated in, other procedures by each chain.

On the basis of this data, it was estimated that if all U.S. chains established unit pricing, the average cost per store would range from $400 to $550 for installation and from $1,000 to $1,600 for maintenance. The study also estimated that average annual maintenance costs for all chains would likely be substantially under 0.10 percent of average sales.

At the time of the Kearney study no independent stores were known to have unit pricing, therefore, an industrial-engineering-type approach was used to develop cost data. Under this approach, cost estimates were developed by analyzing the numerous detailed tasks involved in installing and maintaining unit pricing in various types and sizes of stores, which were affiliated and unaffiliated with wholesalers. The following table shows the average cost per store and the percent of cost to annual sales.

	System installation		System maintenance	
	Cost	Percent of sales	Cost	Percent of sales
Affiliated:				
Supermarket	$620	0.0411	$1,378	0.0913
Superette[1]	300	.0901	881	.2646
Small store				
Unaffiliated:				
Supermarket	1,302	.0863	1,919	.1272
Superette	598	.1526	1,058	.2698
Small store	153	.2512	213	.3495

[1] Retail grocery stores with annual sales from $150,000 to $500,000.

Because of wholesalers' unit pricing assistance (e.g., data gathering, calculations, and computer-printed labels) the cost as a percent of sales was substantially lower for affiliated stores than for unaffiliated stores of the same size. All small stores were considered to be unaffiliated.

As did the McCullough/Padberg study, the Kearney study concluded that small stores would be at a significant cost to sales disadvantage in maintaining unit pricing systems. It demonstrated that the supermarket would be in a favorable position to institute unit pricing because about 93 percent are owned by major chain companies or affiliated with wholesalers which provide many services to the stores, including product pricing, shelf label preparation, and planning of new systems and programs. The study shows that annual maintenance costs for these supermarkets would probably not exceed 0.10 percent of sales.

The study also stated that most unit pricing costs would be passed on to consumers in price increases. It suggested that regulation of unit pricing should be reasonable as to the number of items included and possibly even exclude items on short-term sales and promotions in order to minimize costs. It said consideration should be given to excluding small stores from regulation because their sales are only a minor portion of groceries sold in the United States (10.8 percent in 1972) and regulation would add significantly to their burden in terms of competition. The study also suggested superettes be excluded, but to a lesser extent because they have been more profitable than small stores in recent years.

Cost of enforcement

The experience of the few State and local governments which are enforcing unit pricing regulations indicates that unit pricing adds little to the tax payer's burden. The primary reason for this was best stated by Commerce officials when commenting on the Kearney study suggestion that total costs of unit pricing could be substantially higher if unit pricing was regulated. These officials observed that many items now sold in food stores are covered by State and local weights and measures laws so that the cost of enforcing unit-pricing regulations could be absorbed by using the existing inspection force.

Officials of 6 of the 8 State and local governments regulating unit pricing stated that active enforcement programs are being carried out with existing personnel. However, one jurisdiction complained about an inadequate inspection force; this was apparently due to a lack of cooperation by store owners and management since about 35 percent of the stores showed a fairly high degree of noncompliance, which required follow-up inspections. The remaining respondents indicated that cooperation by retail stores was generally satisfactory.

Each of the eight laws excludes certain types or sizes of stores from regulation. Five of the laws contain more than one exemption. As discussed in chapter 7, the most frequent exemptions relate to single owner-operated stores and volume of sales. In this last category one law exempts any retail entity (one or more stores) with annual sales of less than $2 million, two laws exempt stores with annual sales of less than $750,000 and one law exempts stores with annual sales of less than $500,000. In our opinion, these exemptions would tend to keep down the cost of enforcing unit pricing regulations in these jurisdictions as well as avoid the competitive disadvantage for smaller stores due to their heavier cost-to-sales burden for unit pricing.

Nationwide impact of cost on the grocer and consumer

We believe, on the basis of recent studies, supermarkets would be in the best position to offer unit pricing at the least cost. Regulating unit pricing in supermarkets would involve only one in five grocery stores in the United States but it would have the greatest impact in terms of availability of unit pricing to the consumer. According to 1972 statistics, 77.4 percent of nationwide grocery sales occurred in supermarkets.

On the basis of the McCullough/Padberg and Kearney studies, the annual cost of installing and maintaining unit pricing systems in all supermarkets could be as high as 0.17 percent of total sales. If this percentage is applied to estimated nationwide supermarket sales of $78.7 billion for 1972, the total costs for unit pricing would be about $133.8 million.

Supermarkets cannot be expected to absorb these costs since their average operating profit margin before taxes are low. For example, food chain profits before taxes were .94 percent of sales in fiscal year 1972–73. If the cost were passed on to consumers, the estimated cost of unit pricing for a family of four, assuming they purchased their food in 1973 in a unit pricing supermarket, would have been about $5.71 a year, or 11 cents a week.[26]

Using unit pricing to select lower unit cost products, however, enables consumers to offset these costs. Although few studies of overall consumer use of unit pricing have been made, the John Paul Rowe survey of shoppers in suburban Washington, D.C., showed that 11 percent of the consumers actually used unit pricing and that about 8.8 percent of the purchases observed probably involved the use of unit pricing. Michael J. Houston's study concluded that participants had actually saved money by using unit pricing. It showed that the use of unit pricing significantly reduced the error rate when participants tried to choose the most economical selection. This reduced error rate was also measured in terms of the dollar difference between the minimum price for the most economical purchases and the actual price paid by the participants. Analysis of these dollar differences showed about a 3-percent savings for the shoppers in unit-pricing stores. This 3-percent savings was attributed to the use of unit pricing.

By combining the estimated usage rate (8.8 percent) with the estimated savings (3 percent), an estimated savings of 0.264 percent on total purchases is derived. This exceeds the estimated cost of providing unit pricing (0.17 percent of sales) and indicates that consumers, by using pricing, can offset the cost of providing it.

Other labeling factors' impact on effectiveness of unit pricing

Unit pricing, as generally used today is based on the net weight of the content in the can or package. However, for some products net weight may not be the measure of quantity that is needed for consumers to readily compare prices between competing products.

These products include those which—

Are in a packaging liquid (e.g. canned fruits and vegetables),

Footnotes at end of article.

Must be reconstituted before use (e.g. dry and condensed soups), and

Contain differing percentages of active ingredients and where use is based on volume (e.g. detergents).

To avoid inaccurate price comparisons among competing brands of such products, unit pricing should be based on some other measure—drained weight, yield, volume, etc.—which would enable consumers to more accurately compare prices.

As discussed in chapter 4, food products which are packed in liquid can have significant differences between drained weight and net weight. The "Consumer Reports" analysis found that food processors disclosures of drained weight for such products—especially canned fruits and vegetables—is needed so that retail stores can realistically calculate unit prices for shoppers.

The following table shows comparative information on a can of vacuum packed corn and a can of corn packed in liquid in which the number of kernels was virtually identical. This table comes from an industry sponsored study conducted by Consumer Research Institute, Inc.[27]

	Brand A (less moisture)	Brand B (more moisture)
Net weight of contents (ounces)	12	17
Price per can (cents)	25	25
Normal unit price per ounce (cents)	2.08	1.47
Price per serving (usage unit) (cents)	6.25	6.25

The usage unit selected for the study was a 3 ounce drained weight serving. Although arbitrary, the unit selected makes little difference if it is consistent across brands. If drained weight rather than net weight had been disclosed on the brands' labels in ounces, the usage unit could have been the ounce or pound.

As can be seen from the preceding table, shoppers could believe they were getting a better choice with brand B. However, if unit price was based on drained weight, shoppers could tell there was no price difference.

Yield information is particularly suitable for prepared mixes and products that must be reconstituted before use. Commerce recognized this in its attempt to simplify package quantity patterns when the package standard for dry milk was based on the number of quarts of milk resulting from reconstitution rather than attempting to establish a weight standard for the powdered product.

The following table from the Consumer Research Institute, Inc., study shows the problem which occurs when net weight of contents rather than yield is used to calculate unit prices for reconstituted products. The table presents comparative information on four brands of vegetable beef soup with brands A and B requiring reconstitution before use.

Footnotes at end of article.

	Brand A (dehydrated)	Brand B (condensed)	Brand C (ready to serve)	Brand D (ready to serve)
Net weight of contents (ounces)	3½	10¾	14¾	19
Price per can or package (cents)	[1] 40	[2] 23	[2] 25	[2] 57
Normal unit price per ounce (cents)	11.43	2.14	1.68	3
Price per serving (usage unit) (cents)	7	9	14	28

[1] Package.
[2] Can.

The usage unit selected for the study was one cup. However, if yield information had been disclosed on brand A and B labels in ounces, the usage unit could have been the ounce or quart.

The application of yield information in computing unit price shows that the dehydrated soup is the cheapest rather than the most expensive as indicated by the normal unit price based on net weight of contents.

Detergents and other such products with active ingredients are sold by weight but are used by volume. However, the amount used each time depends on the package directions for each brand. For example, directions for laundry detergents specify different amounts depending on the type of washer, the hardness of water, and the condition of the fabrics to be washed. These directions may also state that the final amounts used are subject to the consumer's judgment. The Consumer Research Institute, Inc., computed the price per washload for three brands of detergents on the basis of usage data obtained from package directions. The results are shown below.

	Brand A (tablet)	Brand B (concentrated)	Brand C (regular)
Net weight of contents (ounces)	46	49	20
Price per package (cents)	79	79	38
Normal unit price per ounce (cents)	1.7	1.6	1.9
Price per washload (cents)	6.00	6.00	6.78

On the basis of these examples, we believe price comparisons of competing brands for some products should be based on usage or drained weight rather than the net weight. If manufacturers of such products included usage or drained weight information on their product labels, it would be feasible for retailers to base unit prices on more meaningful measures of quantity and would make unit pricing even more effective in facilitating consumer price comparisons.

Universal product code

Plans are well underway within the grocery industry to make possible the automation of the supermarket checkout process. Under this system each product will have a distinct code on the label. When the coded items are passed across a scanner at the cash register, they will automatically be rung up and the customer will receive a receipt describing the product and its price. The system for assigning a distinct code to each product has been designated the Universal Product Code. Once operational, the system should save time, reduce labor costs, eliminate errors, and reduce operating costs which may be passed on to the consumer in lower food prices.

Because this system will not require the marking of prices on individual packages, individual retailers may decide to eliminate this cost and use shelf labels to provide the pricing information consumers need. Although such a practice could encourage the availability and use of unit pricing, it could also create problems for consumers. Because of the problems of design and maintenance of shelf labels for unit pricing, as discussed in chapter 7, we believe that, before such a system is implemented, the design and maintenance of shelf labels should be improved. The savings offered by the system may provide an incentive to the retailer to do this.

Consumer and industry comments

The officials from 3 trade associations and 5 consumer groups we interviewed concerning unit pricing stated that consumers experience difficulties in comparing the prices of competing products. They also generally agreed that unit pricing was a possible answer to the problem. They disagreed, however, as to whether unit pricing should be mandatory for supermarket-size (over $500,000 in annual sales) stores.

Consumer groups

Officials from all five consumer groups stated that unit pricing should be mandatory. One official stated that all of the qualitative labeling information would be meaningless without unit pricing to help consumers make the final economic comparison. Another official stated that without unit pricing consumers will not be able to compare the value of competing products; and, still another official stated that unit pricing should be legible and easy for consumers to understand and use.

Food industry

Officials from the trade associations stated that mandatory unit pricing was not needed and could put some small retail food stores out of business. They said that unit pricing is available in most metropolitan areas under voluntary programs. Making unit pricing mandatory would add to food prices and require Federal Government monitoring which would be costly to taxpayers.

While industry officials agreed that the design and implementation of some unit-pricing systems needed improvement, they believe the programs are evolving and new and improved systems are being instituted. They are concerned, however, about the cost of improved systems when there is no assurance that consumers will use the unit pricing information.

Industry officials also expressed concern about passing the costs of unit pricing on to the consumers. They stated the profit margin for most retailers was so small that most firms could not absorb the cost of the program but would have to pass it on to consumers in the form of higher food prices.

One optimistic viewpoint taken by industry is that with the increased use of the Universal Product Code, the cost of providing unit pricing information will be minimal. In addition, because the shelf labels will have the only price information, they will take on added significance and retailers will have to improve their design and maintenance.

Conclusions

Despite the potential benefits of unit pricing, its actual impact on consumers has been limited. Because of either a lack of awareness or a lack of understanding, a relatively small percentage of consumers have actually used unit pricing and they generally have used it on only selected purchases.

While there has been no study of the reasons for a lack of understanding or awareness and, therefore, limited use of unit pricing, several studies showed a strong association between consumer education, income, and age levels and the awareness and understanding of unit pricing. In our opinion, this association is caused, at least in part, by the lack of consumer education on the meaning and benefit of unit pricing and by the problems of design and maintenance of unit pricing an shelf labels. While voluntary programs have been beneficial, food retailers should be given specific criteria for presenting unit pricing and educating consumers on its use.

To insure that unit pricing information is presented to consumers in a meaningful way and that they can understand and use it in making value comparisons, national standards should be established for designing and maintaining such programs. These standards should also prescribe the basis for computing unit price (net weight, drained weight, usage) and for selecting the unit of measure (per pound or per ounce) to be used. In addition, a consumer education program should be established to acquaint consumers with

the prescribed format and the benefits of using unit pricing.

The need for national standards and consumer education will also increase with the use of the Universal Product Code and the planned automation of the supermarket checkout process. As now planned, the shelf label would be the sole source of information for consumers for the package price as well as the unit price. When such plans are put into operation consumer understanding and the design and maintenance of shelf labels will take on added importance.

Estimates show the annual costs of unit pricing could be as much as $133.8 million. The costs would have to be passed on to consumers in the form of higher grocery prices. However, consumers could offset these costs by using unit pricing to select lower unit cost products.

Agency comments

HEW, commenting on our recommendation to the Congress to consider establishing a unit pricing program, advised us that its Office of Consumer Affairs endorses the concept of uniformity of unit pricing as well as education of consumers as to its uses and benefits. USDA did not comment on our recommendation, but did note that with unit pricing information consumers could more readily make both price-quantity and price-quality judgments. USDA also noted that price comparison is not the only basis for consumer buying decisions. Quality, convenience, personal tastes and preferences, and utility of a particular size are other key factors that are not reflected in unit pricing.

Commerce questioned whether a mandatory unit pricing program would be sufficiently used by consumers to justify the higher food prices they would be asked to pay. Commerce believes that various surveys cited in our report indicate that consumers would not offset these higher costs by using unit pricing to select lower unit cost products. Also Commerce stated that mandatory unit pricing would require Government monitoring and in this period of rapid inflation it seemed inadvisable to endorse any program that would unnecessarily add to the cost of food and/or increase the cost of government when the benefits in so doing are doubtful.

Although Commerce recognizes that not all chains in metropolitan areas under voluntary programs have unit pricing, it believes the existence of at least one such chain in any area provides the consumer with the option of using it. Commerce believes also that free market pressure should be sufficient to persuade other chains to adopt unit pricing so as to remain competitive and, therefore, there is no need for government to intervene where the market operates efficiently.

Moreover, Commerce believes more attention should be devoted to studying the impact of mandatory unit pricing rules on small retailers, which, as pointed out in our report, could force some of them out of business. Commerce indicated that the Federal Trade Commission is studying concentration in the retail food industry and stated that it would be inadvisable to take steps that could result in fewer firms in the industry and, therefore, nothing should be done to reduce the diversity of the industry while the matter is under study.

Concerning whether consumers would use unit pricing provided under a mandatory program, one of the main reasons for the limited use of unit pricing has been the lack of awareness and understanding. Problems and variations in the extent of coverage, the design and maintenance of shelf labels, the unit of measure, and the lack of promotion and explanatory materials have all contributed to the problems consumers have in trying to understand and use unit pricing. A mandatory uniform program should reduce the obstacles limiting consumer awareness and understanding of unit pricing.

Also studies cited in this report indicate that, when consumers use unit pricing, they use it on about 8.8 percent of their purchases and achieve savings of about 3 percent, which results in an estimated savings of 0.264 percent on total purchases. This exceeds the estimated cost of providing unit pricing (0.17 percent of sales) and indicates that consumers, by using unit pricing, can offset the cost of providing it.

We believe it becomes even more important to consumers during a period of rapid inflation to have unit pricing to help consumers compare the cost of competing food products.

With regard to the cost of monitoring unit pricing requirements, the experience of the few State and local governments which are enforcing unit pricing regulations indicates that unit pricing adds little to the taxpayers' burden. Officials of six of the eight State and local governments regulating unit pricing stated that active enforcement programs are being carried out with existing personnel.

Unit pricing is available in about 50 percent of the chain-operated supermarkets and in 25 percent of the independent supermarkets. But variations in the number of products covered by individual stores or chains, problems in the design and maintenance of shelf labels, inappropriate units of measure, and lack of promotion and explanatory materials have all contributed to problems consumers have in understanding and using unit pricing. Unit pricing programs with such problems should not be expected to develop sufficient market pressure to persuade other chains to adopt unit pricing to remain competitive. Further, in an area where no retailer is providing unit pricing, there is no such market pressure for a retailer to adopt unit pricing.

This report cites the concern of industry officials that mandatory unit pricing could put small retailers out of business. However, the legislative proposals under consideration by the Congress exclude any retail outlet with gross annual sales of less than $250,000 or a firm with several outlets with total annual sales of less than $500,000 from the requirement to provide unit pricing.

Additional comments of the Department of Commerce

Commerce made the following general comments on our report, in addition to its comments on specific matters (open dating and unit pricing).

"The basic premise underlying the report is that informed consumers are essential to the fair and efficient functioning of a free market economy. An important consideration in attaining this goal is the extent to which consumers would utilize the information that would be available if the proposals in the six basic areas (full disclosure of ingredients, nutritional labeling, percentage of characterizing ingredients, grading, open dating and unit pricing) were enacted. The studies quoted in the report indicate that the consumer is not utilizing the information he or she now has available.

"With approximately 8,000 items available in the average supermarket and as many as 230 assortments of one food category (cheese), the consumer theoretically could have 48,000 pieces of information to weigh in selecting 'best' buys if information in all six areas of the report became mandatory. If the average housewife were to buy only 20 different products she would have 120 pieces of information to evaluate. Given changing prices, sales, and differences in prices between stores, a consumer would be hard pressed to make efficient use of the information the report proposes providing and for which he or she would have to pay in the form of higher food prices."

Our report demonstrates that incomplete information, the confusing presentation of and/or the lack of explanatory material provided by the food industry or the retailers have contributed to the limited use of the information by consumers. In fact, several studies cited in this report indicate the consumers' desire for easy-to-use information.

Many of our recommendations are directed toward providing information in a more useful form or making it more uniformly available, rather than toward providing new types of information. For example, where ingredients are now only listed in order of predominance, the precentage of the main characterizing ingredients would be shown and, where now only non-standardized foods have to have their ingredients listed, "standardized" foods would also have their ingredients listed.

The recommendations in this report are directed toward providing the consumer more usable information for making the comparisons contemplated by the Congress and for determining which brands are best suited to their specific needs or preferences.

Recommendation to the Congress

To insure the most effective presentation of unit pricing information and to insure consumer awareness and understanding of unit pricing, we recommend the Congress consider amending FPLA to establish a unit pricing program, including guidelines for the design and maintenance of unit pricing information and education of consumers about its use and benefits. H.R. 3708 was introduced in the 93d Congress to amend FPLA to require a disclosure of retial unit prices of packaged consumer commodities. If enacted, this proposal would require any retail outlet, which has gross sales of $250,000 or more annually, or any firm with a number of outlets whose total sales exceed $500,000 annually, to display the total selling price and the retail unit price either on the package or in close proximity to the point of display. This legislation would not, however, establish standards for the designing and maintaining of such systems, nor would it provide for consumer education—two essential factors in the success of the unit pricing program.

FOOTNOTES

[1] "What's Happened to Truth-in-Packaging?" *Consumer Reports* (Jan. 1969), p. 41. Study commissioned by Consumers Union and directed by the Consumer Research Foundation.

[2] For the purposes of this report, "supermarkets" are defined as retail grocery stores with annual sales of $500,000 or more.

[3] Jack D. Richardson, "The Question of Unit-Pricing," Testimony in Public Hearings, New York City Department of Consumer Affairs (May 26, 1969), pp. 4–6. Study conducted by New York City Department of Consumer Affairs.

[4] Monroe P. Friedman, "Dual-Price Labels: Usage Patterns and Potential Benefits for Shoppers in Inner-City and Suburban Supermarkets," Center for the Study of Contemporary Issues, Eastern Michigan University, Ypsilanti, Michigan, no publishing date, pp. 62–85. Study funded by Safeway Stores, Inc., and the National Association of Food Chains and directed by Monroe P. Friedman.

[5] Michael J. Houston, "The Effect of Unit-pricing on Choices of Brand and Size in Economic Shopping," *Journal of Marketing*, vol. 36 (July 1972), pp. 51–54. Experiment conducted in a midwestern town of 15,000–20,000 people using outlets of three major supermarket chains.

[6] Robert D. Gatewood and Robert Perloff, "An Experimental Investigation of Three Methods of Providing Weight and Price Information to Consumers," *Journal of Applied*

Psychology, vol. 57, no. 11 (1973), pp. 81–85. Study was based on a doctoral dissertation submitted to Purdue University.

[7] Required the volunteer to match the total price of the package with its net weight so that the cost per ounce would show in a box in the center of the device. All volunteers using the device were trained to a criterion of three successful computations before the study began. A device similar to that used in the study as pictured on page 56.

[8] C.W.J. Granger and A. Billson, "Consumers' Attitudes Toward Package Size and Price," *Journal of Marketing Research*, vol. 9 (Aug. 1972), pp. 239–248. Study funded by the Consumer Research Institute, Inc., Washington, D.C.

[9] A group of products similar in nature and/or use; for example canned fish includes tuna, salmon, sardines, etc.; and household cleaning compounds include all-purpose cleaners, scouring cleansers or pads, bowl cleaners, drain cleaners, etc.

[10] Percentages and description of dry groceries based on a study by "Progressive Grocer" magazine in cooperation with The Great Atlantic & Pacific Tea Co., Inc. See "Progressive Grocer," Apr. 1973, p. 208.

[11] T. David McCullough and Daniel I. Padberg, "Unit Pricing in Supermarkets: Alternatives, Costs, and Consumer Reaction," *Search Agriculture*, Cornell University, Ithaca, New York, vol. 1 no. 6 (Jan. 1971), pp. 2 and 10. Study financed by Consumer Research Institute, Inc.

[12] John Paul Rowe, "An Inquiry Into a Consumer Information Issue: Unit Pricing," Thesis, School of Government and Business Administration of the George Washington University, Washington, D.C. (May 1973), p. 18. Reported and observed usage were compared in this study.

[13] Ed Henry, "Shopping by the Numbers," *Money* (May 1973), pp. 63 and 64.

[14] Robert Aitchison, "Some Facts on Unit Pricing in New York City and Upstate New York Supermarkets," *Cornell Agricultural Economics Staff Paper*, no. 72–1, Cornell University, Ithaca, New York (Jan. 1972), pp. 8 and 9.

[15] Omitted.

[16] See footnote 1 on p. 62, McCullough and Padberg, pp. 16–20. Interviews were conducted in six Toledo area stores about 4 months after unit pricing was introduced.

[17] "Background Information of Jewel Compar-A-Buy Pricing Study," supplement to news release, Jewel Food Stores, Nubrose Park, Illinois, for release Oct. 11, 1970, pp. 4–8. Interviews conducted at three Chicago area stores about 1 (test I) and 3 (test II) months after introduction of unit pricing.

[18] Lawrence M. Lamont, James T. Rothe, and Charles C. Slater, "Unit Pricing: A Positive Response to Consumerism," The University of Colorado, Boulder, Colorado (no publish date), pp. 5 and 7. Telephone interviews conducted during second month after introduction of unit pricing in a Denver area supermarket chain.

[19] "Unit Pricing and the Consumer—Does she understand it?—Does she like it?—Does she use it?" McCann-Erickson Research Services (July 1971) pp. 1–9 and section on method, no page number. Interviews conducted in five Toronto area stores about 2 months after introduction of unit pricing.

[20] See footnote 1 on p. 63, Rowe pp. 29, 43, 44, and 65.

[21] See footnote 2 on p. 72.

[22] See footnote 1 on p. 62, McCullough and Padberg, pp. 11–16.

[23] Hans R. Isakson and Alex R. Maurizi, "The Consumer Economics of Unit Pricing," *Journal of Marketing Research*, vol. 10, (Aug. 1973), pp. 277–285.

[24] Joseph S. Coyle, "Dual Pricing," *Progressive Grocer*, (Feb. 1971), p. 50.

[25] Joseph S. Coyle, "What Cost Dual Pricing?" *Progressive Grocer*, (Nov. 1970), p. 81.

[26] Based on the average cost of food for a family of four ($3,359 a year or $64.60 a week per USDA statistics) multiplied by the estimated annual cost of unit pricing (0.17 percent of sales).

[27] Raymond C. Stokes, "Unite Pricing, Differential Brand Density and Consumer Deception," Consumer Research Institute, Inc., Washington, D.C., (June 1973), pp. 1–18.

A NEW SUPERMARKET RIPOFF: PACKAGES WITHOUT PRICES

(By Consumer Federation of America)

The supermarket industry takes the attitude that if the consumers want prices on merchandise it will give them grease pencils so they can mark the prices for their own information. This is typical of the "public-be-damned" attitude the industry takes. It equates on the PR equivalency scale with "let 'em eat cake."—Carol Tucker Foreman, Executive Director, Consumer Federation of America.

American supermarkets are trying to sell consumers something new: Packages without prices.

There is a major change taking place in food retailing. Grocery stores are beginning to us a computerized checkout system. This system makes it unnecessary for the supermarket to put prices on the items they sell, and if present plans are carried out, prices will no longer appear on items in your supermarket. They will only be on the shelves.

The supermarket industry plans to take prices off merchandise despite the fact that there is great consumer opposition to such action. For example, in a study last year of the 37 most important characteristics of a store, shoppers ranked "all prices clearly labeled" second only to "cleanliness."

Two developments in the industry have made dramatic change possible:

One: Industry-wide adoption of the Universal Product Code (UPC).

Two: Installation of the computerized checkout system in the stores.

What follows is a technical and economic discussion of the change and an outline of an action program to meet the challenge.

Question. What is the Universal Product Code (UPC)?

Answer. The symbol can be smaller than 1.5 square inches. In this tiny space, the lines on the symbol will be able to generate one TRILLION individual, distinct, machine-readable numbers.

The UPC can be affixed to almost any kind of merchandise and still be completely readable, whether the item comes in a bag, bottle, box, can, jar, sack, tube, cellophane/pliofilm wrapper or aluminum dish.

Question. What happens at the computerized checkout stand?

Answer. Each checkout stand will be equipped with an electronic scanner. The checker will simply pull a UPC-marked products across the scanner. In a milli-second, the scanner will translate the UPC bar symbol to the UPC code number, transmit that information to the store's mini-computer file and the products price will then be "looked up" and flashed back to the register. The price will then be visually displayed to both the consumer and the checker. At the very same time, a description of the product and its price will be printed on the customer's cash register tape, and that information is also stored for computing the total bill.

Question. What about "two-fors" and "three-fors?" Will merchandise still have to be separated into groups, according to the number purchased at a given price?

Answer. "Two-fors" and "three-fors" will not have to be grouped together. The computer will do this electronically and automatically.

Take a "three-for" as an example. Say you buy candy bars priced at three for 29 cents. You do not have to group them together on the conveyor.

When the first candy bar shows up and the laser beam informs the computer of the number, the computer will charge 10 cents for the bar. When the second shows up, the price will still be 10 cents. But when the third shows up, the computer will have stored in its memory the fact that two bars have already been charged within that particular order and it will flash "9c" on the electronic sign above the checkout counter. Let's say you had nine different combinations of items within your order. There would be no necessity to group any of them. The sorting and correct pricing would all be done by the computer.

Question. Have consumer groups or labor unions been periodically consulted about the revolutionary UPC and the automated checkout stand?

Answer. Not at all. Although research and development on this project has been going on for more than ten years, CFA doesn't know of any consumer group that has been asked for its advice at any time, anywhere in the entire nation.

Now, research and development of the computerized checkout stand is an accomplished fact, so chains which plan to install them are busily setting up "consumer committees" and "consumer advisor groups." But there is no instance in the country where management has agreed to take consumer advice to keep prices on the merchandise.

In addition, with thousands of jobs at stake, management has carefully avoided consulting with the affected trade unions, the Retail Clerks, Meat Cutters and Teamsters.

Question. What is the attitude of the grocery industry toward consumers?

Answer. Patronizing, condescending. But let their words speak for them:

A prominent Chicago retail food executive: "Generally, people do not know what they want . . . We must be ahead of our customers, be anticipating and doing the things we know they need, even though they themselves do not know what they want."

Edgar B. Walzer, editor-in-chief Progressive Grocer: "Consumer protectionists have became aware of the Automated Front End and—as if by reflex—have started reaching for the monkey wrench. Specifically, they oppose the removal of prices from individual packages because shoppers would thereby be deprived of necessary information . . . It's not enough to say—again—that the protectionists don't know what they're doing . . . When it comes to retail food prices, it might be said that consumers are discussing them more and comprehending them less."

Alan Haberman, president of First National Stores, suggested that if consumers were really interested in having prices on merchandise, the supermakets would be glad to supply grease pencils so the consumers could do the marking themselves.

Question. What are the advantages and disadvantages of the computerized checkout stand as far as the consumer is concerned?

Answer. An excellent summary appeared so comprehensive, you will find a complete recently in Media & Consumer. Because it is reprint on the last two pages.

CFA would like to make one minor addition to the M&C compilation: Recently, supermarkets have been pledging they will stop their policy of raising the price of merchandise already on the shelves. There has been a very loud public clamor by some supermarkets on this score, and they have spent a lot of money advertising this new policy. Yet, when the computer checkout stand goes into effect, re-pricing will be accomplished by a simple change at the computer, and the price of the item will be changed wherever it is located: On the shelf,

in the storeroom or in the warehouse—until the next change. Presumably, the price indicated on the shelf will always be the same as that in the computer.

Question. Is it profitable for a supermarket to install automated checkout stands?

Answer. Probably.

The Distribution Number Bank, Inc., which is a creature of the grocery industry, has made an analysis of the profit picture. It breaks profits into two segments: Hard and soft savings. Here is a direct quote from DNB:

"Hard Savings: Studies done for the Ad Hoc Grocery Committee by McKinsey and Co. (management consultants) with the help of many leading chains and equipment companies indicate that such automation should lead to net savings before tax for retailers equal to 1.0 to 1.5 percent of sales essentially due to quantifiable productivity savings.

"For example, a $10,000 per week retail store should expect to save $27,000 before tax by 1975(after subtracting depreciation, cost of capital (on a $120,000 investment), and other costs. *Average return after tax on average investment over 10 years appears to be over 30 percent.*" (Italics ours.)

"Soft Savings: . . . accurate information on what was sold will be available since every item is uniquely coded and is identified in the automated checkout process. Savings from use of those data have been classified as 'soft' due to the difficulty of predicting them. Some obvious savings in this category are shrink identification by item (and presumably reduction), direct store inventory control, and a vast range of changes such as shelf allocation, instant price changes, and other merchandising changes. *Some people, including the McKinsey team, believe those soft savings may eventually be more significant than the hard or productivity savings identified to date.*" (Italics ours.)

In other words, the industry is saying that when it moves ahead with installation of the automated checkout, it figures to make a return of 60 percent or more on its investment.

Question. Isn't this machinery expensive to install?

Answer. You bet it is.

Estimates of the cost of installation run about $100,000 per store.

Question. Who is going to pay for the installation?

Answer. We suspect the initial cost is likely to be passed on to you, the shopper, in the form of higher prices. Supermarkets tell us they don't make much of a profit now so it can be assumed that we will have to help them pay for their equipment by paying higher prices.

Question. In view of the savings possible, has the industry ever talked about reducing prices?

Answer. Not that you could notice.

In fact, in all of the vast amount of literature on the subject, there is never any mention by any industry figure of a possible reduction in prices.

Question. Can't prices be left on the merchandise?

Answer. They could be and some supermarket people think they should be.

Larry Russell, a management consultant to the food industry: ". . . consumers want prices on the packages. And if they want that, they will get it, but the cost advantage to the consumer will be reduced."

Paul Korody, consumer affairs director of the National Association of Food Chains: "It's a non-issue. The removal of prices from goods is not necessary to install the system . . . by insisting that the prices remain on the can, you just lose the benefits. The price will be useful to the consumer only and has no bearing on how the system runs."

What is the dollars and cents cost of keeping the price on? The industry says that a store with $3 million annual sales and with no prices on the packages would show a net savings from an automated checkstand of $34,700 a year.

If the store left the prices on the can, the savings would be $23,000 per year. For about $225 per week, the store could satisfy its consumers' demand for price marking.

Question. If the cost of price marking is so minor, then why is the industry taking away something the consumer wants?

Answer. Probably because it figures it can get away with it.

We think they should be stopped.

The Consumer Federation of America has a program, and here it is:

PROGRAMS TO MAINTAIN PRICE MARKING ON CONSUMER PRODUCTS

We propose both legislative and action programs:

Legislative Program: Draft and present to Federal, state, county and municipal governments legislation to require that every consumer product have the price plainly marked on it.

Action Program: Whenever and wherever a store opens with computerized checkout stands, let store management and the general public know that consumers object to the elimination of price marking.

Following are some of the things that should be included in your program:

1. Propose and support legislation to require that any packaged item sold at retail have a price marked clearly on it.

2. Press for immediate action at all governmental levels: Federal, state, county and municipal.

3. CFA proposes this language: "The package of every consumer commodity offered for retail sale shall bear the price of such commodity in arabic numbers. The price shall be large enough to be readable and shall not be in code." An appropriate penalty should be included.

1. At every location where computerized checkstands are introduced, leaflet the general public so they will be aware of the consequences.

2. Use the media to spread the message:

a. Radio and television talk shows.

b. Newspaper, radio and television news departments.

c. Letters to the editor.

d. Every other available resource, including purchase of time or space if that is deemed necessary.

3. Let legislators know how we feel, and when a crucial vote is at hand, mobilize the consumer movement and all our friends—especially the labor unions which have a particular concern—to let representatives know how deeply we feel on this subject.

4. CFA will provide camera-ready copy that will lend itself for easy adaptation to local leaflets and signs.

THE PROS AND CONS OF THE AUTOMATED CHECKOUT

Proclaimed benefits to the consumer

1. Less waiting time. Because of the speed of the automated checkout's scanner and computer, the consumer will virtually streak through the checkout lanes.

2. Fewer errors in price ring-ups. Because the price codes on most products will be optically scanned and recorded, there's less room for error on the part of the clerk.

3. Detailed sales receipt. A few of the systems offer a sales receipt that includes both the price and name of each item you bought.

4. Elimination of item-pricing. Since there'll now be on each item a price code that can be read by the optical scanner there's no need to go through the process of stamping a price on each item. By just putting one price on prominent display near the item, there will supposedly be significant labor savings that can be passed along to the consumer.

5. Ease in check cashing. The computer can store the records of more than 20,000 customers and okay in a flash the shopper's check.

M & C Comment

1. Less time at the checkout counter is indeed possible, and is one of the prime advantages to consumers.

2. The system will produce fewer errors, unless the wrong information is fed to the computer or the computer goes haywire. Then, watch out!

3. Where available, and it won't be available with all the systems, this may help the consumer in his or her budgeting.

4. While it's true some labor savings *could* be passed on by the elimination of price-marking on each item, consumerists are almost universally opposed to such a move. The supermarket industry's own tests generally show a distinct coolness on the part of consumers to removing prices from items.

5. Certainly an advantage and one that will save considerable time.

CONSUMER BEWARE

There's no guarantee that some supermarkets won't substantially reduce the number of checkout lanes when switching to the new system, thus forcing the food shopper to wait just as long as before.

Since the computerized system delivers the capability for instantaneous price changes, you may wind up paying 51 cents for that can of beans whose price was shelf-listed as 43 cents. Why? Because someone at chain headquarters or in the store raised the price between the time you took the item from the shelf and got to the checkout counter. There's no guarantee this won't happen.

If the brand name and the size or quantity of the product are not included, the receipt offers scant information that will be useful in budgeting or comparison shopping.

This is potentially the most harmful element of the new checkout system, for a number of reasons:

The supermarkets are offering no guarantee that they'll share this savings with the consumer. In fact, supermarkets might merely gobble it up for themselves for increased profits.

There's also no guarantee that the supermarkets can faithfully see to it that the price tag is accurate. In fact, the industry as a whole has a notoriously bad reputation for its ability to maintain shelf prices properly.

If the prices do not appear on the items, the consumer has little defense—unless he or she is endowed with a superb memory—against the instantaneous price changes mentioned earlier.

Having the price on the item at the time it's used (in the kitchen) can reinforce the consciousness of price at the time foods are prepared.

Comparison shopping will become quite complicated. Checking the price of corn—fresh, frozen or canned—will require either a superb memory or trips from aisle to aisle to compare prices, since none will be on items in the cart.

A visual terminal that will flash the price and product name as the UPC is scanned is cited as another assurance to the consumer that the correct price is being charged. Yet the increased speed of the system is based on a checker using a rapid two-handed motion to slide the groceries across the scanner and bag them almost simultaneously. That hardly allows the shopper enough time to match the product with the price flashed on the visual terminal.

The question is how this information will be used. While the stores probably won't have much more information on a customer's employment and financial situation than they do now, the information will be readily available. Perhaps even for sale to credit bureaus or direct mail houses.

By Mr. MOSS:

S. 998. A bill to amend title 44, United States Code, to strengthen the authority of the Administrator of General Services and National Archives and Records Service with respect to records management by Federal agencies, and for other purposes. Referred to the Committee on Government Operations.

RECORDS MANAGEMENT ACT OF 1973

Mr. MOSS. Mr. President, today I am introducing a bill to require more effective control of the creation, use, and disposition of records by Federal Government agencies. Similar bills have been introduced in the House of Representatives by Congressmen RICHARD C. WHITE, FRANK HORTON, and GUNN MCKAY, by Congressman BILL ARCHER, and by Congressman JOHN M. MURPHY. I appreciate the interest of these distinguished Members in legislation to reduce waste and inefficiency in Government paperwork.

The American people have vital interests in the management of public records. The policies and transactions of the Federal Government must be accurately and completely documented. Records of historical value must be preserved. The public must have ready access to documents covered by the Freedom of Information Act. The taxpayers also expect, however, that paperwork be minimized, that records be maintained and used efficiently, and that records no longer of value be destroyed rather than stored indefinitely at great expense.

The cost of producing, handling, and storing correspondence, reports, directives, forms, and other material is enormous. It has quadrupled in the last two decades. In 1955 a Hoover Commission task force reported that Federal agencies were spending approximately $4 billion annually on paperwork. In 1973 the General Accounting Office gave a conservative estimate of $15 billion a year. Seven million cubic feet of records were produced in 1972 alone. The expense is not limited to paperwork, however, but arises also from the use of automated information systems and microreproduction methods.

The Federal Records Act of 1950 places primary responsibility for efficient management of Government records with agencies and departments but gives the General Services Administration and National Archives and Records Service oversight authority. Since 1964 officials of the NARS have inspected and evaluated nearly every major agency and department and found that remarkably few do even a tolerable job of controlling paperwork. Of 33 agencies examined prior to 1971, an average of 27 failed to meet NARS standards in each of 21 categories from filing systems to office copying to records disposal. Thirty agencies had neglected to assign specific responsibility for records management activities to any personnel; only one was judged to have adequate staff. Of 12 agencies and departments investigated since 1971, 3 have designated records management officers but no better programs or qualified staff than the previous group.

Far from improving their records management activities in recent years, some agencies have cut funds and eliminated personnel—a flagrant case of false economy. When NARS employees inspected the Department of the Navy in 1968, they found that 38 well-qualified people in the Office of the Secretary were assigned to records management. A followup investigation in 1970 disclosed that the function had been removed from the secretarial level and the staff reduced to 20. By attrition, the number of employees subsequently dropped to 16. These steps were taken despite a NARS report, in 1968, that the Navy could save $10 million of its $100 million annual expenditure on paperwork.

Such conditions should not be interpreted as a failure of the GSA or the National Archives and Records Service. The NARS has developed guidelines and standards for handling all types of documents and using a variety of equipment. Through studies, workshops, manuals, and consulting services, the relatively small staff of experts have managed to persuade many agencies to adopt some improvements. However, their efforts are handicapped by inadequate authority to accomplish significant savings and much greater efficiency.

Mr. President, present legislation has three major weaknesses which the Records Management Act is intended to correct. First, the Federal Records Act of 1950 lacks, while my bill contains, a practical and comprehensive definition of records management functions. Essential to cost savings, for example, are controls over the proliferation of records; but many agencies have been reluctant to accept this notion because it is nowhere specified in law. My bill refers repeatedly to records creation as well as to their maintenance, use, and disposition.

Second, NARS must presently rely on persuasion to implement better procedures and techniques. Under the Records Management Act, where voluntary compliance is not forthcoming, the Administrator of the General Services Administration will have authority to compel agency chiefs—subject to appeal to a new Records Review Board—to follow measures that will improve records management.

Third, the results of NARS inspections and studies now rarely come to public and congressional attention. The Records Management Act requires that the Administrator of GSA report the findings of each agency study, the nature of each order and recommendation issued by the Administrator, and the adequacy of agency staffing to the Congress, the Office of Management and Budget, and the General Accounting Office.

Mr. President, no one knows the potential savings of effective records management. The experience of NARS, however, is that most agencies can reduce their paperwork costs by 10 percent and achieve $10 savings for every $1 spent on management personnel salaries. In August 1970, the President ordered OMB and the GSA to spearhead a reduction of $200 million in the $1.4 billion spent for internal and interagency reporting, 1 of 10 elements of record management. In slightly more than a year, agencies reported savings of $270 million. This project clearly demonstrates what can be accomplished by agencies with sufficient clout.

Mr. President, I believe that the Records Management Act is necessary and important legislation. I ask unanimous consent that the text of the bill be printed in the RECORD

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

S. 998

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 "Records Management Act".

AMENDMENT OF TITLE 44, UNITED STATES CODE

SEC. 2. (a) Title 44, United Staates Code, is amended by striking out chapter 27 through chapter 31 and inserting in lieu thereof the following new chapter:

"Chapter 27.—RECORDS MANAGEMENT

"Sec.
"2701. Definitions.
"2702. Objectives of records management.
"2703. General responsibilities of Administrator.
"2704. Records management authority of Administrator.
"2705. Records Review Board.
"2706. Records management by Federal agencies.
"2707. Custody and control of property.
"2708. Establishment of standards for selective retention of records; security measures.
"2709. Records center; storage, processing, and serving of records.
"2710. Interagency records transfers.
"2711. Retention of records.
"2712. Certifications and determinations on transferred records.
"2713. Safeguards.
"2714. Unlawful removal, destruction of records.
"2715. Records management personnel.
"2716. Authority of Comptroller General.
"2717. Rules.

"§ 2701. Definitions

"For purposes of this chapter, chapter 21, and chapter 25 of this title—

"(1) the term 'records' has the meaning given it by section 3301;

"(2) the term 'records management' means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition, including the management of correspondence, forms, directives, reports, machine readable records, microforms, information retrieval, files, mail, vital records, records equipment and supplies, office copiers, word processing and source data automation techniques, records preservation, records disposal, and records centers or other storage facilities;

"(3) the term 'paperwork management' is considered to be a synonym for the term 'records management,' as defined above;

"(4) the term 'records practices' means any system, procedure, or technique followed with respect to effective records creation, records maintenance and use, and records disposition;

"(5) the term 'records creation' means any process involved with respect to producing any recorded information necessary to conduct the business of a Federal agency;

"(6) the term 'records maintenance and use' means any activity involved with respect to—

"(A) the planning and establishment of controls and procedures governing the location of records of a Federal agency;

"(B) the development and implementation of systems and procedures to facilitate the safeguarding, retrieval, and use of recorded information kept at file locations;

"(C) the development and implementation of systems for the economical and efficient processing of mail of a Federal agency;

"(D) the control of selection and use of equipment and supplies associated with records;

"(7) the term 'records disposition' means—

"(A) the removal of records by a Federal agency through such methods as—

"(i) the disposal of temporary records no longer necessary for the conduct of business by destruction or donation;

"(ii) the transfer of records to Federal agency storage facilities or records centers; and

"(iii) the transfer to the National Archives of the United States of records determined to have historical or other sufficient value to warrant continued preservation;

"(B) the transfer of records from one Federal agency to any other Federal agency;

"(8) the term 'records center' means an establishment maintained by the Administrator or by a Federal agency primarily for the storage, servicing, security, and processing of records which must be preserved for varying periods of time and need not be retained in office equipment or space;

"(9) the term 'inspection' means the review of Federal agency records, records practices, and records management programs for the purpose of evaluating records management effectiveness and recommending means for the improvement of records management;

"(10) the term 'paperwork study' means the carrying out of an investigation and analysis of any agency records, records practices, or paperwork processes (whether manual or automated), with a view toward rendering findings and recommendations with respect thereto;

"(11) the term 'servicing' means making available for use information in records and other materials in the custody of the Administrator—

"(A) by furnishing the records or other materials, or information from them, or copies or reproductions thereof, to any Federal agency for official use, or to the public;

"(B) by making and furnishing authenticated or unauthenticated copies or reproductions of the records or other materials;

"(12) the term 'unauthenticated copies' means exact copies or reproductions of records of other materials which are not certified as such under seal and which need not be legally accepted as evidence;

"(13) the term 'National Archives of the United States' means those official records which have been determined by the Archivist to have sufficient historical or other value to warrant their continued preservation by the Federal Government, and which have been accepted by the Administrator for deposit in his custody;

"(14) the term 'Administrator' means the Administrator of General Services; and

"(15) the term 'Board' means the Records Review Board established by section 2705 (a);

"16) the term 'Federal agency' shall have the meaning defined in title 40, United States Code, section 472(b); and

"(17) the term 'executive agency' shall have the meaning defined in title 40, United States Code, section 472(a).

"§ 2702. Objectives of records management

"It is the purpose of this chapter, chapter 21, and chapter 33 of this title to require the establishment of standards and procedures to assure efficient and effective records management. Such standards and procedures shall seek to effectuate the following goals:

"(1) accurate and complete documentation of the policies and transactions of the Federal Government;

"(2) control of the quantity and quality of records produced by the Federal Government;

"(3) simplification of the processes through which records are created, stored, retrieved, and used;

"(4) the judicious preservation and disposal of records;

"(5) the establishment and maintenance of a system which focuses continuous attention upon records from their initial creation to their final disposition;

"(6) the establishment and maintenance of mechanisms of control with respect to records creation, in order to assure the prevention of unnecessary records, and the effective and economic operations of an agency;

"(7) the establishment and maintenance of such other systems or techniques as the Administrator considers necessary to carry out the purposes of this chapter, chapter 21, and chapter 33 of this title.

"§ 2703. General responsibilities of Administrator

"The Administrator shall provide guidance and assistance to Federal agencies with respect to records creation, records maintenance and use, and records disposition. In providing such guidance and assistance, the Administrator shall—

"(1) develop and promulgate records management standards, guidelines, procedures, and techniques, including guidance with respect to staffing and selection and effective use of equipment and supplies;

"(2) conduct research with respect to the improvement of records practices;

"(3) serve as a clearinghouse for information with respect to records management and as a central source for reference and training materials with respect to records management;

"(4) establish such interagency committees and boards as may be necessary to provide an exchange of information among Federal agencies;

"(5) disseminate information with respect to technological development in microfilm, office copying, automated data processing, and other electronic and mechanized equipment useful in the processing of recorded information;

"(6) promote the economical and efficient utilization of space, equipment, and supplies necessary for records creation, records maintenance and use, and records disposition; and

"(7) conduct paperwork studies and require the heads of executive agencies to conduct paperwork studies with respect to establishing procedures designed to save time and effort in records management, with particular attention given to standards and procedures governing the creation of records.

"§ 2704. Records management

"(a) The Administrator shall—

"(1) conduct inspections or paperwork studies, at regular intervals as determined to be necessary by the Administrator, of the records practices, and records management programs of every Federal agency;

"(2) require the head of every Federal agency at regular intervals as determined to be necessary by the Administrator to transmit a report to the Administrator with respect to the records, records practices, and records management programs of each such Federal agency;

"(3) prescribe rules with respect to records management; and

"(4) order, to the extent he considers necessary, the head of any executive agency to take specific action with respect to the records, records practices, and records management program of his agency.

"(b)(1) The Administrator may conduct paperwork studies at the request of the head of any Federal agency. Any such study shall not be in lieu of any inspection or paperwork study conducted by the Administrator under subsection (a)(1).

"(2) The Administrator is authorized and directed to charge any Federal agency for the cost of any study conducted by the Administrator pursuant to paragraph (1) at rates to be determined by the Administrator as provided in regulations issued by him. The Administrator may exempt anyone from the charges required by this paragraph if he determines that such charges would be impracticable. To the extent any such exemption is granted, appropriations to the General Services Administration are authorized to reimburse the fund established pursuant to paragraph 3(A) for any loss of revenue.

"(3)(A) There is hereby established in the Treasury of the United States, on such a date as may be determined by the Administrator, a fund into which there shall be deposited the revenues collected by the Administrator pursuant to the provisions of paragraph (2).

"(B) Moneys deposited into the fund shall be available for paperwork studies and related activities in such amounts as are specified in annual appropriations Acts without regard to fiscal year limitations.

"(4) For purposes of this subsection (b), the term 'Federal agency' includes the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction.

"(c) The Administrator may conduct inspections or paperwork studies which involve a review of the policies and practices of more than one Federal agency and which examine interaction and relationships among Federal agencies with respect to records and records management.

"(d)(1) The officers and employees of each Federal agency shall cooperate fully with the Administrator with respect to any inspection or paperwork study of any such agency conducted by the Administrator under subsection (a)(1), (b)(1), or (c).

"(2) Records, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected or surveyed in accordance with rules prescribed by the Administrator, subject to the approval of the Executive Office of the President.

"(e)(1) The Administrator shall transmit reports to each House of the Congress no later than the close of business March 31 of each year. Each such report shall contain—

"(A) a detailed statement with respect to each inspection or paperwork study conducted by the Administrator under subsection (a)(1) or subsection (c);

"(B) a compilation of reports transmitted to the Administrator under subsection (a)(2) during the most recent calendar year;

"(C) a description and explanation of any rule prescribed by the Administrator under subsection (a)(3), or of any order issued by the Administrator under subsection (a)(4) during the most recent calendar year; and

"(D) an evaluation of the adequacy of personnel staffing support for the records management function within each Federal agency;

"(2) Each report transmitted by the Administrator to each House of the Congress under paragraph (1) shall at the same time be transmitted to the Director of the Office of Management and Budget and to the Comptroller General. The Director and the Comptroller General shall review each such report and transmit their comments and recommendations with respect to each such report to each House of the Congress no longer than sixty days after receiving each such report.

"(f) Except as provided by section 2705, every executive agency shall comply with any order issued by the Administrator under subsection (a)(4) which applies to such agency, no later than one year after the date upon which such order is issued.

"§ 2705. Records Review Board

"(a) There is established as an independent organization in the executive branch of

the Federal Government a board to be known as the Records Review Board.

"(b)(1) The Board shall be composed of five members as follows:

"(A) three appointed by the President by and with the advice and consent of the Senate;

"(B) one appointed by the Administrator; and

"(C) one appointed by the Director of the Office of Management and Budget.

A vacancy in the Board shall be filled in the manner in which the original appointment was made.

"(2)(A) Except as provided by subparagraphs (B) and (C), members of the Board shall be appointed for terms of five years.

"(B) Of the members first appointed—

"(i) two shall be appointed for terms of five years,

"(ii) two shall be appointed for terms of three years, and

"(iii) one shall be appointed for a term of one year, as designated by the President at the time of appointment.

"(C) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

"(c)(1) Except as provided by paragraph (2), members of the Board shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-16 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Board.

"(2) Members of the Board who are full-time officers or employees of the Federal Government shall receive no additional pay on account of their service on the Board.

"(3) While away from their homes or regular places of business in the performance of services for the Board, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Federal Government service are allowed expenses under section 5703(b) of title 5, United States Code.

"(d) The Board may appoint and fix the pay of such personnel as it deems necessary to assist it in carrying out its functions under this section.

"(e)(1) Any executive agency may appeal to the Board any order issued by the Administrator under section 2704(a)(4).

"(2) Any such appeal shall be filed no later than three months after the date upon which such order is issued. Such appeal shall be in writing and shall contain a detailed statement of the reasons of such agency for objecting to such order.

"(3) The Administrator shall, no later than one month after the filing of an appeal under paragraph (1), transmit a written reply to such appeal to the Board. Such reply shall include the reason of the Administrator for issuing such order.

"(4) The Board shall render a ruling with respect to any appeal filed under paragraph (1) no later than three months after the date of such filing. If such ruling requires compliance with the order issued by the Administrator, the executive agency involved shall comply with such order no later than six months after the date upon which such ruling is rendered.

"§ 2706. Records management by Federal agencies

"(a)(1) The head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the Federal agency. Such records shall furnish the information necessary to protect the legal and financial rights of the Federal Government and of persons directly affected by the activities of the Federal agency.

"(2) The head of each Federal agency shall establish and maintain an efficient and continuing records management program which shall focus upon the complete cycle of records creation, records maintenance and use, and records disposition, the establishment of necessary or appropriate controls, and achievement of the goals described in section 2702.

"(b) The records management program established by the head of each Federal agency under subsection (a)(2) shall include provision for—

"(1) effective controls over records creation, records maintenance and use, and records disposition, to insure efficient and economical agency operations;

"(2) cooperation with the Administrator in applying standards, procedures, and techniques designed to improve records management, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value; and

"(3) compliance with the provisions of this chapter and of section 2101 through section 2113, section 2501 through section 2507, and section 3301 through 3314, and any rule prescribed under such provisions.

"§ 2707. Custody and control of property

"The Administrator shall have immediate custody and control of the National Archives Building and its contents, and may design, construct, purchase, lease, maintain, operate, protect, and improve buildings used by him for the storage of records of Federal agencies in the District of Columbia and elsewhere. For purposes of this section 2707, the term 'Federal agency' includes the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction.

"§ 2708. Establishment of standards for selective retention of records; security measures

"The Administrator shall establish standards for the selective retention of records of continuing value, and assist Federal agencies in applying the standards to records in their custody. He shall notify the head of a Federal agency of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of such agency that shall come to his attention, and assist the head of such agency in initiating action through the Attorney General for the recovery of records unlawfully removed and for other redress provided by law.

"§ 2709. Record centers; storage, processing, and servicing of records

"(2) The Administrator may establish, maintain, and operate—

"(1) records centers for storage, processing, and servicing of records for Federal agencies pending their deposit with the National Archives of the United States or their disposition in any other manner authorized by law; and

"(2) centralized microfilming services for Federal agencies.

"(b) When the head of a Federal agency determines that it may effect substantial economies or increased operating efficiency, he shall provide for appropriate storage, processing, and servicing of records in a records center maintained and operated by the Administrator or, when approved by him, in a center maintained and operated by the head of the Federal agency.

"(c) For purposes of this section 2709, the term 'Federal agency' includes the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction.

"§ 2710. Interagency records transfers

"Subject to applicable law, the Administrator shall prescribe rules governing the transfer of records from the custody of one Federal agency to that of any other Federal agency.

"§ 2711. Retention of records

"The Administrator may empower a Federal agency, upon the submission of evidence of need, to retain records for a longer period than that specified in disposal schedules. The Administrator may withdraw, in accordance with rules prescribed by him, disposal authorizations covering records listed in disposal schedules.

"§2712. Certification and determinations on transferred records

"An official of the Federal Government who is authorized to certify to the facts on the basis of records in his custody may certify to facts on the basis of records that have been transferred by him or his predecessors to the Administrator, and may authorize the Administrator to certify to facts and to make administrative determinations on the basis of records transferred to the Administrator, notwithstanding any other law.

"§2713. Safeguards

"The head of each Federal agency shall establish safeguards against the removal or loss of records he determines to be necessary and required by rules of the Administrator. Safeguards shall include making it known to officials and employees of the Federal agency—

"(1) that records in the custody of such agency are not to be alienated or destroyed except in accordance with section 3301 through 3314 of this title; and

"(2) the penalties provided by law for the unlawful removal or destruction of records.

"§2714. Unlawful removal, destruction of records

"The head of each Federal agency shall notify the Administrator of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency of which he is the head that shall come to his attention, and with the assistance of the Administrator shall initiate action through the Attorney General for the recovery of records he knows or has reason to believe have been unlawfully removed from his agency, or from another Federal agency whose records have been transferred to his legal custody.

"§2715. Records management personnel

"The head of each Federal agency shall assign responsibility for developing, coordinating, and implementing his agency's records management program to a central identifiable control point within his agency, and shall assign to it personnel with specialized knowledge in the various functions comprising records management, and in such numbers as required to accomplish the objectives stated in section 2702.

"§2716. Authority of Comptroller General

"The provisions of this chapter and of section 2101 through section 2113, and section 2501 through section 2507, do not limit the authority of the Comptroller General of the United States with respect to prescribing accounting systems, forms, and procedures, or lessen the responsibility of collecting and disbursing officers for rendition of their accounts for settlement by the General Accounting Office.

"§2717. Rules

"The Administrator may prescribe such rules as he considers necessary to carry out the provisions of this chapter."

(b) The table of chapters for title 44, United States Code, is amended by striking out the items relating to chapter 27, through

chapter 31, and inserting in lieu thereof the following new item:

"27. Records management..... 2701".

DEFINITION OF RECORDS

SEC. 3. Section 3301 of title 44, United States Code, is amended by inserting "machine readable materials," immediately after "photographs,".

EFFECTIVE DATE

SEC. 4. The foregoing provisions of this Act shall take effect on the date of the enactment of this Act, except that any requirement for the transmission of reports to the Administrator by the heads of Federal agencies or for the transmission of reports to the Congress by the Administrator, shall apply with respect to calendar years beginning after the close of December 31, 1975.

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

S. 999. A bill to designate the Federal office building located in Dover, Del., as the "J. Allen Frear Building". Referred to the Committee on Public Works.

J. ALLEN FREAR BUILDING

Mr. ROTH. Mr. President, today I am introducing for myself and Senator BIDEN, a bill that the Senate saw fit to pass in the last session of Congress, but which was not acted upon by the House of Representatives. The bill would designate the new Federal office building in Dover, Del., the J. Allen Frear Building, in honor of former Senator Frear of Delaware.

Mr. President, on two occasions in the last session, I had the opportunity to comment upon the virtue of this bill. I ask unanimous consent that the previous remarks of my cosponsor and I be inserted in the RECORD.

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

JULY 25, 1974

Mr. ROTH. Mr. President, today I am introducing, for myself and Senator BIDEN, a bill to honor former Senator J. Allen Frear of Delaware by designating the new Federal building in Dover by his name.

It is important, I believe, that this building be named after such a distinguished son of Delaware as Allen Frear. For a Federal building should be more than just a building of bricks and mortar. It should be a building of spirit and tradition, tied to the virtues exhibited by our own parties of revolutionary days: love of country, dedication to freedom, devotion to duty, faith in God, and allegiance to principle, ethics and morality. Allen Frear exhibited all those qualities—and more—throughout his life and as a distinguished Member of the U.S. Senate. Members of the Senate who served with him during the years 1949 to 1961 will recall his depth of perception, his good sense, his humaneness and his deep interest and concern for his fellow man.

J. Allen Frear was born on a farm near Rising Sun, Del., on March 7, 1903. He graduated from the University of Delaware in 1924. He became president and owner of a retail business in Dover, a commissioner of Delaware State College as well as of the Delaware Old-Age Welfare Commission, president of Kent General Hospital, a major in the U.S. Army, with overseas service in the European Theater of Operations and with the Military Government at the close of the Second World War, after serving two terms in the U.S. Senate, a Commissioner of the Securities and Exchange Commission. His life is one in which all of us from Delaware can be justly proud. By his example he has set a high standard for us all.

Mr. President, great men and great events are associated with the site of the new Federal building. It is fitting and proper that the Federal building be located near such historical places. And it is fitting and proper that it should bear as its name the name of one among us—from our own time—who did so much to carry on the great traditions of honors the spot.

I hope my colleagues in the Senate will join with me in supporting this bill to honor a former member of the Senate.

Mr. President, on July 2 I delivered an address in Dover at the dedication of the new Federal building which describes my views more fully. I ask unanimous consent that it be inserted in the RECORD at this time.

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

STATEMENT OF WILLIAM V. ROTH, JR.

Mr. Ink, distinguished guests.

As we stand here today facing the old historic Meeting House Square, one cannot help but pause and think of the great men and events associated with this locale. It was here, for instance, that John Dickinson, the penman of the revolution, is supposed to have drafted the Delaware Constitution in 1792. It is also said that this square was the site for the reading of the Declaration of Independence in 1776.

The cemetery adjacent to the Delaware State Museum is the resting place for such historic figures as Colonel John Haslet, the Commander of Delaware's first militia regiment, and of Senator John Clayton, jurist and Secretary of State under President Zachary Taylor. It is fitting and proper then that the new Federal Building be located so near such hallowed ground.

The proud traditions of Delaware upheld in the past by such men as those I have mentioned are still being upheld by fine and good men. Historians will long remember the contributions of John Williams of Sussex County whose quiet and methodical investigations of wrongdoing gained the attention, and respect of the entire nation. Cale Boggs whose early roots were in Kent County now represents the finest in New Castle County. His has been a lifetime truly marked by outstanding dedicated public service. In fact, because of my high regard for the service rendered our State by Cale I have urged that the new Federal Building in Wilmington be named after him.

Here in Kent County we have former Senator Allen Frear, one of the finest public servants Kent County has ever provided to this Nation.

Allen Frear has always been perceptive, full of good sense, and warmly human. These fine qualities plus his deep interest and concern for his fellow man are what helped to make him such an excellent United States Senator.

In these three men one can find many characteristics of the patriots of revolutionary days. Senators Frear, Williams, and Boggs represent all of the old fashioned virtues that made this country great—the same characteristics of the patriots of revolution—love of country—dedication to freedom—devotion to duty—faith in God—strong family ties—and an allegiance to principle, ethics and morality. All are men of unimpeachable integrity and morality, and each section of our State can be proud that it has provided such men to us and that men of this calibre would dedicate their lives to public service and show so much true concern for the citizens of this State.

Mr. Ink and distinguished guests, it gives me great pleasure to participate in this dedication. Moreover, it gives me double pleasure to propose to you today that this building be named after Dover's distinguished friend and neighbor, Former U.S. Senator Frear. I am making such a request of the Senate Public Works Committee and hope that my colleagues on this committe will go along with my proposal.

In the case of Senator Boggs, I was stymied by an unofficial rule that Federal buildings cannot be named after a living American unless he has reached the age of 70. Without revealing Allen Frear's age, I can say that in his case we are faced with no such impediment. I realize, however, that there are still some reservations about naming a public building after a living man. Whether or not this can be accomplished, I would hope the media and the people of Delaware would begin calling these two buildings by the names of these outstanding men.

It is important, I believe, that this building be named after such a distinguished son of Dover as Allen Frear. For a Federal building should be more than just a building of blocks and mortar. It should be a building of spirit and tradition, as well as a building tied to the virtues represented by Senator Frear and his distinguished colleagues I have mentioned. I want this building to be part of the fine traditions of this State and by being named after Allen Frear it will be.

Allen Frear served in the Senate from 1949 to 1961 and as his many friends in this State know so well he and his lovely wife Esther have participated in a lengthy array of civic and public causes. Their lives represent the finest in America and as we dedicate this building which I will hereafter call the Frear Building, I would urge that we dedicate it to the old fashioned virtues which made this country great—virtues which characterize the lives of Allen and Esther Frear. These are the virtues which have sustained this nation throughout its history and with the help of God they will continue to sustain us in the future.

AUGUST 21, 1974

Mr. ROTH. Mr. President, I thank my colleague from Delaware for his support of this bill to name the new Federal office building in Dover, Del., the J. Allan Frear Building. I have spoken on this matter on two previous occasions, so my remarks shall be brief.

Mr. Chairman, I believe that Federal buildings should be more than concrete and steel—they should embody and complement the community in which they stand. Federal buildings can do this by bearing as their name the name of a distinguished member of the local community. In Dover, Del., such a man is former U.S. Senator J. Allen Frear.

J. Allen Frear's entry in the Biographical Directory of the American Congress reads as follows:

"Frear, Joseph Allen, Jr., a Senator from Delaware; born on a farm near Rising Sun, Kent County, Del., March 7, 1903; attended the Rising Sun rural school and Caesar Rodney High School; graduated from the University of Delaware in 1924; president and owner of a retail business in Dover, Del.; Commissioner of Delaware State College 1936–1941 and Delaware Old Age Welfare Commission 1938–1948; director, Federal Land Bank Board, Baltimore, Maryland 1938–1947, being chairman of the board the last two years; director of the Farmer's Bank of Dover and the Baltimore Trust Co., of Camden, Del.; president of Kent General Hospital, Dover, Del., 1947–1951; during World War II served in the United States Army as a major, with overseas service in the European Theater of Operations with the Military Government, 1944–1946; delegate to Democratic National Conventions in 1948, 1952, and 1956; elected as a Democrat to the United States Senate in 1948 for the term commencing January 3, 1949; reelected in 1954 for the term ending January 3, 1961; unsuccessful candidate for reelection in 1960; appointed to the Securities and Exchange Commission on March 15, 1961, resigned in October 1963; elected a vice president of the Wilmington Trust Co., in Delaware, 1963; is a resident of Dover, Delaware.

This entry is enough to tell us that former Senator Frear has led a worthwhile life of community service, that he has done much for the people of Delaware. But it does little to point out the essential humanity of this man—his perception, his warmth, and his good sense; the qualities that have earned him friendship as well as respect, and deserve note.

Mr. President, in a time when suspicion is widespread that many in public office are not worthy of trust, it is important that we honor those who have lived a public life that is worthy of trust. For that reason I sponsor and urge my colleagues to support S. 3185, to designate the Federal office building located in Dover, Del., as the J. Allen Frear Building.

Mr. President, shortly after I first suggested that the Federal office building in Dover be named for former Senator Frear, an article appeared in the Delaware State News supporting that idea. I ask unanimous consent that it be inserted in the RECORD at this time.

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

[From the Delaware State News, July 9, 1974]

NAMING OF FED BUILDING FOR FREAR IS GOOD IDEA

(By Harry C. McSherry)

A proposed action that was met with pleasure by all persons learning about it was the one to name the new Dover federal office building in honor of former U.S. Sen. Allen J. Frear of Dover.

The fact that the former Senator is a prominent Democrat apparently did not deter U.S. Sen. William V. Roth, a Republican, from suggesting it and, further, indicating he planned to confer with the proper Senate Committee concerning the matter.

As a supporter of civic matters, either in public, or privately, the former Senator has been acknowledged in the front ranks of affairs locally for a long term of years.

His pleasant manner has brought him an untold number of friends and has likewise aided his efforts in many activities.

It is needless to say the local public will be greatly pleasured should the proposal of Senator Roth be successful.

Mr. BIDEN. Mr. President, I have cosponsored S. 3815, a bill to designate the new Federal Office Building in Dover, Del., as the "J. Allen Frear Building."

At the request of Senator ROTH, I have had the bill reported out of the Public Works Committee of which I am a member. The Public Works Committee in its report stated that:

"The committee believes that it would be most appropriate to name the New Federal Office Building in Dover the 'J. Allen Frear Building'."

J. Allen Frear served as the U.S. Senator from Delaware for two terms from 1949 to 1961. Senator Frear has dedicated his entire life to public service. A person of the highest moral integrity, Senator Frear has conducted himself in both elected office and his many public service activities, in a fair, impartial, nonpartisan manner. He has always placed the interests of the Nation and the people of the State of Delaware before self or party.

The best indication of this is demonstrated by the fact that my Republican colleague from Delaware first came up with the idea to name this building after Senator Frear, a Democrat.

I, therefore, in recognition of his outstanding record of public service, urge your support of S. 3315 when it comes before the Senate for consideration.

Mr. BIDEN. Mr. President, I am pleased to cosponsor with my distinguished colleague from Delaware (Mr. ROTH) S. 999, a bill to designate the new Federal Office Building in Dover, Del., as the J. Allen Frear Building.

I have previously co-sponsored a similar bill introduced by Senator ROTH which was passed by the Senate on August 21, 1974, but failed to pass in the House of Representatives before the end of the 93d Congress. Last year, the Public Works Committee stated in its report that it would be most appropriate to name the building after Mr. Frear.

J. Allen Frear served as the U.S. Senator from Delaware for two terms from 1949 to 1961. A person of the highest moral integrity, Senator Frear has dedicated his entire life to public service. He has conducted himself in both elected office and his many public service activities in a fair, impartial, and nonpartisan manner. Throughout his years of public service, he has always placed the interests of the Nation and Delaware before himself or his party. The best testimony to this is demonstrated by the fact that my Republican colleague from Delaware initiated the action to name this building after Senator Frear, a Democrat.

It is my considered opinion that by the passage of this bill, the Senate would bestow a duly deserved honor on a great American and a great Delawarean.

By Mr. MOSS (by request):

S. 1000. A bill to amend the Consumer Product Safety Act to improve the Consumer Product Safety Commission, to authorize new appropriations, and for other purposes. Referred to the Committee on Commerce.

CONSUMER PRODUCT SAFETY COMMISSION IMPROVEMENTS ACT OF 1975

Mr. MOSS. Mr. President, I introduce, by request, a package of amendments to the Consumer Product Safety Act which has been submitted by the Consumer Product Safety Commission.

The Consumer Subcommittee has recently completed 4 days of comprehensive oversight hearings into the implementation of the act by the Commission. We considered also amendments which I proposed (S. 644) several weeks ago. At those hearings, the Commission discussed in detail the substance of the amendments which I introduce today by request.

In order to expedite consideration of these proposals, I plan to hold the record of our oversight hearings open until April 1 to allow interested persons to submit comments on the substance of these amendments and those contained in S. 644.

Mr. President, I ask unanimous consent that these proposed amendments and the Commission's section-by-section analysis be printed in the RECORD.

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

S. 1000

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the Consumer Product Safety Commission Improvements Act of 1975".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. Section 32(a) of the Consumer Product Safety Act (15 U.S.C. 2081(a)), is amended to read as follows:

"(a) There are hereby authorized to be appropriated for the purpose of carrying out the provisions of this Act (other than the provisions of Section 27(h) which authorized the planning and construction of research, development, and testing facilities), and the functions, powers, and duties transferred to the Commission under Section 30, including hire of passenger motor vehicles; procurement of services as authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS–18; rent in the District of Columbia or elsewhere; advance payments to offerors under Section 7(d)(2); official reception and representation expenses; services of expert witnesses at such rates as may be determined by the Chairman; expenses for conducting safety education seminars notwithstanding 31 U.S.C. 551; and miscellaneous and emergency expenses of enforcement activities authorized or approved by the Chairman and to be accounted for solely on his certificate; not to exceed—

"(1) $51,000,000 for the fiscal year ending June 30, 1976;

"(2) Such sums as may be necessary for the transition period from the fiscal year ending June 30, 1976, and the fiscal year beginning October 1, 1976;

"(3) Such sums as may be necessary for the fiscal year ending September 30, 1977; and

"(4) Such sums as may be necessary for the fiscal year ending September 30, 1978."

In addition to such specific amounts as are authorized above, there are authorized to be appropriated for the Commission such additional or supplemental amounts as may be necessary for increases in salary, pay, or other employees benefits authorized by law, for other non-discretionary cost increases, and for expenses of programs or other activities which are mandated or authorized by law to the Commission subsequent to the date of enactment of this Act.

LIMITATIONS ON JURISDICTION

SEC. 3. (a) Section 2(2) of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471(2)) is amended by deleting paragraph (B) in its entirety and by redesignating paragraphs "(C)" and "(D)" as "(B)" and "(C)" respectively.

(b) Section 3(a)(1)(D) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)(D)) is amended by deleting "economic poisons" and inserting "pesticides" in lieu thereof.

(c) Section 3(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)) is amended by inserting "other" between "for" and "limitations" in the last sentence thereof and by inserting before such sentence the following: "Except for the regulation of fireworks devices and components thereof under the Federal Hazardous Substances Act, the Commission shall have no authority under the Acts and functions transferred pursuant to Section 30 of this Act, to regulate any product or article described in subparagraph (B) or (E) of this paragraph."

(d) The second sentence of section 30(a) of the Consumer Product Safety Act (15 U.S.C. 2079(a)) is amended by (1) deleting "of the Administrator of the Environmental Protection Agency and"; and (2) deleting "Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Packaging Act of 1970" and inserting in lieu

thereof "Federal Food, Drug, and Cosmetic Act (15 U.S.C. 301 et seq.)".

BUDGET AND EMPLOYEE PROVISIONS

SEC. 4. (a) Section 4(f) of the Consumer Product Safety Act (15 U.S.C. 2053(f)) is amended by adding at the end thereof the following new paragraph:

"(3) Requests or estimates for regular, supplemental, or deficiency appropriations for the Commission shall require the approval of the Commission prior to their submission pursuant to Section 27(k)(1)."

(b) Section 4(g) of such Act (15 U.S.C. 2053(g)) is amended (1) by striking out "full-time" in paragraph (2) and inserting "regular" in lieu thereof and (2) by adding the following new paragraphs at the end thereof:

"(3) The Chairman, subject to the approval of the Commission and the Civil Service Commission based upon the criteria hereinafter set forth, without regard to Chapter 51 of title 5, United States Code, may establish non-career executive assignment positions upon a determination that there is a need for filling such positions for persons who will:

(A) be deeply involved in the advocacy of Commission programs and support of their controversial aspects;

(B) participate significantly in the determination of major Commission policies; or

(C) serve principally as a personal assistant or advisor to the Chairman or other Commissioner.

"(4) Appointments to fill non-career executive assignment positions shall be made by the Chairman, subject to the approval of the Commission, except that selections to positions described in paragraph (3)(C) shall be made by the immediate Commissioner concerned and the appointment to such positions shall not be subject to the approval of the Chairman or the other Commissioners.

"(5) The Chairman, subject to the approval of the Commission, may abolish a non-career executive assignment position upon a determination that there is no longer a need for such a position.

"(6) The Chairman, subject to the approval of the Commission, without regard to Chapter 51 of title 5, United States Code (except section 5114), may place a total of twenty-five positions in GS-16, 17, and 18. Such positions shall be in addition to those authorized by section 5108(a) of title 5, United States Code.

"(7) No officer or agency of the United States, other than the Civil Service Commission for the purpose of evaluating professional qualification, shall have any authority to require the Chairman or the Commission to obtain approval for the appointment, employment, or promotion of any individual by the Commission."

(C) Section 5108(c) of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(12) the Chairman of the Consumer Product Safety Commission, subject to the approval of that Commission, may place a total of twenty-five positions in GS-16, 17, and 18, without regard to this chapter (except section 5114)."

INFORMATION DISCLOSURE

SEC. 5. Section 6(b)(2) of the Consumer Products Safety Act (15 U.S.C. 2055(b)(2)) is amended by (1) deleting the word "or" preceding "(B)"; (2) deleting the period at the end of the paragraph and inserting "or," in lieu thereof; and (3) adding at the end thereof the following new subparagraph: "(C) information concerning formal or informal substantial product hazard proceedings under Section 15."

STANDARDS DEVELOPMENT

SEC. 6. (a) The last sentence of section 7(b) of the Consumer Product Safety Act (15 U.S.C. 2056(b)) is amended to read as follows:

"An invitation under paragraph (4)(B) shall specify a period of time, during which the standard is to be developed, which shall be a period ending 150 days after the acceptance of an offer, unless the Commission for good cause finds (and includes such finding in the notice) that a different period is appropriate.

(b) Section 7(e) of such Act (15 U.S.C. 2056(e) is amended by redesignating paragraph "(3)" as "(4)" and adding a new paragraph (3) as follows:

"(3) In any case in which a recommended proposed standard submitted by an offeror is not accepted, in whole or in part, the Commission may develop such standard or contract with third parties for such development."

(c) Section 7(f) of such Act (15 U.S.C. 2056(f)) is amended by changing to read the following:

"Not more than 60 days after receiving the proposed standard from the offeror pursuant to subsection (b) (which time may be extended by the Commission by a notice published in the Federal Register stating good cause therefor), the Commission shall publish in the Federal Register a notice withdrawing such notice of proceeding or publish a proposed rule which either proposes a product safety standard applicable to any consumer product subject to such notice, or proposes to declare any such subject product a banned hazardous consumer product."

PROHIBITED ACTS AND ENFORCEMENT

SEC. 7. (a) Section 19(a) of the Consumer Product Safety Act (15 U.S.C. 2068(a)) is amended as follows:

(1) Paragraphs "(3)", "(4)", "(5)", "(6)" and "(7)" are redesignated "(4)", "(5)", "(6)", "(7)", and "(8)" respectively;

(2) Newly designated paragraph (4) is amended by inserting "or fail to refuse to establish or maintain records," immediately after "copying of records,";

(3) A new paragraph (3) is added to read as follows:

"(3) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which has been determined by the Commission to present a substantial product hazard in an order issued pursuant to section 15;";

(4) Newly designated paragraph (7) is amended by deleting "or" at the end thereof;

(5) Newly designated paragraph (8) is amended by deleting the period and inserting a semicolon in lieu thereof; and

(6) The following new paragraphs are added after newly designated paragraph (8):

"(9) fail to comply with any rule under section 13 (relating to prior notice and description of new consumer products); or

"(10) fail to comply with any rule under section 27(e) (relating to provision of performance and technical data).".

(b) Section 20 of such Act (15 U.S.C. 2069) is amended by (1) deleting "section 19(a)(1), (2), (4), (5), (6), or (7)" in the second sentence of section 20(a)(1) and inserting in lieu thereof "section 19(a)(1), (2), (3), (5), (6), (7), (8), (9), or (10)"; and (2) deleting "or (2)" and inserting in lieu thereof", (2), or (3)" in section 20(a)(2).

(c) Section 22 of such Act (15 U.S.C. 2071) is amended by (1) deleting the first sentence of subsection (a) and inserting in lieu thereof of the following:

"The United States district courts shall have the jurisdiction to restrain any violation or potential violation of section 19 or a rule or regulation issued under this Act, or both."; (2) deleting "(with the concurrence of the Attorney General)" and inserting "or potential violation" immediately after "violation" in the second sentence of subsection (a); and (3) inserting immediately after "consumer product safety rule" in the first sentence of subsection (b) the following:

"or which has been determined by the Commission to present a substantial product hazard in an order issued pursuant to section 15 of the Act, or which violates any rule or regulation issued under the Act,".

LITIGATION

SEC. 8. (a) Section 11(a) of the Consumer Product Safety Act (15 U.S.C. 2060(a)) is amended by (1) deleting "and to the Attorney General" in the second sentence thereof; and (2) deleting "transmit to the Attorney General, who shall file in the court," in the third sentence thereof and inserting in lieu thereof "file in the court".

(b) Section 24 of such Act (15 U.S.C. 2073) is amended by deleting ", to the Attorney General," in the second sentence thereof.

(c) Section 27(b)(7) of such Act (15 U.S.C. 2076(b)(7)) is amended by inserting "civil or criminal" between "enforcing the" and "laws" and by deleting "with the concurrence of the Attorney General."

(d) Section 27(c) of such Act (15 U.S.C. 2076(c)) is amended by deleting "with the concurrence of the Attorney General".

(e) Section 27 of such Act (15 U.S.C. 2076) is amended by adding at the end thereof the following new subsection:

"(1) The Commission may be represented by the Solicitor General in any proceeding before the Supreme Court of the United States, if the Commission so requests and if the Solicitor General consents."

GENERAL RULEMAKING AUTHORITY

SEC. 9. Section 27(b) of the Consumer Product Safety Act (15 U.S.C. 2076(b)) is amended by adding at the end thereof the following new paragraph: "(9) to promulgate such rules or regulations as may be appropriate for the effective administration and enforcement of this Act."

INFORMATION DISCLOSURE TO OTHER GOVERNMENTAL BODIES

SEC. 10. Section 29 of the Consumer Product Safety Act (15 U.S.C. 2078) is amended by adding at the end thereof the following new subsection:

"(e) The Commission may provide to another Federal agency or a State or local authority engaged in activities relating to health, safety, or consumer protection, copies of any accident or investigation report made under this Act by an officer, employee, or agent of the Commission, provided that the identity of any injured person or any person treating him shall not be made available to any member of the public without the consent of the person so identified, as prescribed by Section 25(c)."

JURISDICTION UNDER CONSUMER PRODUCT SAFETY ACT

SEC. 11. Section 30(d) of the Consumer Product Safety Act (15 U.S.C. 2079(d)) is amended to read as follows:

"(d) A risk of injury which is associated with consumer products and which may be regulated by the Commission under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, or the Flammable Fabrics Act may instead be regulated under the provisions of this act upon a determination by the Commission that such action is in the public interest."

TITLE 18 PROTECTION

SEC. 12. Section 1114 of Title 18, United States Code, is amended by inserting ", the Consumer Product Safety Commission" immediately after "Department of Health, Education, and Welfare".

SECTION-BY-SECTION ANALYSIS OF PROPOSED AMENDMENTS OF THE CONSUMER PRODUCT SAFETY COMMISSION—CONSUMER PRODUCT SAFETY COMMISSION IMPROVEMENTS ACT OF 1975

Section 1 provides that the Act may be cited as the "Consumer Product Safety Commission Improvements Act of 1975."

AUTHORIZATION OF APPROPRIATIONS

Section 2 amends Section 32(a) of the Consumer Product Safety Act (CPSA) to authorize appropriations for fiscal years 1976, 1977, 1978 and the interim period between fiscal years 1976 and 1977. The section also includes specific language authorizing the expenditure of monies for various purposes consistent with the Commission's activities in carrying out its mandate. These include the authority to lease automobiles, to obtain expert and consultant services, to rent space in the District of Columbia and elsewhere, to make advance payments to offerors developing consumer safety standards, to incur official reception and representation expenses, to obtain the services of expert witnesses, to incure expenses for conducting safety education seminars, and to incur expenses for enforcement purposes. The section also provides for the authorization of such additional or supplemental amounts as may be necessary to meet increased salary, pay, retirement, or other employee benefits as may be authorized by law, to meet other nondiscretionary cost increases, and to provide for the funding of programs or activities which are imposed on the Commission subsequent to the date of the Act.

LIMITATIONS ON JURISDICTION

Section 3 would resolve certain jurisdictional questions. Subsections (a) and (d) would specifically eliminate pesticides from the Commission's jurisdiction under the Poison Prevention Packaging Act of 1970 (PPPA). Enactment of the Federal Environmental Pesticide Control Act of 1972 (P.L. 92-516), in effect, obstructs subsequently enacted Commission authority to enforce any special packaging standards for pesticides under the Poison Prevention Packaging Act, but does not affect the Commission's authority to promulgate such standards. The Environmental Protection Agency's authority under P.L. 92-516 enables that agency to adequately promulgate and enforce pesticide-related packaging standards for the purpose of child protection. Subsection (b) contains a technical amendment reflecting provisions of P.L. 93-516.

Section 3(c) would resolve the existing controversy over jurisdictional questions involving firearms, ammunition, and cigarettes. Specific exclusion of those products from the Commission's jurisdiction under the Federal Hazardous Substances Act (FHSA) would be consistent with their exclusion from authority under the CPSA. Provision is made, however, for retaining jurisdiction over fireworks devices under the FHSA.

BUDGET AND EMPLOYEE PROVISIONS

Section 4(a) amends section 4(f) of the CPSA to add a provision to require the Commission, in lieu of the Chairman exclusively, approval of budget requests or estimates submitted to OMB and the Congress.

Section 4(b)(1) amends section 4(g) of the CPSA to substitute the term "regular" for the term "full-time" to conform the term to the language of other conflict of interest statutes that distinguish regular employees from "special Government employees" (as defined in 18 U.S.C. 202.)

Section 4(b)(2) amends section 4(g) of the CPSA to add several paragraphs. Proposed 4(g)(3) enables the Chairman, subject to the approval of the Commission, to establish non-career executive assignment positions pursuant to criteria which is consistent with the role of an independent regulatory commission.

Proposed 4(g)(4) grants to the Chairman, with the approval of the Commission, the authority to fill non-career executive assignment positions. The provision provides that Commission personal assistant positions designated as non-career executive assignment positions may be filled by the individual Commissioner concerned without the approval of the other Commissioners.

Proposed 4(g)(5) provides that the abolition of an established non-career executive assignment position may be made by the Chairman with the approval of the Commission.

Proposed 4(g)(6) gives the Chairman, subject to the approval of the Commission, the authority to establish and fill twenty-five positions in GS-16, 17, and 18. These positions would be in addition to those authorized in 5 U.S.C. 5108(a).

Proposed 4(g)(7) provides that the appointment, employment, or promotion of any individual by the Commission shall not, except for the purpose of evaluating professional qualifications by the Civil Service Commission, be subject to the review of any other officer or agency of the Government.

Proposed 4(c) amends 5 U.S.C. 5108(c) to correspond with proposed 4(g)(6).

INFORMATION DISCLOSURE

Section 5 would specifically authorize the Commission to disclose information concerning substantial product hazard proceedings under section 15 of the CPSA, without regard to certain restrictions contained in section 6 (b)(1) of the CPSA. That section requires that prior to public disclosure of product-related information obtained under the CPSA, the Commission must allow any directly affected manufacturer or private labeler to submit comments with regard to such information. Disclosure of information relating to a suspected or verified substantial product hazard is considered to be in the public interest and timely accessibility to such information should not be impeded by the restrictions contained in section 6 (b)(1) of the CPSA.

STANDARDS DEVELOPMENT

Section 6 would provide the Commission more flexibility in the standards development process. Subsection (a) would allow the development period for a consumer product safety standard to end 150 days after the date of acceptance of an offer to develop such standard. At present, the 150-day period begins with the publication in the Federal Register of an invitation for offerors to develop a standard. The notice and selection process can consume a considerable portion of the 150 days, taking valuable time away from that actually allocated to development of a standard.

Subsection (b)(1) would specifically authorize the Commission to develop or contract for the development of a standard in cases where a proposed standard submitted by an offeror is, in whole or in part, unacceptable. This amendment is of a clarifying nature.

Subsection (c) contains amendments that are consistent with those contained in subsection (a).

PROHIBITED ACTS AND ENFORCEMENT

Section 7 would amend the CPSA to expand the Commission's enforcement authority.

Subsection (a) would amend the "Prohibited Acts" section of the CPSA to include: violation of Commission recordkeeping regulations (section 16(b)); manufacture or marketing of products which have been determined to present substantial product hazards under section 15; violation of any Commission rules under section 13 (relating to prior notice and description of new consumer products); and, failure to comply with any Commission rule under section 27(e) (relating to provision of performance and technical data).

Subsection (b) would provide civil penalties for violations of the proposed additions to the "Prohibited Acts" section.

Subsection (c) (1) and (2) would authorize the Commission to seek appropriate injunctive enforcement in cases involving violations or anticipated violations of the amended "Prohibited Acts" section or of any rules or regulations issued under the CPSA.

Subsection (c)(3) would authorize seizure proceedings against products distributed in commerce which have been determined to present a substantial product hazard under section 15 of the CPSA or which violate any rule or regulation issued under the CPSA. (The amendment contained in section 7(c)(2) is further explained in the summary of section 8 (Litigation). The amendments contained in this section are necessary to provide the Commission with a means of ensuring that various provisions of the Act are readily enforceable.

LITIGATION

Section 8 of the proposed bill would amend the CPSA to give the Commission flexibility in its litigation activities. The proposed amendments would not, however, preclude cooperation between the Commission and the Attorney General.

Subsection (a) would provide that copies of petitions for judicial review of consumer product safety rules would not have to be transmitted to the Attorney General and that the Commission, rather than the Attorney General, would be required to file in the court the record of the proceedings on which such rule was based.

Subsection (b) provides that persons seeking enforcement of consumer product safety rules or orders under section 15 of the CPSA would not be required to give notice to the Attorney General.

Subsection (c) would authorize the Commission to proceed, without the concurrence of the Attorney General, in initiating, prosecuting, defending, or appealing any court action in the name of the Commission for the purpose of enforcing the laws subject to its jurisdiction.

Subsection (d) would authorize the Commission to bring court actions, without the concurrence of the Attorney General, to restrain violations of the CPSA's "Prohibited Acts" section.

Subsection (e) would allow the Commission to seek representation by the Solicitor General in any proceeding before the Supreme Court.

(The amendment contained in section 7 (c)(2) would authorize the Commission to seek injunctive enforcement without the concurrence of the Attorney General.)

It as become apparent to the Commission that the requirement to work through the Attorney General can be a cumbersome process which, in some situations, hampers the proper enforcement of the laws administered by the Commission. For example, the rapid response required in matters such as temporary restraining orders is severely hampered when a significant amount of time is needed to brief the Assistant U.S. Attorneys who have not been involved with Commission maters previously or, more specifically, with the matter at hand. Further, the Commission believes that it is inconsistent to charge an independent regulatory agency with enforcement of specific laws and then remove the final decision from that agency as to which cases are tried and upon what grounds to base the case strategy. Other agencies, such as the National Labor Relations Board, have functioned efficiently through their own attorneys without adversely affecting overall Federal litigation activities.

GENERAL RULEMAKING AUTHORITY

Section 9 would grant the Commission general rulemaking authority for the effective administration and enforcement of the CPSA. It is desirable to have general rulemaking authority to supplement the express authority contained in the CPSA for issuing rules and regulations (e.g., 13(a), 14(c), 17

(g), 26(c), and 27(e)). General rulemaking authority would give the Commission the flexibility to use its discretion to issue rules it believes are necessary to carry out the purposes of the CPSA in areas where Congress has not expressly provided for rulemaking. Further, the authority would obviate the need to seek individual amendments to the CPSA to authorize particular rulemaking. (Section 7 of these Amendments would provide injunctive authority against violation of such rules and regulations, by amending section 22(a) of the Act.)

It should be noted that other acts administered by the Commission contain general rulemaking authority (e.g., section 5(c) of the Flammable Fabrics Act (FFA) and section 10(a) of the FHSA).

INFORMATION DISCLOSURE TO OTHER GOVERNMENT BODIES

Section 10 would permit the Commission to disclose accident or investigation reports to other federal agencies and state and local bodies engaged in activities relating to health, safety, or consumer protection. Any subsequent disclosure to the public by such agency or body would be conditional on the consent requirements contained in section 25(c) of the CPSA. The Commission views the existing language as an unnecessary hindrance in establishing Federal-State cooperation as mandated by section 29 of the CPSA.

JURISDICTION UNDER CONSUMER PRODUCT SAFETY ACT

Section 11 would authorize the Commission to proceed under the broader and more viable provisions of the CPSA, when necessary and in the public interest, in dealing with product hazards that are or would be subject to regulation under the acts transferred under section 30 of the CPSA. Section 30(d) of the CPSA currently requires that a risk of injury which is associated with a product and which could be eliminated or reduced to a sufficient extent by action taken under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, or the Flammable Fabrics Act may be regulated by the Commission only in accordance with the provisions of those acts.

TITLE 18 PROTECTION

Section 12 would provide penalties for any person who assaults, intimidates, or kills a Commission employee assigned to perform investigtiave, inspection, or law enforcement functions while engaged in the performance of his official duties.

By Mr. MOSS:

S. 1001. A bill to authorize Federal agencies administering lands and waters for recreational and other public purposes to acquire rights-of-ways essential to the enjoyment and utilization of such lands and waters. Referred to the Committee on Interior and Insular Affairs.

ACCESS TO PUBLIC LANDS

Mr. MOSS. Mr. President, I am introducing, for appropriate reference, a bill to authorize Federal agencies administering public lands to acquire rights-of-way to public lands access to which has been blocked by private landowners.

There is a recurring problem in the Western public lands States of hikers, picnickers, hunters, fisherman, and other folks being unable to enjoy certain tracts of public land which are surrounded by private landholdings across which there is no public access. In some cases such lands have been accessible to the public in the past because a friendly farmer or rancher has allowed the public to use a private road, but the access has been lost with a change of ownership. Such cases engender a lot of hard feelings and ill will and, I might add, a lot of illegal trespass and the danger of someone being shot by an irate landowner.

My bill would avoid these problems by providing a means for acquiring lawful access for the public. I urge my colleagues to favorably consider this bill, for it is clear that without access, the public lands are not public.

By Mr. ABOUREZK:

S. 1002. A bill to provide for the creation of the Indian Trust Counsel Authority, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

INDIAN TRUST COUNSEL AUTHORITY ACT

Mr. ABOUREZK. Mr. President, I am introducing for appropriate reference, legislation which addresses the critical need for improved governmental protection and preservation of the land and related natural resources of Indians and Indian tribes. Such protection is central to the unique trust relationship between the United States and Indian people. This unique relationship, unlike that enjoyed by any other group of citizens, is deeply rooted in the Constitution, treaties, statutes, Executive orders, and agreements.

By assuming a special responsibility in behalf of Indians and Indian tribes, the Federal Government serves as a fiduciary with respect to their land and natural resources. For example, reservation land is owned in fee simple by the United States in trust for the tribe or individual Indian who is the beneficial owner. And in exercising its role as trustee for Indian property, the United States is bound by duties analogous to that of a private fiduciary. Fundamental to these duties is a responsibility borne by the trustee for insuring that the assets are not irresponsibly alienated or compromised in favor of other interests. But placed in a context where the Federal Government is trustee for Indian property rights, this responsibility against alienation and compromise creates inevitable strains. Federal agencies, in the implementation of their public charges and policy, often formulate proposals which come into conflict with Indian claims to property. When such proposals are made, if Government is conceived to be a trustee for Indian property, a conflict of interest arises.

Nowhere is such conflict more acute than in the Department of the Interior, which has administrative responsibility for carrying out trust responsibilities to the Indians and for promoting the development of the Nation's public lands and natural resources. An Interior project, such as a new reclamation project, may affect the water, fishing or other rights of Indians. The Department must decide whether a project that it is sponsoring interferes with Indian interests. The dispute may be mediated by the Solicitor's office, which also functions as an attorney, both for Indian interests and for the Bureau which wants to build the project. If the departmental decision is adverse to the Indians, the Government is unlikely to seek judicial review on behalf of the Indians, though an independent advocate might well do so, since the legal questions are often far from clear in these cases. Furthermore, an independent advocate would have the leverage in agency negotiations that comes from ability ultimately to seek court relief.

There are difficulties, as well, in insuring adequate Goverment representation of Indian claims in disputes with State or private interests. The dispute may involve rights in water or other resources which will be affected by a planned Federal project. The Government may be interested in seeing these disputes settled quickly in order to speed development of the project, but this may conflict with the Indian interest in pursuing its claim.

In practice, conflicts between Indian interests and other Federal policies have not always been resolved against the Indians. Agency officials have tried to be conscientious, but they are being asked to carry out an awkward and inconsistent role. If nothing else, the situation creates an appearance of conflict that weakens the confidence of the Indian beneficiaries in the fairness of the system.

A basic responsibility of any trustee is to be loyal to his trust, to conserve trust property and to avoid self-dealing with trust assets. He must not appropriate trust property, nor manage it for his own benefit. The dual responsibility of Federal agencies to protect Indian interests and promote conflicting Government policies places stress upon these ordinary fiduciary obligations.

Similarly, under principles of good administrative procedure, an agency should not have an institutional responsibility for representing both sides in a dispute, particularly when it is also the decisionmaker. Nor should an advocate for a particular interest be expected to weigh competing interests in deciding whether to pursue its client's interests. The present arrangement is undesirable both in terms of concepts of administrative procedure and fiduciary responsibilities, and as a matter of fairness to the agency officials assigned inconsistent roles.

Mr. President, one of the most scholarly and concise papers ever written on this governmental anomaly was prepared several years ago by Reid P. Chambers, Esq., while serving as acting professor of law, University of California at Los Angeles. Mr. Chambers is currently the Associate Solicitor of Indian Affairs, Department of the Interior. Because of the informative nature of Mr. Chambers' paper—"Discharge of the Federal Trust Responsibility to Enforce Claims of Indian Tribes: Case Study of Bureaucratic Conflict of Interest"—I will ask that it be included in the RECORD at the conclusion of my remarks.

A serious conflict of interest clearly exists within the governmental institutions charged with the responsibility of exercising the trustee's role in behalf of Indians and Indian tribes. What is needed is an institutional rearrangement within the Federal structure to provide Indians with an independent effective voice to speak for their land and resource claims. This will insure a full presentation of Indian interests in agency and court pro-

ceedings and enable the agency to concentrate on the proper resolution of the dispute. The Indian Trust Counsel Authority legislation which I introduce today will serve as such a spokesman. But before commenting upon the general provisions of the proposed measure I want to briefly outline the legislative history of the trust counsel concept.

The inspiration for such legislation was embraced in the administration's message to Congress July 8, 1970, in which the President noted the inherent conflicts of interest on the part of the Federal Government present in legal confrontations concerning the natural resource rights of Indians. The Secretary of the Interior and the Attorney General must at the same time advance both the national interest in the use of land and water rights and the private interests of Indians in land which the Government holds as trustee. Bills to establish a mechanism to alleviate such conflicts in the legal representation of Indians were introduced in the 91st, 92d and 93d Congresses and extensive hearings were conducted. However, no further action was taken with respect to these measures and they died at the end of each of those Congresses.

My proposed measure builds on these previous proposals, and incorporates substantive revisions recommended by Indians and legal scholars over the past several years. Through such revisions, the Indian Trust Counsel Authority will be better prepared to assume a more forceful and effective legal advocate's role in behalf of the Indians' claim to land and related natural resource rights.

The Indian Trust Counsel Authority Act reaffirms the Federal commitment to fulfill the responsibilities and obligations of the United States to the American Indian people. The legislation recognizes that the safeguarding of the natural resource interests of Indians is a constitutionally derived element of the overall national interest in natural resource protection and development but that, institutionally, that element has not had a full and effective voice in the process of determining the national interest in particular instances when it comes into conflict with other constitutionally derived elements.

The legislation seeks to improve the decisionmaking process for determining the national interest while fulfilling the U.S. trustee responsibilities by creating an Indian Trust Counsel Authority as an independent agency capable of advocating and defending the trustee's obligations and the Indian interests whenever they come in conflict with other agencies pursuing their line missions.

The Authority, it must be emphasized, is to be the effective voice of the United States as trustee. The Authority therefore has full authority to investigate and prosecute any claim when it feels that the United States has not properly fulfilled its obligations as trustee. The authority may intervene as a matter of right in any action, and must be notified by any agency making any determination which may affect or impair the right or interest of the Indian people. The Authority is a part of the Federal Government and no other Federal agency is relieved of any of their responsibilities to the Indians.

Mr. President, the history of our Nation's relations with the Indian people is replete with sordid dealings which have had the effect of relieving the Indians of a substantial portion of their original natural resource base. A major share of our economy is derived from these former Indian lands and other natural resources. Unfortunately, through more subtle means employed today by the very Federal officials charged with the responsibility for protecting Indian rights, the remaining Indian natural resources are being eroded or compromised in favor of non-Indian interests. This situation can no longer be tolerated. It districts the Indian leadership from working on constructive social and economic development plans to make their reservations and communities better places to live. My proposed bill to authorize the establishment of an Indian Trust Counsel Authority will help to correct the major institutional shortcomings that I have identified in my statement. I urge this body's support for the proposed measure and welcome cosponsors from both sides of the aisle.

Mr. President, this concludes my formal remarks. I ask unanimous consent that the previous document referred to and the bill in its entirety be printed in the RECORD at this point.

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

S. 1002

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Trust Counsel Authority Act".

SEC. 2. Article I, section 8, clause 3 and article II, clause 2 of the Constitution of the United States confer on Congress the powers of ratifying treaties and regulating commerce with the Indian tribes. These provisions have been consistently construed to give the Congress special authority to deal with Indians and Indian tribes. In recognition of this authority and the obligation it entails, the Congress finds and declares that—

(1) a unique relationship exists between the United States and the American Indian people which arises under the Constitution, treaties, statutes, and executive orders and agreements, and which creates a fiduciary responsibility on the part of the United States to act as trustee for the territorial integrity, the natural resources, and the right to self-government of the Indians;

(2) the United States has charged itself with the highest degree of loyalty, care, skill, and diligence in the exercise of this trust responsibility:

(3) the United States is likewise obliged to protect and advance the national interest in and to the use of land and water and other natural resources;

(4) to the extent that it must simultaneously advance the national interest in natural resources and fulfill its trust responsibility to protect the natural resource interests of Indians, the United States has often found itself in inherent conflicts of interest, frequently resulting in a failure to meet the trustee obligations; and

(5) there is a need to provide independent, high quality legal assistance to Indians unimpaired by conflicts, insulated from political pressure, and dedicated solely to the fulfillment of the trust responsibility of the United States to American Indian people.

SEC. 3. (a) In reaffirming the trust and treaty relationships between the United States of America and the American Indians, and between the United States and the Alaska Natives, which Indians and Natives are hereinafter referred to as "Indians", the purpose of this Act is to establish an Indian Trust Counsel Authority to provide independent legal counsel and representation for the preservation and protection of the natural resource rights of the Indians.

(b) For the purpose of this Act, "natural resource" shall mean lands or interests in lands, including, but not limited to, water rights, timber, minerals, and the right to hunt and fish or any right or interest, including intangible rights, attaching to or derived from such resources.

SEC. 4. The Indian Trust Counsel Authority (hereinafter referred to as the "Authority") is established as an independent agency in the executive branch and shall be free from control by any department, agency, or independent instrumentality of the executive branch of the United States.

SEC. 5. The Authority, upon the request of an aggrieved Indian, Indian tribe, band, or other identifiable group of Indians, acting either in the name of the United States, in the name of the Indian, tribe, band, or group, or in its own name, is authorized to render legal services necessary to preserve, protect, adjudicate, or administer rights or interests of the Indians to or in natural resources within the United States trust responsibility owing to the Indians. The legal services authorized to be performed pursuant to this section include, but shall not be limited to, all the following actions necessary for the protection, preservation, adjudication, or administration of the natural resources or interests therein held or claimed by the Indians within the United States trust responsibility owing to Indians; the investigation and inventorying of Indian land and water rights; the preparation, initiation, and prosecution or defense to final adjudication, including appeals, in all courts of the United States suits by or against the United States or its officers and employees, and, in all courts of the United States and of the States, suits against any of the States, their subdivisions, departments, or agencies, or against persons and corporations, public or private, except Indian tribes, all actions in law and equity; and the institution of and participation or intervention in actions in any Federal, State, or local administrative proceedings. The United States waives its sovereign immunity from suit in connection with litigation initiated by the Authority under this section. Any such suit against the United States, its officers and employees shall be tried to the court without a jury.

SEC. 6. (a) Except as hereinafter provided in this section, nothing in this Act shall be construed to relieve the Department of Justice and the Department of the Interior of any of their responsibilities to the Indians, including, but not limited to, those which derive from the trust relationship and any treaties between the United States and the Indians.

(b) Prior to the initiation of, intervention in, or entering of a defense in any case, except a case where the Authority is authorized to file suit against the United States or its officers and employees pursuant to section 5 of this Act, in which is involved the right or interest of Indians to or in natural resources, the Attorney General, or other officer of the Department of Justice charged with such responsibility, shall provide the Authority with timely notice thereof. The Authority shall, under rules and regulations that it shall promulgate, determine if such case involves a conflict of interest on the part of the United States. Upon the making of such affirmative determination, the Authority shall thereafter have sole authority to represent the United States as trustee for any such Indian right or interest.

(c) In any case where the Attorney Gen-

eral or other appropriate officer of the Department of Justice is representing the United States as trustee for any Indian right or interest to or in natural resources, the Authority may intervene, as a matter of right and acting in the name of the Indian, Indian tribe, band, or other identifiable group of Indians, under authority of section 5 of this Act. In the event of such intervention, the Authority thereafter shall exclusively represent the United States as the trustee in the litigation.

SEC. 7. (a) Any department, agency, or independent instrumentality of the executive branch of the United States, shall, with respect to any proposed action which may affect or impair the rights or interests of any Indian, Indian tribe, band, or other identifiable group of Indians, to or in natural resources within the United States responsibility owing to the Indians—

(1) give notice to the Authority and to any and all affected Indians, Indian tribes, bands, or other identifiable groups of Indians; and

(2) afford the Authority and all affected Indians, Indian tribes, bands, or other identifiable groups of Indians, a reasonable opportunity to submit comments on the proposed action and, where an oral hearing is required by law or where the department, agency, or independent instrumentality deems it appropriate to hold a hearing, an opportunity to participate therein.

(b) Upon taking final action with respect to such proposed action, the department, agency, or independent instrumentality of the United States involved shall give notice to the Authority and all affected Indians, Indian tribes, bands, or other identifiable groups of Indians, of the final action taken. The Authority, acting under the authority conferred in section 5 of this Act and pursuant to the jurisdiction otherwise granted by law to an adversely affected party, may appeal such final action to the United States District Court for the District of Columbia.

SEC. 8. (a) The powers of the Authority granted by this Act shall extend to sections 1346(a)(2), 1362, 1491, and 1505 of title 28, United States Code: *Provided,* That such powers shall not extend to the filing or prosecution of, or intervention in, any action, claim, or other proceeding against the United States relating to any matter as to which a claim has been filed or could have been filed under the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049), as amended, or any other special statute authorizing a claims suit to be brought by Indians against the United States: *Provided, however,* That the Authority may assist any Indian tribe requesting such assistance in its claim pending before the Indian Claims Commission or successor forum.

(b) The Authority may not, under authority of section 5 of this Act, represent any Indian, Indian tribe, band, or other identifiable group of Indians in any action which would or could generate its own fee, unless such Indian, tribe, band, or group can prove to the satisfaction of the Authority that good faith efforts to obtain representation in such action by two or more private attorneys or firms had met with failure.

SEC. 9. The Authority is authorized to—

(1) make such rules and regulations as it deems necessary to carry out its functions;

(2) receive and use funds or services donated by any person, organization, or corporation, public or private, and such donation shall be deemed to be a charitable contribution within the terms of section 170(c)(1) of title 26, United States Code;

(3) make such expenditures or grants, either directly or by contract, as may be necessary to carry out its responsibilities under this Act; and

(4) request from any department, agency, or independent instrumentality of the United States any information, personnel, services, or materials it deems necessary to carry out its functions under this Act, and each such department, agency, or independent instrumentality is authorized and directed to cooperate with the Authority and to comply with any such requests to the extent permitted by law, on a reimbursable or nonreimbursable basis.

SEC. 10. (a) The Authority shall be governed by a Board of Directors (hereinafter referred to as the "Board") composed of seven Directors who shall be Indians, appointed by the President, with the advice and consent of the Senate.

(b) The term of Office of the Directors shall be four years, except that, of the first seven Directors appointed, one shall be appointed for a one-year term, two shall be appointed for a two-year term, two shall be appointed for a three-year term, and two shall be appointed for a four-year term. A Director appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed, pursuant to subsection (a) of this section, for the remainder of such term. Upon the expiration of his or her term of office, a Director shall serve until his or her successor has been appointed and qualified. A Director may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

(c) The President shall designate one of the Directors to serve as Chairman at his pleasure.

(d) The Directors shall receive pay at the daily equivalent of the rate provided for grade GS-18 in section 5332 of title 5, United States Code, for each day they are engaged in the business of the Authority, and shall be allowed travel expenses, including a per diem allowance, as authorized by section 5703 of title 5, United States Code, in connection with their services for the Authority.

SEC. 11. The Board shall convene at the call of the Chairman, but must convene at least once each quarter, to set policy for the Authority and review its activities. The Board shall report to the President and the Congress annually on the activities of the Authority.

SEC. 12. (a) Without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, the Board shall appoint and prescribe the duties of a chief legal officer for the Authority, who shall have the title of Indian Trust Counsel, and who shall be paid at a rate equal to that provided for in level IV of the Executive Schedule (5 U.S.C. 5315), and a Deputy Indian Trust Counsel, who shall be paid at a rate not in excess of that provided for grade GS-18 in section 5332 of title 5, United States Code.

(b) Section 5312 of title 5, United States Code, is amended by adding a new paragraph (98), as follows:

"(98) Indian Trust Counsel.".

(c) Without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, the Board, after consultation with the Indian Trust Counsel, shall appoint, fix the pay of, and prescribe the duties of such other attorneys as it deems necessary.

(d) Subject to the provisions of title 5, United States Code, the Board shall provide for the employment of such other Authority staff as it deems necessary in exercising its power and duties.

(e) To carry out any of its functions or responsibilities under this Act, the Board is also authorized to employ or procure, through contract or otherwise, the temporary or intermittent services of special counsel, experts, consultants, or organizations and to fix the compensation for and prescribe the duties of such services.

SEC. 13. Attorneys and special counsel appointed under section 12 of this Act may, at the direction of the Authority, appear for or represent the Authority in any case in any court, before any commission, or in any administrative proceeding.

SEC. 14. There are authorized to be appropriated to the Authority such sums as are necessary to carry out the provisions of this Act.

DISCHARGE OF THE FEDERAL TRUST RESPONSIBILITY TO ENFORCE CLAIMS OF INDIAN TRIBES: CASE STUDIES OF BUREAUCRATIC CONFLICT OF INTEREST

(By Reid Peyton Chambers*)

No servant can serve two masters; for either he will hate the one and love the other; or else he will hold to the one, and despise the other.—Luke 16:13

The United States stands in a fiduciary relationship to Indians and Indian tribes. It has been held by the Supreme Court that "Indian tribes are the wards of the nation." [1] The duty is a "self-imposed" one which arises out of the Indian tribes' status as "dependent domestic nations" within the territory of the United States. The classic discussion of the Government's fiduciary duty to Indian tribes is found in Chief Justice Marshall's landmark decision of *Cherokee Nation* v. *Georgia,* 30 U.S. (5 Pet.) 1, 17 (1831). In holding that Indian tribes are not "foreign states" entitled to invoke the original jurisdiction of the Supreme Court, the Chief Justice stated that "the condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence."

Later Supreme Court decisions have reaffirmed the special guardianship of the Federal Government for Indians. In *United States* v. *Kagama,* 118 U.S. 375 (1836), the Court analyzed the fiduciary duty as growing out of an "exclusive sovereignty * * * which must exist in the National Government" and the fact that Indian tribes are "communities *dependent* on the United States." (Emphasis in original.) Accord: *United States* v. *Sandoval,* 231 U.S. 28, 45–46 (1913). Most recently, in *Seminole* v. *United States,* 316 U.S. 286, 296–97 (1942), the Supreme Court held that the United States "has charged itself with moral obligations of the highest responsibility and trust." This guardianship was referred to as in part "a humane and self-imposed policy."

The existence of this trust relationship was recently reaffirmed by President Nixon. In a message to Congress on July 8, 1970, he emphasized that:

"The United States Government acts as a legal trustee for the land and water rights of American Indians. These rights are often of critical economic importance to the Indian people; frequently they are also the subject of extensive legal dispute."

The President noted that many legal disputes concerning the extent of the Indians' land and water rights are between them and agencies of the federal government, their trustee. Such instances involve conflicts of interest, as it is impossible for the government vigorously to provide legal representation to the Indians and, at the same time, effectively pursue its own designs and policies with respect to land and water also claimed by the Indians.

In order to remove the conflict of interest, the President proposed creation of a new entity, independent of the executive branch, to provide legal representation to Indians. Legislation to establish this entity—the Indian Trust Counsel Authority—was sent to Congress on July 31, 1970. As proposed, the Trust Counsel Authority would be controlled by a three member Board of Directors, appointed by the President with the advice and consent of the Senate. The Board of Directors, in turn, would appoint the Indian Trust Counsel as the chief legal officer.

The purpose of this paper is to examine several situations where a conflict has arisen

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between Indian trust rights and conflicting federal claims. The situations described herein have all arisen within the past three years, although in some cases the conflict of interest has deeper historical antecedents. Since the trust responsibility to the Indians is primarily reposed in the Department of the Interior, the conflict of interest is most direct when the agency with an interest adverse to the Indians is a bureau located within the Interior Department. Therefore, conflicts between either the Bureau of Land Management or Bureau of Reclamation—both Interior agencies—and Indian rights have been selected for most of the cases analyzed.

In analyzing the conflict of interest between government agencies and the Indians, it is imperative to perceive that the federal government as trustee is charged with the protection of what are essentially *private property rights*. As trustee for private rights, the government does not act in its usual political capacity, but is charged with the same general obligations as are imposed on private trustees.[3]

Indeed, the Court of Claims recently held that the United States should be held to "the most exacting fiduciary standards" with respect to Indians, whatever its other goals and preferences.[5] The same principle was announced by the Supreme Court in *Seminole Nation* v. *United States*, 316 U.S. 286, 297 (1942). Just as a private trustee, the United States has a duty of undivided loyalty, which has been called the "most fundamental" duty owed to the beneficiary by his trustee or a ward by his guardian.[4] Another important duty is the obligation to preserve and protect the trust property, which includes taking all reasonable steps to enforce the beneficiary's legal claims relating to the property.[5] And just as a conflict between the private trustee's fiduciary duty of loyalty and his own personal interests would be intolerable if it interfered with performance of his trust responsibility, a conflict between the rights of Indian beneficiaries and the public purposes embodied in federal programs with adverse interests must not impede the effective discharge of the United States' fiduciary obligation to protect private Indian property rights.

This "conflict" then, is not only which properly can be resolved through the process of balancing conflicting interests. Such a balancing procedure within the executive department is desirable where competing *public* policies are being balanced; this, of course, is the method by which public policy is formulated. But private rights, which the United States is obligated as a fiduciary to defend, cannot be so balanced against conflicting public purposes. The government's relationship to the Indians is, in this respect, unique in character.

On the one extreme, the prohibition against the United States, as trustee, having an interest adverse to his beneficiary could conceivably be resolved by holding that wherever a public purpose conflicts with Indian trust rights, the latter shall always prevail. Such an absolute frustration of competing public policies would clearly be intolerable for several reasons. Most importantly, the formulation of public policy must retain more flexibility then would be permitted by such an iron-clad rule. As will be seen, Indian property rights are sometimes difficult to define and raise complex legal and factual questions. Moreover, a private trustee faced with a conflict between a fiduciary duty and a critical personal interest could resign, whereas the federal trust obligations cannot be ended without an Act of Congress. What can be demanded at a minimum is that Indians' claims be asserted by an advocate with undivided loyalty.

The opposite extreme would be a rule requiring the Indian interest to yield to conflicting public purposes. In the past this extreme—while by no means a fast rule of administrative practice—aptly describes the result of most, although not all,[6] cases where a conflict of interest has arisen in the discharge of the federal trust responsibility. In part, this consequence may derive from entrusting primary responsibility for administering the trust obligations to Indians to the Secretary of the Interior and, within the Interior Department, to the Bureau of Indian Affairs.[7] The Department of the Interior's major responsibility is the management and conservation of *public* property and resources; [8] its bias, therefore, would be against conflicting private property rights.

The Indian Trust Counsel proposal now pending before Congress represents a departure from either of these extremes. Without pledging that private Indian interests should prevail whenever they conflict with public purposes, the proposal represents an institutional rearrangement in which private rights can be advanced with undivided loyalty. Since the proposed bill waives the sovereign immunity of the United States in connection with actions commenced by the Trust Counsel, it favors resolution of conflict situations by the judicial branch rather than by executive fiat. As stated, this is the very least to which the Government's Indian wards are entitled—to have their cases advocated and adjudicated by officials and tribunals free of divided loyalties.

The Nature of Legal Conflicts of Interest

In legal representation, there are three basic conflict-of-interest situations. The first is where the attorney himself has a personal interest in property claimed by his client. It is obvious that an attorney will not zealously advocate his client's interests if he must sue himself, a corporation in which he has a substantial financial stake, or his employer. Such representation has repeatedly been declared to be unethical.[9]

Similarly, an attorney cannot effectively represent a client whose claimed rights conflict with those of another client.[10] An attorney "should resolve all doubts against the propriety of" representing multiple clients.[11] The multiple client problem, where a federal agency has a claim to property adverse to Indian claimants, is the most common conflict in federal representation of Indians.[12]

A third conflict of interest is that political influence may intercede between the lawyer and his clients. A conflict may thereby be created between the attorney's duty to his client and his dependence on third persons—here, chiefly higher officials in the Departments of Justice and Interior and members of Congress. Canon 35 of the American Bar Association, *Canons of Professional Ethics*, would seem to be violated by the present structure by which federal legal representation is provided to the Indians. It reads (in part):

"The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual . . . . A lawyer's relation to his client should be personal, and the responsibility should be direct to the client."

The American Bar Association *Code of Professional Responsibility* similarly bars political influence exerted upon an attorney-client relationship.[13] Ethical Consideration 5-23 declares that:

"Since a lawyer must always be free to exercise his professional judgment without regard to the interests or motives of a third person, the lawyer who is employed by one to represent another must constantly guard against erosion of his professional freedom."

While political influence may properly focus upon government attorneys who are charged with implementing public policies, it cannot be justified in the case of attorneys employed in the discharge of a federal trust responsibility to protect private rights.

The case studies which follow demonstrate that all of the three types of prohibited conflicts of interest exist in the federal representation of the Indians. Additionally, they indicate that—where a conflict of interest of the "multiple client" type exists, and a federal agency is claiming trust property in which the Indians claim an interest—no government attorney is at present charged with single-mindedly advancing the Indians' claim. The Solicitor's office, in evident violation of professional ethical standards, generally "represents" *both* the Indians and the agency involved. Moreover, the controversy is usually *resolved* in that office itself: the Solicitor issues an "opinion" which, far from resembling an opinion letter from a private attorney to his client, constitutes an adjudication of the dispute for all practical purposes. No government attorney will "appeal" the opinion to a court or higher administrative authority; it is accepted as a statement of the law.[14]

CASE STUDIES OF CONFLICTS OF INTEREST

A. The "multiple client" problem

1. Lease of Colorado Riverfront Property, Claimed by Quechan Tribe, by the Bureau of Land Management

The Bureau of Land Management (BLM) administers the public lands of the United States. Not infrequently the BLM sells or leases lands claimed by the Indians or Indian tribes.

The Colorado River serves as a boundary for a number of Indian reservations along its banks. Riverfront property in many areas is especially valuable for recreational purposes. In April 1967, Interior's Program Support Staff recommended that Secretary Udall approve a lease of lands to Yuma County for an airport and park facilities.[15] These lands, which border the Colorado River, were claimed by the Quechan Tribe to be part of their Fort Yuma Reservation.

The conflicting claims of the tribe and the BLM were presented to the Department of Interior's Solicitor for his "opinion." The Solicitor reasoned that the Quechans possess a beneficial interest only in the irrigable lands within the reservation, but that Indian title to nonirrigable reservation lands had been ceded by an agreement of December 3, 1893, ratified by an act of Congress in 1894.[16] The Solicitor then determined that the proposed lease was legally unobjectionable so long as one irrigable parcel of land was excluded from it.[17]

In rendering this "opinion," the Solicitor was in reality arbitrating a dispute among various of his "clients." The Indian tribe and the BIA, on the one hand, resisted the lease; other Bureaus within the Department supported it. Clearly, the Solicitor could not provide complete legal representation to the competing interests. Rather than acting as an advocate, he functioned as an umpire and fashioned a "compromise" solution. Moreover, the critical technical determination as to which lands were irrigable and which were nonirrigable was made by the Bureau of Reclamation, one of the Bureaus which *favored* the lease.[18]

In sustaining the legality of the lease, the Solicitor held the 1893 Agreement, on which the 1894 statute was based, to be valid. This determination rejects certain claims of the Quechan Indians that the Agreement was an utter nullity because it was obtained by fraud, duress, and even forgery—arguments the Indians could expect an uncompromised advocate to advance in a judicial or administrative proceeding.

In 1893 Congress granted a right-of-way to an irrigation company to construct a canal over lands on the Yuma Indian Reservation.[19] Three commissioners were appointed to negotiate with the Indians and obtain their consent to the right-of-way. The

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tribal members could not read, write, or understand English, and an Indian interpreter who was not a member of the tribe was engaged by the commissioners. An "agreement" was concluded, by which the Quechans granted not only the canal right-of-way, but also forfeited *all* reservation lands in return for allotments once the canal was constructed. Evidence introduced before the Indian Claims Commission[20] indicates that the interpreter and commissioners forced some Indians to sign document, forged other signatures, and failed to explain that the agreement would have the effect of ceding the entirety of the reservation.[21] Moreover, eight tribal members opposed to the agreement were imprisoned in Los Angeles at the time it was signed; some of these dissidents were whipped and one died in prison.[22]

The agreement was ratified by an Act of Congress in 1894, but significant portions of the act were never carried out. The Act specifically provided that unless the company began construction of the canal "within three years from the date of the passage of this Act, . . . the rights granted by the Act aforesaid shall be forfeited."[23] The canal was not constructed within that time period. Instead, an irrigation project over reservation lands was finally constructed over a decade later pursuant to the Reclamation Act of 1902 then in effect and an appropriation bill enacted in 1904.[24] This legislation was far less advantageous to the Quechans than the 1893 agreement, for the entire cost of the irrigation project was to be borne by them, and the land was to be sold at its value prior to reclamation, rather than by auction at market value as provided in the 1894 act. Allotments were not made until 1912, nearly twenty years after the 1893 agreement.[25]

Clearly, an argument can be made—and would be advanced by an uncompromised advocate of the Quechans—that the 1893 agreement was void ab initio, and that even if the agreement were valid, the cession of Quechan lands contained in it and in the 1894 Act was revoked by the company's failure to commence construction of the canal within three years. The area continued to be administered as an Indian reservation after the 1894 Act,[26] and the 1904 Act recognized that the Indians maintained a beneficial interest in irrigable lands (the only lands the 1904 Act covered) not sold to settlers. If the 1893 Agreement and 1894 Act had really ceded all reservation land, no such beneficial interest could have continued. The issue, of course, is not whether these arguments would ultimately be sustained: the crucial point is that they were never articulated by the Solicitor.

2. The Use of Big Horn River Water by the Bureau of Reclamation

The Bureau of Reclamation is the other agency within the Interior Department which most often has claims which conflict with Indian trust property rights. The federal reclamation program, originally limited to the construction of irrigation works for both public and private users, has expanded over the past seventy years to provide water for power, municipal, commerical, and industrial users.[27] Reclamation projects may store and sell surplus waters, and may advance such objectives as navigation flood control.[28]

Frequently, these projects seek to use water to which Indians and Indian tribes have a claim under the "Winters Doctrine." First set forth in *Winters* v. *United States*, 207 U.S. 564 (1908), this doctrine is that when the Indians ceded lands to the federal government, they impliedly retained rights to sufficient water to serve the present and future needs,[29] of those lands which they retained.[30]

There are a number of unresolved general issues concerning *Winters* doctrine rights. While it seems that the Indians can use their water for any purpose for which their reservation was created,[31] it is not clear how far they may depart from the initial agricultural use served by irrigation.[32] Moreover, the measure of the *Winters* doctrine right may be exceedingly complex, involving a present estimate of future beneficial needs. It seems obvious that the Indians require an advocate who will press those claims to the fullest extent possible. In a number of instances, the Interior and Justice Departments have desisted from doing so, in large measure because of the conflicting policy of the Bureau of Reclamation to appropriate as much water as possible for the reclamation projects. Reclamation projects, in fact, cannot be authorized under present procedures unless found feasible from a financial standpoint. A finding of feasibility requires that the estimated cost of proposed construction which can properly be allocated to irrigation, power, municipal, and miscellaneous purposes be repaid to the United States from the sale of water and power to private users.[33]

Another point of contention between the reclamation projects and Indian *Winters* rights claims is that—while the *Winters* doctrine extends to water needed for present and *future* use, the Bureau of Reclamation seems to plan projects where water sufficient to sustain the project is not *currently* being appropriated, irrespective of whether an Indian claim of future beneficial need might be asserted. (This problem appears in the Rio Grande and Kennewick Dam case studies, *infra*.)

The Bureau of Reclamation constructed Yellowtail Dam on the Big Horn River in the late 1950's, on the Crow Indian Reservation in Montana. Lands belonging to the Crow Tribe and the right to use water owned by the tribe for power generation were condemned for this purpose.[34] Without legal opposition from within the government, the Bureau of Reclamation is currently selling waters from the Big Horn River to industrial users. These sales may be in violation of the tribe's *Winters* rights,[35] which have never been inventoried or established.

In November 1967, the Field Solicitor's Office in Billings, Montana, issued a memorandum sustaining the legality of the Reclamation diversions.[36] The Field Solicitor proposed a restrictive interpretation of the *Winters* case, which would limit the rights conferred by the doctrine to uses in agricultural production. Since the Crow Tribe is primarily desirous of developing coal deposits on the reservation—estimated at up to one billion tons—the Field Solicitor's opinion would deny them the right to use Big Horn water in preference to Reclamation for this purpose. The Field Solicitor adopted this position while admitting that "it has not been decided whether the use of Winter's [sic] Decree water may be changed from irrigation to industrial use."[37] Moreover, the Field Solicitor argued that since the Bureau had condemned the power site for Yellowtail Dam, it could urge that it had condemned the entire *Winters* doctrine rights of the tribe to the river, since the value of the power site would be diminished by tribal diversions. No opinion could be more damaging to the interests of the Solicitor's Indian clients. Surely any committed advocate would be expected to urge on their behalf that, since the condemnation case explicitly compensated the tribe for the use of water for power generation, all other water rights remained intact and the power site value was merely paid for the taking of land. In this instance, the Field Solicitor chose solely to serve one of his "clients," to the inevitable detriment of the interests of the Indians.

The problem is a continuing one. In January 1968, the Commissioners of the BIA and Bureau of Reclamation met, and it was agreed that the Crow Tribe would receive 110,000 acre feet annually of Big Horn water. This agreement was based on assurance contained in a study that this was all the water which could be made available to the Indians.[38] A year later, at the 1969 Reclamation Conference, the Commissioner of the Bureau of Reclamation and the Billings Regional Director reportedly indicated that about 750,000 acre feet of water would be available from Yellowtail Reservoir for industrial purposes—two-and-one-half times the amount projected in the study preceding the 1958 agreement. It was stated that much of this water had been contracted for and that the sale of industrial water alone would repay the cost of constructing Yellowtail Reservoir earlier than planned. A persuasive argument can be made that the tribe is entitled to sufficient water to meet all of its beneficial needs, including industrial uses, or that it is entitled to compensation for the loss of water rights not covered by the condemnation of the Yellowtail power site. But since this would obviously involve a payment by the government, this claim has not been pressed by the Indians' trustee.[39]

3. Pyramid Lake

Pyramid Lake has often been cited as the prime example of a long-continuing conflict-of-interest between an Indian tribe and the Bureau of Reclamation.[40] The Pyramid Lake Paiute reservation was established in 1859; it essentially forms a circle around the lake, which is the terminus of the Truckee River in Nevada. Historically, the Paiute tribe, for whom the reservation was established, had been a fishing people, and the lake's fishery was the chief source of sustenance for the reservation.[41]

Reclamation's incursions into the water used to supply the lake began shortly after the passage of the Reclamation Act of 1902. In 1906 the Newlands Irrigation Project was established on the nearby Carson River which constructed a dam and canal to divert water from the Truckee.[42] The canal steadily depleted the water supply of Pyramid Lake, reducing its level and ultimately destroying its natural fishery.

After the canal was constructed, the United States initiated quiet title actions to adjudicate the rights of water users along the Carson and Truckee Rivers. A temporary decree was entered in 1950 in *United States* v. *Alpine Land and Reservoir Co.*, Equity No. D-183 (D. Nev.), adjudicating the respective rights of the Newlands project and private users to Carson River water. A final decree along the Truckee, the *Orr Water Ditch* decree, was entered in 1944.[43] Although the *Winters* doctrine was established when these cases were brought, the Indians' federal fiduciary did not assert their *Winters* doctrine rights for water to stock Pyramid Lake and protect the dying fishery.[44] The United States did, however, assert and secure a water right for the Newlands project to divert Truckee water.[45] Between 1917 and 1967 the average annual diversion of Truckee River water for the Newlands project has been 250,000 acre feet—*half* the average annual flow of the Truckee River.

In recent years, the government has been derelict in representation of the Pyramid Lake Indians in the following respects:

(a) The *Orr Water Ditch* decree did rule that the Indians were entitled to 30,000 acre feet per annum for irrigation purposes. When the tribe sought instead to use this water to raise the lake's level, thereby improving the fishery resource, the Solicitor of the Interior Department in 1955 issued an opinion that this was unlawful[46]—hardly an act of zealous advocacy on behalf of the Indians. The tribe then sought to have the government modify the decree to permit such a use. In 1964 the Interior Department requested Justice to petition the court to amend the decree, but no action was ever taken.

(b) In 1957 Congress authorized construction of the Washoe Project by the Bureau of

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Reclamation.[47] This project has two principal components: (1) Stampede Dam on the upper Truckee River, and (2) Watasheamu Dam and Reservoir on the Carson River, upstream from the canal and Newlands project. The major threat posed by this project to Pyramid Lake is the construction and authorization of Watasheamu Dam and Reservoir. If operated for the benefit of upstream Carson users, it would have the certain effect of depriving the downstream Newlands project of Carson River water and increasing its demand upon Truckee River water.

The possibility that Watasheamu Dam and Reservoir might be constructed impelled upstream Carson water users to press for a settlement in the *Alpine* case (Carson River) more favorable to them than the 1950 temporary decree. Their hope was, in part, that enough water could be reserved for upstream users to make the construction of Watasheamu Dam feasible. Negotiations by Justice Department attorneys looking toward a more lenient settlement than the temporary decree aroused suspicions by the Indians that the Bureau of Reclamation was influencing the Justice Department negotiations. In addition, enforcement of the temporary decree by a court-appointed water master has in many respects permitted use of water by private parties not sanctioned by the decree. The Indians, therefore, sought to intervene in the *Alpine* case to require strict enforcement of the decree and to participate in any settlement so as to protect their existing use of Truckee water, which could otherwise be diverted to serve the Newlands project if the project's rights to use of Carson water were curtailed. The tribe charged that the Department of Justice had not adequately represented their interests.[48] The motion to intervene was opposed by Justice and denied by the District Court and the Court of Appeals for the Ninth Circuit.[49]

(c) In April 1969, the Interior Department recommended that the Department of Justice institute a quiet title action on the Truckee River on behalf of the tribe, limited to waters not already adjudicated in the *Orr Water Ditch* case. No such action has been commenced since that request was made. Unable to receive a response from the government, the tribe finally filed suit in the Federal District Court for the District of Columbia against the Secretary of the Interior and Attorney General.[50] The relief sought includes an injunction compelling the Secretary to recognize the prior and paramount right of the tribe to Truckee River water to maintain the lake's fishery. The tribe also requested a court order that the defendants enforce both the *Orr Water Ditch* and *Alpine* decrees, and an order requiring the Attorney General to seek a judicial determination of the tribe's water rights.

4. Water Right Litigation Concerning Tributaries to the Rio Grande River

While the American Bar Association's Code of Professional Responsibility permits representation of potentially conflicting clients where litigation is not involved, it clearly enjoins an attorney from any representation of clients with differing interests in litigation.[51] The wisdom of this absolute prohibition is demonstrated by the difficulties in which the Department of Justice has become enmeshed while conducting water rights ligitation on behalf of Indian pueblos in New Mexico. In a real, albeit indirect, sense, the government may be said to be representing "both the plaintiff and defendants in an adversary action."[52]

The State of New Mexico has commenced five suits seeking to administer water to be diverted into the Rio Grande from the Colorado River system by the San Juan-Chama Reclamation Project.[53] The State Engineer of New Mexico is authorized to administer the Bureau of Reclamation's project in certain respects. Accordingly, the State Engineer has instituted these suits to determine all water rights to certain tributaries of the Rio Grande so as to aid in this administration.

One of the five pending cases [54] names as among the defendants four Indian pueblos—Nambe, Pojoaque, Tesuque, and San Ildefonso. This case seeks to adjudicate water rights to the Nambe and Pojoaque Creeks. San Ildefonso Pueblo and a number of other pueblos not named defendants, border on the Rio Grande and claim water in the Rio Grande by virtue of the *Winters* doctrine. Representatives of the Solicitor's Office in Albuquerque has even expressed the view that assertion of an Indians' full claim to Rio Grande water would exhaust the present flow.[55] Thus the federal attorney for the pueblos is aware of an Indian property claim which, if asserted, might destroy the feasibility of a reclamation project which seeks to supply principally municipal and industrial users in Albuquerque that already use some Rio Grande water.

The Department of Justice intervened to defend the litigation on behalf of the pueblos and filed a complaint claiming "quantities of water sufficient to satisfy the maximum needs and purposes of said Pubelos. . . ."[56] But, although one pueblo, San Ildefonso, has claims to water on the Rio Grande as well as Pojoaque Creek, the United States elected to accept the limitations on the case framed by the State and not to assert any claims to the Rio Grande itself. Consequently, San Ildefonso must "compete" with the three other pueblos for water in the Pojoaque and Nambe creeks which, in fact, are almost dry.[57] Some of the Indian pueblos are concerned that the government's decision to limit the water right adjudication to tributaries of the Rio Grande, and not to assert claims to the main river itself, is influenced by a desire not to delay the completion and operation of the federal San Juan Chama Reclamation Project.[58] The first clear conflict of interest in New Mexico then, is that the United States Department of Justice and the Solicitor's office of the Department of Interior (the regular attorneys for the Bureau of Reclamation) are representing Indian interests which may not be compatible with the multimillion-dollar project of another important government "client."

A second conflict of interest appears on the face of the pleadings. The same attorneys are representing interests of the Indians and the Santa Fe National Forest. Both the Indians and the National Forest must compete for the same limited supply of water.

These conflicts are not theoretical; they appear to have resulted in a serious failure to protect Indian rights. For example, the government has failed to contest a "settlement" arrived at between the State and non-Indian users following administrative procedures under New Mexico State law, notwithstanding the federal nature of Indian water rights.[59] When it filed its complaint, the State prepared an elaborate hydrologic survey showing its determination of all lands which have been irrigated within the Nabe-Projoaque watershed. The State then made "offers of judgment" to the non-Indian defendants based on the survey. If accepted, these offers were signed as court orders. The federal attorneys in an instance of non-adversary representation of the Indians, failed to require any non-Indian landowner to prove the source and character of his title, or the measure of rights to the use of water, or history of water use.[60] Indeed, these non-Indian defendants are not even required by the United States to answer its complaint and to plead—let alone prove—title to their land or use of water.[61]

5. *Private Trespass Over Tlingit and Haida Lands*

The Pueblos' water rights claims to the Rio Grande (just as the Northern Palutes' claims to water for Pyramid Lake) involve the prospect of adjudicating all, or a substantial number of, the claims to use of water in a huge river system. The government's handling of more limited types of litigation, however, appears no more effective when blemished by the occurrence of a conflict of interest. An example of this deficiency can be seen from an analysis of the trespass committed by a private road builder over Tlingit and Haida lands near the native village of Klukwan, Alaska.

The builder initially sought a permit to construct the road from Bureau of Land Management in Alaska. Since the road would pass over, and use timber situated on, land determined by the Court of Claims [62] to be held in aboriginal "Indian title" [63] by the Tlingit and Haida Indians, the BLM told the firm to secure the Indians' consent. The BLM specifically stated that "no cutting of right-of-way timber or road construction is to take place until the right-of-way and timber permits are issued." [64] Nonetheless, when consent was refused by the Tribal Council, the firm constructed the road without the permission of either the Indians or the BLM.[65]

In January 1969, the Tlingits and Haidas requested the Solicitor for the Interior Department to take action against the builder for its trespass.[66] In April 1969, a decision was reached to institute suit seeking money damages and injunctive relief. After suit was filed, the BLM was asked to "investigate" the facts of the situation. This investigation revealed that the road had indeed been constructed in August 1968 and a report described in some detail the factual results of the investigation.[67] No action was taken to prosecute the claim. In view of the Indians' Washington counsel this was because the theory of recovery was resisted by the Public Lands Division of the Solicitor's Office.[68] Ultimately, the action was dismissed by the United States.

The Solicitor's Office, evidently, did not wish to claim that aboriginal "Indian title" gives the Indians enforceable rights to the land—despite the fact that the Tlingit and Haidas' title had been recognized by the Court of Claims, and Indian title has been held by the Supreme Court to furnish a basis for the recovery of money damages.[69] This is not surprising in view of Interior's history of dealing with Indian title in Alaska. Between the time of Alaskan Statehood Act of 1958 and promulgation of the land freeze in January 1968,[70] the BLM patented six million acres in Alaska—mostly to the State. Half of this land was claimed by Alaskan native by virtue of aboriginal possession,[71] a claim ignored by the Bureau. To some degree, in addition, the Solictor's reluctance to assert the enforceability of Indian title as a property right may have been due to the fact that the Interior Department was, in the latter part of 1969, considering the issuance of right-of-way permits for construction of a trans-Alaskan pipeline, which would pass over lands claimed by Alaska natives by virtue of Indian title.[72]

B. Other conflicting responsibilities of the United States: Defense of Indian Claims Commission proceedings

The Department of Justice's statutory duty [73] to defend proceedings commenced by Indian tribes or bands in the Indian Claims Commission results in a conflict which has, on occasion, prevented it from fulfilling its trust responsibility to protect and conserve Indian property rights.

In October 1968, the Rincon and La Jolla Bands of Mission Indians requested the government to commence an action on their behalf against the Escondido Mutual Water Company for an injunction and damages for unlawful appropriation of San Luis Rey River water claimed by the Indians.[74] Despite repeated requests, and a growing urgency,

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as negotiations progressed concerning the terms under which the water company would sell its assets to the City of Escondido and liquidate, the government refused to make any decision.[75] Finally three days before the water company's shareholders were scheduled to meet to vote formally on the city's offer to purchase the company's assets and on the liquidation plan, the Rincon and La Jolla Bands filed suit, represented by private counsel, in the federal district court in San Diego against the Econdido Mutual Water Company, and the City of Escondido. The Secretary of the Interior and the Attorney General of the United States were named as defendants because of their failure to represent the Indians.[76]

The government's reluctance to commence litigation proceeded in part from a desire not to embark upon general riverwide water rights adjudications.[77] Another reason given by the Department of Justice for its failure to represent the Mission Indians was the fact that the Department was currently defending an Indian Claims Commission proceeding in which the Indian Bands claimed that the government had been derelict in its preservation of their water rights in the river.[78] This institutional conflict-of-interest is particularly troubling since, when the government filed its proposed findings of fact and brief in the San Luis Rey case before the Commission, it had urged that the Indians' best course was to seek redress from the water company rather than the government, and even that receiving damages from the government could preclude the Indians and the government from later asserting their water rights.[79] If such an adjudication is a desirable means to protect the trust property, the government as trustee should have brought it. Similarly, if the statutory requirement that the Department of Justice defend Indian Claims Commission actions makes that agency less vigorous in protecting Indian trust property, new institutional arrangements should be created to fulfill that vital function.

Indeed, the Department of Justice has acknowledged that the pendency of the claims proceeding and concern that the United States could be liable for its sanctioning of the water company's diversion (the Secretary of the Interior had entered into a 1914 contract with the water company without the Indians' consent, limiting their use of the river's water) influenced the Department's attitude toward representation of the Mission Indians. Assistant Attorney General Kashiwa, justifying the Justice Department's ten month delay in deciding whether to assist the Indians, stated that:

"The La Jolla, Rincon, Pauma and Pala Bands of Mission Indians are not only wards of the United States but be considered as potential adversaries in litigation against the United States." [80]

The Department of Justice's defense of Indian Claims Commission cases on behalf of the government adversely affects its representation of Indians in those situations within the Interior Department where the Solicitor or another official "arbitrates" an Indian claim. For example, the Quechans also had a claim pending before the Indian Claims Commission at the time the Yuma County lease was signed.[81] The government's determination that the riverfront lands were nonirrigable may have been motivated by a desire to minimize their value before the Claims Commission.[82]

C. Conflict of interest between the attorney's duty to represent Indian trust property rights and political influences from the executive department

In addition to his representation of conflicting Interior Department bureaus, the Solicitor's zeal in representing Indian trust beneficiaries is further strained by his position as the legal advisor to the Secretary of the Interior. The Solicitor is thus clearly responsive to the Secretary's desires. There is evidence in the Quechan lease case that Secretary Udall was influenced to favor the lease by political pressures from his home state of Arizona. Prior to the Solicitor's opinion, a meeting was held in March, 1968, between the Yuma County River Parks Advisory Committee and representatives of the Solicitor and the Secretary. In a letter to "Dear Stu," the Chairman of this Yuma County Committee reported on this meeting and expressed disappointment with the sympathy shown by Deputy Solicitor Weinberg for the Indians' claims.[83] Secretary Udall responded to "Dear Roy" on March 22 and expressed the hope that the lawyers could promptly overcome the obstacles involved. The same day, the Secretary urged the Commissioner of the Bureau of Reclamation to make his determination as to the irrigability of the lands "as rapidly as possible," and indicated that "I consider this matter of great priority." [84]

D. Technical determinations by interior agencies with an interest adverse to the Indians: the Kennewick Dam extension

One problem illuminated in the Quechan lease case was the unquestioning reliance which Interior Department decision-makers placed upon the technical determinations made by the Bureau of Reclamation as to the irrigability of the land in controversy. Similarly, the Tlingit and Haidas were required to rely on an investigation of the trespass to their lands by The Bureau of Land Management.

A more extreme example of the Interior Department's undiscerning reliance upon the technical determinations of a Bureau with interests adverse to the Indians is the Department's continued support of the Kennewick Dam Extension to the Yakima Reclamation Project. Legislation authorizing the extension had passed the Senate and was nearing House passage when the Yakima Indian Tribe—which had not been notified of the pending legislation—urged that consideration of the bill be postponed as the extension would use waters to which the tribe was entitled. Specifically, the tribe was concerned that if the extension were constructed it would preclude the Yakimas' own plans, which were concrete in their formulation and had been submitted to Interior, to construct three irrigation projects.

On July 16, 1969, a meeting was convened by the Assistant Secretary for Public Land Management, attended by representatives from the tribe, the National Congress of American Indians, the Bureau of Reclamation, Interior's Legislative Counsel, and members of the Solicitor's Office representing *both* Indian Affairs and Reclamation. All present agreed that a 1945 court decree constituted a full and complete adjudication of water rights in the Yakima River above the contemplated project and of all waters in tributaries to the Yakima River flowing through the Yakimas' land—particularly Toppenish and Satus Creeks, where two Indian irrigation projects were planned by the tribe. At this meeting Reclamation officials stated that they would make no use of tributary water, and the Assistant Secretary accepted their technical determination that the hydrology of the river did not require their use of these waters.[85] This assurance however, was directly contradictory to a prior House Report, wherein Reclamation had stated that, in order to establish project feasibility, it did rely on the inflows from these tributaries during certain times of the year.[86]

The Bureau of Reclamation's July disclaimer [87] is also inconsistent with a memorandum less than one month earlier, which stated that the extension would utilize *only* "return flow from upstream irrigation and uncontrolled spills past the point of diversion." [88]

Despite these plain inconsistencies in Reclamation's reports, the Assistant Secretary stated that his study confirmed Reclamation's disclaimer,[89] and on August 12, Secretary Hickel reaffirmed his support for the Kennewick Dam Extension.[90]

E. Prior notification to Indian Tribes of projects which may affect their interests: the "return" of lands claimed by Fort Mohave Indians to the State of California

As is apparent from the discussion of Kennewick Dam Extension, affected Indians are sometimes not notified when a federal agency contemplates actions adverse to their trust property rights. Consequently, the Indians may be stripped of the land and other natural resources on which they rely for their livelihood and left with only a claim for money compensation.

On March 15, 1967, a BLM hearing examiner issued a proposed decision to award to the State of California a substantial portion of the lands claimed by the Mohave Indians to be included within their reservation. The basis for this decision was a determination that the land in question was public land on September 28, 1950, the date the Swamp and Overflow Land Act [91] was passed, and was hence "returnable" to the State by the United States. At no time did the Mohave Tribe have notice of the proceeding. By accident, in June 1967, the BIA learned of the decision. Shortly thereafter, both the BIA and the Mohave Tribal Council petitioned to intervene.[92] The grounds for the petitions were that the Indian Claims Commission had determined the lands in question to be held by the Mohaves by "Indian title" in 1850.[93]

These petitions were referred to the Office of the Solicitor—the Indians trust attorney. Earlier in 1967, the Solicitor had rejected the BIA's request to resurvey the Ft. Mohave reservation boundaries, and a member of the Solicitor's staff who had written that decision also participated in the decision concerning the petitions to intervene. At first the Solicitor denied the BIA's petition (on the ground that since a government attorney had participated in the hearing, the BIA had been adequately represented) and granted the Mohaves a limited right to intervene which was conditional upon the Solicitor and the Secretary making certain determinations. Then, in October 1969, the Solicitor broadened his decision and granted the tribe a *de novo* hearing, with the right to cross-examine witnesses who had testified earlier.[94] Although the tribe requested that a government attorney represent them in this costly proceeding, the Department of Justice refused to provide one and the Mohaves were ultimately required to secure private counsel.

F. Conflicting interests among Indian clients: intervention into Rio Grande litigation by Pueblos of Santo Domingo and San Felipe

As discussed earlier (Part IA(4)) certain Indian pueblos believed that their interests to water on the Rio Grande should be asserted in the New Mexico litigation which was limited by the state and the United States to tributaries of the river. On April 23, 1970, the pueblos of Santo Domingo and San Felipe moved to intervene in all five cases commenced by the state and to assert their claims to the Rio Grande. This motion was resisted by the Departments of Justice and Interior on the ground that the interests of the intervening pueblos were adequately represented by government counsel.

The Commissioner of the Bureau of Indian Affairs sought to assign a highly experienced water rights lawyer in the Bureau's employ, Mr. William H. Veeder, to represent these pueblos. The Justice Department resisted Mr. Veeder's being assigned as a co-counsel to them, so the Commissioner assigned him to the pueblos themselves,[95] and the pueblos

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directed that he appear in court. After Mr. Veeder had made one court appearance, a dispute arose as to whether Mr. Veeder's assignment was to act as counsel or as an expert witness. The Commissioner then took the position that Mr. Veeder was only to be an expert witness. Accordingly, Mr. Veeder's assignment was retracted on the grounds that government attorneys could not oppose other government attorneys and that the Department of Justice adequately represented the pueblos. Mr. Veeder was even threatened with prosecution for violating the federal conflict of interest laws[96] if he continued to represent the pueblos against the government.[97]

The New Mexico litigation, and the intervention by the pueblos, dramatize another problem: that Indian tribes or groups may have conflicting interests among themselves which require resolution. Either different Indians may have conflicting claims to particular property, as the four pueblo defendants obviously had competing claims to the waters in the Nambe-Pojoaque system; or they may differ on tactical questions, such as whether to assert their rights to the Rio Grande itself. Notably San Ildefonso, and the other pueblos with the RioGrande claims, did *not* join Santo Domingo and Dan Felipe in requesting that the litigation be broadened to include the Rio Grande.[98]

CONCLUSIONS

This paper has discussed at some length at least eight separate instances where a conflicting interest on the part of an Interior Department Bureau has obstructed legal enforcement of an Indian claim to land or natural resources. Each situation is current—arising in 1967 or later—and some are continuing controversies. The shortchanging of Indians by the white man—thought by some to be an historical phenomenon—is a present day occurrence, abetted by the Government itself.

The responsibilities of the Interior Department's Solicitor to other departmental bureaus, and the duties of the Attorney General to defend other agencies and Indian Claims Commission proceedings, in practice greatly diminish the zeal and effectiveness of these officials in providing legal representation to the Indians. The Solicitor is particularly compromised as an advocate for Indian rights by the fact that he must render opinions settling intradepartmental disputes, including such procedural matters as whether the Mohaves can intervene in a proceeding pending in the Bureau of Land Management.

The Solicitor is thus charged with serving both as lawyer and as judge. The Department of Justice seems sluggish in responding to Indian requests that litigation be brought; moreover, the defense of Indian Claims Commission proceedings forces upon that Department the role and also the mentality of being an adversary to many Indian claims to natural resurces. Similarly, the Interior Department's duty to conserve and protect public resources engenders a hostility on its part in some instances to claims by Indians of private property rights. Even the existence of a suspected conflict of interest—as in Justice's negotiations to settle the Carson River *Alpine* case, or its decision to confine the scope of New Mexico water rights litigation—raises just doubts in the minds of the Indian clients as to the fidelity of their attorneys.

The opinions of the Solicitor in the Interior Department are, moreover, frequently based upon investigations conducted by agencies with interests adverse to the Indians; for example, the hydrological studies by the Bureau of Reclamation concerning Kennewick Dam and land surveys conducted by the Bureau of Land Management (as in the *Tlingit* and *Haida* case). These facts are seldom subjected to scrutiny comparable to that of cross-examination by a zealous attorney or the critical evaluation of a hearing examiner, commissioner or, judge. The Indians generally have no comparable experts to which they can turn for technical expertise.

Finally, no systematic procedure exists for notifying Indian tribes or their protectors of actions which might infringe Indian trust interests. In the Kennewick Dam extension and the Mohave land transfer, the affected Indians learned only accidentally of the contemplated action, and with respect to the former, it was too late to muster effective opposition.

The Indians' fiduciary relationship with the Government is a unique protection for a minority group. The value of this relationship is, however, substantially eroded by conflicts of interest that compromise the Federal protection extended to the Indians. At the very least, the Federal trustee should disclose all possible conflicts to the Indians affected, and provide them with legal and technical representation unblemished by divided loyalties. By separate institutional devices, the Government has managed in the past to represent both sides in a controversy,[99] and there seems no reason why this cannot be done in the case of conflicts between Indians and other Federal departments. And even apart from the creation of new institutions, procedures should be established within the Interior Department to give notice to Indians of adverse claims against land and natural resources claimed by them, and to relieve the Solicitor of responsibility for representing both sides and serving as judge as well in contested matters.

FOOTNOTES

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[1] *United States v. Kagama*, 118 U.S. 381 (1886). In *Cherokee Nation* v. *Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831), Chief Justice Marshall stated that the relationship between Indians and the United States "resembles that of a ward to his guardian." *United States v. Payne*, 264 U.S. 446, 448 (1924); *Choctaw Nation v. United States*, 119 U.S. 1, 27–28 (1886). See also *Creek Nation v. United States*, 295 U.S. 103, 109–10 (1935).

[2] In *Menominee Tribe of Indians v. United States*, 101 Ct. Cls 10, 18–19 (1944), it was held that a special jurisdictional act providing that "the court shall apply as respects the United States the same principles of law as would be applied to an ordinary fiduciary, add(s) little to the settled doctrine that the United States, as regards its dealings with the property of the Indians, is a trustee." In *Menominee Tribe*, the government was barred from borrowing funds from the Indians without paying a normal rate of interest, and from making expenditures with high-interest funds before exhausting low interest accounts. In *Sioux Tribe v. United States*, 105 Ct. Cls. 725 (1946), the court held that the government has a standard fiduciary duty to make a proper accounting to its beneficiary.

[3] *Navajo Tribe of Indians v. United States*, 364, F. 2d 320, 322 (Ct. Cls. 1966). Compare *Menominee Tribe of Indians v. United States*, 102 Ct. Cls. 555 (1945).

[4] Scott, *Trusts*, p. 1297 and § 170–17.

[5] *Id.*, §§ 176–177.

[6] While the case studies described below are ones where the Indian interests appear to have been compromised, this is, of course, not always the resolution when conflict arises. For example, in January 1969, the Solicitor determined that the south boundary of the Salt River Indian Reservation in Arizona had been erroneously determined by the Bureau of Land Management to be the north, rather than the south, channel of the Salt River. Memorandum, Solicitor Edward Weinberg to Secretary of the Interior, M–36770, January 17, 1969. Similarly, the Solicitor determined in 1966 that the boundaries of the Yakima Indian Reservation had been erroneously surveyed and portions of the land that should have been included in the reservation administered by the BLM, should be returned to the Tribe. Memorandum. Associate Solicitor for Indian Affairs to Assistant Secretary for Public Land Management, June 21, 1967, "Restoration to Yakima Tribe of Lands Omitted from Survey."

[7] 5 U.S.C. §§ 22, 481, 485' 25 U.S.C. §§ 1, 1A, 2.

[8] Its duties include administration of public lands, mines, territories and possessions, fish and wildlife, national parks, and petroleum conservation.

[9] *E.g.* American Bar Association, Committee on Ethics, Informal Opinion No. 967 (1966). In *United States v. Anonymous*, 215 F. Supp. 111, 113 (E.D. Tenn. 1963), the Court stated: "Attorneys must not allow their private interests to conflict with those of their clients . . . . They owe their entire devotion to the interests of their clients."

Disciplinary Rule 5–101. (American Bar Association) *Code of Professional Responsibility* provides "Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests."

[10] For example, an attorney for an insurance company was engaged in representing X, a motorist insured by the company, in a suit against Y following an automobile accident involving X and Y. In this litigation, the attorney was contending before the court that Y had been negligent and X had not been negligent. Due to the length of the court proceeding, and the size of his out-of-pocket expenses in connection with his injuries, X requested an arbitration proceeding under the terms of the policy where, if successful, X could require prepayment of certain benefits. To resist prepayment, the company must show that X was negligent in the accident. It was held that the same attorney could not represent both X in court, and his company in the arbitration proceeding, even if both X and the company consented. Informal Opinion No. 977 (1967).

[11] Ethical Consideration 5–15, American Bar Association, *Code of Professional Responsibility*.

[12] The federal conflict-of-interest laws protect the Government against any such conflicting interest held by its employees. These laws, butressed by criminal sanctions against violators, prohibit any federal employee from representing a private party before a court or agency in a matter where the United States has an interest. 18 U.S.C. §§ 203, 205. This prohibition survives for a period of time after a person leaves government employment with respect to matters in which he actively participated while with the government and matters under his official supervision. 18 U.S.C. § 207 (a), (b).

[13] Ethical Consideration 5–21 reads in part: "The obligation of a lawyer to exercise professional judgment solely on behalf of his client requires that he disregard the desires of others that might impair his free judgment. The desires of a third person will seldom adversely affect a lawyer unless that person is in a position to exert strong economic political or social pressures upon the lawyer."

[14] Mediation of disputed interests of two clients by an attorney is permissible only if (1) both clients affirmatively request it and

(2) the attorney desists from further representation of either client on the matter involved. American Bar Association, *Code of Professional Responsibility*, Ethical Consideration 5-20; H. Drinker, *Legal Ethics* 112.

[15] Memorandum, "Lease of Lands to Yuma County," Acting Director Program Support Staff to Secretary of the Interior, April 20, 1967.

[16] Act of August 15, 1894, 28 Stat. 332 (1894).

[17] Opinion of June 12, 1968, Status of Land in T. 16 S.R. 22 and 23 E., SBM Proposal for Lease to Yuma County, Arizona.

[18] *Id.* at p. 2.

[19] Act of February 15, 1893, 27 Stat. 456 (1893).

[20] Prior to the leasing dispute discussed above, the Quechans filed a claim against the United States asserting the liability of the government for the loss of use of a considerable amount of their land. *The Quechan Tribe of the St. Yuma Reservation* v. *United States*, Ind. Cl. Com. Docket No. 320.

[21] Indeed, the agreement and congressional enactment following it have never been interpreted as extinguishing the Quechan's beneficial interest in irrigable lands which have not been disposed of under the reclamation laws of the United States.

[22] Memorandum, William H. Veeder to W. Wade Head, Area Director, Phoenix, Arizona, April 15, 1970, "Title of the Quechan Tribe in the Yuma Indian Reservation."

[23] 28 Stat. 286, 336 *et seq.*

[24] 33 Stat. 189 at 224 (1904).

[25] Veeder memorandum, *supra*, note 23, at pp. 23-24.

[26] This was recognized in an earlier opinion by the Solicitor, January 8, 1936, M-28198, pp. 10-11.

[27] Irrigation is the paramount use for reclamation waters. 43 U.S.C. §§ 485h, 521-522. It was not until 1920 that Congress generally authorized the disposition of project water for uses other than irrigation. Act of February 25, 1920, ch. 86, 41 Stat. 451, 43 U.S.C. § 521. But as early as 1906 the Secretary was authorized to supply water and power to "towns or cities on or in the immediate vicinity of irrigation projects." Act of April 16, 1906, ch. 1631, 34 Stat. 116-17 43 U.S.C. §§ 522, 567.

[28] J. Sax, "Federal Reclamation Law," *Water and Water Rights*, p. 121.

[29] *United States* v. *Ahtanum Irrigation District*, 236 F. 2d 321, 326 (9th Cir. 1956); *Conrad Investment Company* v. *United States*, 161 Fed. 829 (9th Cir. 1908).

[30] See generally Veeder, *Winters Doctrine Rights; Keystone of National Programs for Western Land and Water Conservation and Utilization*, 26 Montana L. Rev. 149 (1965).

[31] "The Master ruled that the principle underlying the reservation of water rights for Indian Reservations was equally applicable to other federal establishments such as National Recreation Areas and National Forests. We agree with the conclusions of the Master that the United States intended to reserve water sufficient for the future requirements of the Lake Mead National Recreation Area, the Havasu Lake National Wildlife Refuge, the Imperial National Wildlife Refuge and the Gila National Forest." *Arizona* v. *California*, 373 U.S. 546, 601 (1963).

[32] In *United States* v. *Walker River Irrigation District*, 104 F. 2d 334, 340 (1939), the Court of Appeals for the Ninth Circuit held that a *Winters* doctrine right could be used for irrigation, power, and domestic and stock-watering purposes.

[33] Compare Act of August 4, 1939, ch. 418, § 9(a), 53 Stat. 1.93, 43 U.S.C. § 485h(a).

[34] *United States* v. *5677.94 Acres of Land*, 162 F. Supp. 108 (D. Mont. 1958).

[35] *United States* v. *Powers*, 93 F. 2d 783, 785 (9th Cir. 1930) *aff'd* 305 U.S. 527 (1939).

[36] Memorandum from Field Solicitor to Regional Director, Reclamation, "Division of water of Bighorn River under terms of Yellowstone River Compact," November 16, 1967.

[37] The Field Solicitor likewise took the position that Winters doctrine rights were nontransferable unless the Indian land were also sold, while admitting that this question has never been resolved by a court.

[38] Memorandum, March 22, 1968, Commissioners of Bureau of Reclamation and BIA to Assistant Secretaries Public Land Management and Water and Power Development, "Sale of M & I water from Yellowtail Unit, Missouri River Basin Project, Montana-Wyoming."

[39] Conflicts between the Bureau of Reclamation and Interior's Indian wards in the Missouri River Basin are by no means limited to the Big Horn River. In a memorandum of March 14, 1967, to the BIA's Aberdeen Area Director, the Director of the BIA's Missouri River Basin Investigation claimed that upstream developments of the Agnostura Rapid City and (projected) Belle Fourche projects by the Bureau of Reclamation had depleted the flow of the Cheyenne River, leaving a barren several thousand acres of potentially irrigable bottom land and higher benches on the Cheyenne Indian Reservation. The Director quoted the Bureau of Reclamation's own Cheyenne Diversion Report to substantiate his charge: "A reconnaissance-grade reappraisal of the Cheyenne Pumping Units was made in 1958, with the conclusion that further consideration was unwarranted mainly because of the doubtful water supply. . . . No appreciable further development of either land or water resources may be expected in the Cheyenne River Basin. Five Bureau of Reclamation reservoirs, taking advantage of all the more attractive sites, effectively control most of the runoff."

[40] The principal study of the federal conflict of interest, William H. Veeder "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development," in "Toward Economic Development for Native American Communities," Subcommittee on Economy in Government of the Joint Economic Committee, Congress, 91st Congress, 1st Sess. (Comm. Print 1969) (hereafter cited as "Veeder Committee Print") devotes major attention to Pyramid Lake.

[41] *United States v. Sturgeon*, 27 Fed. Cas. 1357 (No. 16, 413) (D. Nev. 1879), *aff'd*, 27 Fed. Cas. 1358; Veeder Committee Print, pp. 498-99.

[42] Veeder Committee Print, pp. 499-500. The Carson River runs south of, and generally parallel to, the Truckee.

[43] *United States v. Orr Water Ditch Co.*, Equity No. A-3 (D. Nev.).

[44] After the case was begun, but long before a final decree was entered in it, the Supreme Court conclusively established the right of an executive-order reservation to protect and conserve its fishing rights. *Alaska Pacific Fisheries* v. *United States*, 248 U.S. 78 (1918).

[45] A 1968 report by Clyde-Criddle-Woodward Inc. of Salt Lake City, "Report of Lower Truckee-Carson River Hydrology Studies" concludes that there is substantial waste in this water use and that only half the diverted amount is beneficially used by the project. Such waste is a violation of the reclamation laws which limit water to beneficial uses.

[46] Memorandum, Associate Solicitor, Indian Affairs to Commissioner of Indian Affairs, May 5, 1955, M36282.

[47] Act of August 1, 1957, ch. 809, § 2(a) 70 Stat. 775, 43 U.S.C. § 614a(a).

[48] Veeder Committee Print, pp. 507-508.

[49] *United States* v. *Alpine Land and Reservoir Co.*, No. 24, 156 (9th Cir. Aug. 24, 1970).

[50] *Pyramid Lake Paiute Tribe* v. *Hickel*, Civil No. 2506-70 (D. D.C. filed August 21, 1970).

[51] Ethical Consideration 5-15.

[52] *Jedwabny* v *Philadelphia Transportation Co.*, 390 Pa. 231, 235, 135 A. 2d 252, 254 (1957) *cert. denied*, 355 U.S. 966 (1958).

[53] The San Juan Chama Project was authorized in 1962, 76 Stat. 96.

[54] *New Mexico v. Aamodt*, No. 6639, U.S. District Court, D. New Mexico.

[55] Meeting, October 8, 1969, discussed in Daniel M. Rosenfelt, "Report on the Protection of Pueblo Indian Rights to the Use of Water in the Rio Grande Basin: A Discussion of Pending Litigation" (hereafter cited as "Rosenfelt Report") p. 2.

[56] Complaint, paragraph VI(a).

[57] Rosenfelt Report, p. 28.

[58] See also Memorandum, William H. Veeder to Commissioner of Indian Affairs, "Memorandum respecting rights to the use of water of the Pueblo Indians of New Mexico in the Rio Grande and its tributaries," October 31, 1969.

[59] Affidavit of Daniel M. Rosenfelt, April 23, 1970, Case #6639 District of New Mexico.

[60] Rosenfelt Report, p. 39.

[61] *Id.* at 43.

[62] *Tlingit and Haida Indian* v. *United States*, 147 Ct. Cl. 130 (1968).

[63] Indian title is a right to exclusive possession of land, based upon occupancy since "time immemorial." *Johnson* v. *McIntosh*, 21 U.S. (8 Wheat) 543 (1823); *Choteau* v. *Molony*, 57 U.S. (16 How.) 203 (1853); *Holden* v. *Joy*, 84 U.S. (17 Wall.) 211 (1872); *Butts* v. *Northern Pacific R.*, 119 U.S. 55 (1886); *Cramer* v. *United States*, 261 U.S. 219 (1923); *United States* v. *Shoshone Tribe*, 304 U.S. 111 (1938).

[64] Letter, James W. Scott, Manager, Anchorage District Office, BLM, to Moore & Poeser, Inc., May 21, 1968.

[65] Letter, I. S. Weissbrodt to Edward Weinberg, Solicitor, Department of the Interior.

[66] *Ibid.*

[67] Report from Natural Resources Specialist, Juneau, to District Manager, BLM, Anchorage, "Moore and Roeser, Inc., Timber and Road," May 19, 1969.

[68] Letter, I. S. Weissbrodt to Mitchell Melich, Solicitor, Department of the Interior, November 5, 1969.

[69] *United States* v. *Sante Fe Pacific R. Co.*, 314, U.S. 339 (1941).

[70] PLO 4582, 34 Fed. Reg. 1025 (1967).

[71] Federal Field Committee for Development Planning in Alaska, *Alaskan Natives and the Land* 453 (1968).

[72] In April 1970, a preliminary injunction was issued against the Secretary of the Interior barring issuance of right-of-way permits to traverse some lands claimed by Alaskan native villages. *Native Village of Allakaket* v. *Hickel*, Civil No. 706-70 (A.D.C. filed March 9, 1970).

[73] 25 U.S.C. § 70n.

[74] Letter, Robert S. Pelcyger, California Indian Legal Services, to Mr. William E. Finale, Bureau of Indian Affairs, October 31, 1968.

[75] During the course of discussions between the Indians, and their attorneys with California Indian Legal Services, on the one hand, and the Department of Justice and the Interior, on the other hand, a report together with recommendations was submitted to the Department of the Interior by the Sacramento Regional Solicitor's Office. Although the Indians' attorney requested an opportunity to review this report and discuss it with the individual preparing it, the Regional Solicitor's Office refused to make the report available. After its submission, it was classified as "confidential." The withholding of this report from the Indian wards seems in violation of the trustee's duty to disclose opinions of counsel dealing with his own management of the trust property. *Scott, Trusts* 1407. This disclosure must be made even if it reveals the trustee's own negligence. American Bar Association, Informal Opinion No. 1010. The government's defense of its action—that the document constituted an attorney's "work product"—constitutes an admission that the Departments of Justice and the Interior have interests adverse to those of their Indian beneficiaries.

[76] *Rincon Band of Mission Indians* v. *Escondido Mutual Water Co.*, No. 69-217-S (S.D. Cal., filed July 25, 1969).

[77] In a letter to Representative James B. Utt, August 15, 1969, Assistant Attorney General Kashiwa pointed out that such adjudications require several years and entail expense both for the United States and water users in the area. It is far from clear that a general stream adjudication would have been required in the San Luis Rey case, since only the water company's appropriation was complained of, not that of other water users.

[78] *Rincon Band of Mission Indians* v. *Escondido Mutual Water* Co., No. 69-217-S (S.D. Cal., filed July 25, 1969), Response of Attorney General and Secretary of the Interior to Court Order dated November 26, 1969.

[79] Memorandum, Robert S. Plecyger, to Thomas M. Susman, Staff, Subcommittee on Administrative Practice and Procedure, U.S. Senate, November 14, 1969, "San Luis Rey Water Case," p. 14.

[80] Letter to Representative James Utt, August 15, 1969, p. 4.

[81] *The Quechan Tribe of the Ft. Yuma Reservation, California* v. *United States*, Ind. Cl. Com. Docket No. 320.

[82] See Letter, Roy R. Young, to Honorable Stewart L. Udall, March 13, 1968.

[83] *Ibid.*

[84] Memorandum, Secretary of the Interior, to Commissioner, Bureau of Reclamation, March 22, 1968.

[85] Letter, Mr. Robert Jim, Chairman, Yakima Tribal Council, to Honorable Henry M. Jackson, July 22, 1969 (hereafter referred to as "Jim letter").

[86] H. Rept. No. 296, 88th Cong. 2d Sess., states in part:

Available water

"The flow of the Yakima River at Prosser Dam consists of spills over Sunnyside Dam, the next diversion above Prosser Dam, and inflow between Sunnyside and Prosser Dams is made up of tributary inflow and return flow from irrigated lands. The spills over Sunnyside Dam constitute the greatest volume of the total annual runoff, but are a fluctuating, unreliable irrigation supply. By comparison the return flows below Sunnyside Dam comprise a smaller portion of the total runoff, but because they are dependable flows, they provide a large portion of the irrigation supply for the Kennewick Division."

Inflow, Sunnyside to Prosser Dam

"The inflow to the Yakima River below Sunnyside Dam is made up of runoff from tributaries (Toppenish and Satus Creeks) and return flows from irrigated lands. Tributary runoff is of little importance in the months of July-October, when it amounts to about 2 percent of the total inflow. Return flows drain to the river from the Wapato project, south and west of the river, and from the Sunnyside and Roza divisions of the Yakima project on the north and east. A high total inflow is sustained during the irrigation season because the maximum tributary runoff and the maximum return flow occur at different times. *Tributary runoff reaches a maximum during the spring and early summer, when return flows are relatively small. After May or June tributary runoff decreases abruptly, and return flows increase sizably,* reaching a maximum during the late summer. In the fall and winter, inflow is small and does not increase appreciably until augmented by melting snow and spring rains." (Emphasis supplied.)

[87] Jim Letter, p. 3.

[88] Memorandum, Commissioner of Reclamation to Legislative Counsel, Office of the Under Secretary.

"Water Supply and Water Rights for the Kennewick Dam Extension, Washington," June 17, 1969, p. 5. The proposal to use uncontrolled spills is inconsistent with a portion of the 1945 decree, which allocated spills over Sunnyside Dam (the project directly upriver from the Kennewick Division), relied upon by Reclamation, to existing users (as of 1945) "in accordance with its practice prior to the entry of this judgment." William H. Veeder, Memorandum, "Yakima Indian Nation's Rights to the Use of Water Imperiled by Bills: To Provide for the Construction, Operation, and Maintenance of the Kennewick Division Extension, Yakima Project, Washington," July 7, 1969 p. 15.

[89] Jim Letter, p. 3.

[90] Letter to Senator Jackson, August 12, 1969.

[91] 43 U.S.C. § 981 et seq.

[92] Speech, Representative Pettis of California, December 4, 1969 (Congressional Record, vol. 115, pt. 27, p. 3624) (hereafter referred to as Pettis speech).

[93] 7 Ind. Cl. Com. 219. The Supreme Court has declared the Swamp and Overflow Land Act to be inapplicable to lands which the Indians held in 1850. *United States* v. *O'Donnell*, 303 U.S. 501, 509 (1937); *United States* v. *Minnesota*, 270 U.S. 181, 206 (1925). Also, the act applies only lands made unfit for cultivation, see *Keeran* v. *Allen*, 33 Cal. 542 (Cal. Sup. Ct.), and the Mohaves rely on the Colorado River to irrigate and fertilize their fields. 7 Ind. Cl. Com'n 219, 252 (App.).

[94] Pettis speech, *supra* note 92.

[95] The Commissioner relied on 25 U.S.C. § 48 which provides: "Where any of the tribes are, in the opinion of the Secretary of the Interior, competent to direct the employment of their blacksmiths, mechanics, teachers, farmers, or other persons engaged for them, the direction of such persons may be given to the proper authority of the tribe."

[96] 18 U.S.C. § 201 *et seq.*

[97] *Washington Post*, August 22, 1970, pp. A1, A6.

[98] Even if San Ildefonso had asserted its rights solely to the Rio Grande, three pueblos would have been left to rely exclusively on the tributaries.

[99] E.g., *Secretary of Agriculture* v. *United States*, 350 U.S. 162 (1956); *United States* v. *ICC*, 337 U.S. 426 (1949).

By Mr. PERCY (for himself, Mr. GOLDWATER, Mr. CURTIS, Mr. MCGOVERN, Mr. YOUNG, and Mr. HRUSKA):

S. 1003. A bill to name the synthetic gas pilot plant located in Rapid City, S. Dak., the "Karl E. Mundt Gasification Pilot Plant." Referred to the Committee on Interior and Insular Affairs.

KARL E. MUNDT GASIFICATION PILOT PLANT

Mr. PERCY. Mr. President, last year former Senator Karl E. Mundt died after a long and distinguished career in the U.S. Congress. He began his congressional career in 1950 as a Member of the House of Representatives in the 76th Congress. After 4 terms in the House he was elected to the U.S. Senate where he served four consecutive terms—the 81st Congress through the 92d. The number of committees and subcommittees on which he served is great, and in every assignment his wisdom and counsel was exerted. His influence on constructive legislation and his contributions to his country were outstanding.

In the late 1960's Senator Mundt, serving as ranking Republican member of the Interior Appropriations Subcommittee, realized our Nation was headed for an energy crisis of enormous magnitude unless the Congress faced up to the problem and attempted to discover new sources of energy. This vital problem disturbed him. He was convinced that the millions of tons of lignite buried in the soil of the Dakotas, Montana, and Wyoming could, after extensive research, produce gas.

Convinced that the coal gasification process developed by the Consolidation Coal Co. was a significant technological advance in solids-to-gas conversion, Senator Mundt was successful in securing the necessary appropriation to construct the CO_2 acceptor pilot plant in Rapid City, S. Dak., at a construction cost of $9.3 million. The sponsor of the plant is the Department of the Interior, Office of Coal Research and the operating cosponsor is the American Gas Association which supplied one-third of the funds for construction.

The plant is located on a 10-acre site on South Dakota's highway 79, 2 miles south of Rapid City, S. Dak. The land was contributed by the Western South Dakota Development Corp.

Senator Mundt, with the assistance of the Department of the Interior and especially the Office of Coal Research, and the American Gas Association, made this pilot plant possible. I am today introducing, along with Senators GOLDWATER, CURTIS, MCGOVERN, YOUNG, and HRUSKA, a bill to acknowledge this splendid accomplishment, led by Senator Mundt, by having the OCR lignite gasification pilot plant in Rapid City, S. Dak., named and dedicated as the "Karl E. Mundt Gasification Pilot Plant."

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

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

S. 1003

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the synthetic gas pilot plant located in Rapid City, South Dakota, is designated the "Karl E. Mundt Gasification Pilot Plant".

SEC. 2. Any reference in any law, rule, document, map, or other record of the United States to such plant is deemed to be a reference to such plant by the name designated in the first section of this Act.

By Mr. MATHIAS:

S. 1006. A bill to extend the authorization for the American Revolution Bicentennial Administration. Referred to the Committee on the Judiciary.

BICENTENNIAL EXTENSION

Mr. MATHIAS. Mr. President, February 24 marked the official beginning of our Bicentennial celebration. Consequently, I am reintroducing today a modification of a bill which I introduced originally in the 93d Congress to extend the authorization for the American Revolution Bicentennial Administration. I am proposing that we extend this authorization from its present expiration date—December 31, 1976—to December 31, 1989. In so doing, I am confident that we shall commemorate this 200th anniversary of our Nation's birth in a manner which is timely and which will have marked significance for the future.

Our Nation today faces problems at least as great as those faced by our Founding Fathers. If we are to surmount these problems, we must possess a unity of purpose and courageness of action at least as great as that which they possessed. The occasion of our Bicentennial offers the opportunity for a renewal and

rededication of this spirit which made our independence as a nation a reality. A 1-year extravaganza, however, does not afford sufficient time nor the sincerity of commitment necessary for taking the ideals and goals of our formative days and relating them to the lives we lead in contemporary America.

The grave problems which we face today have tended to produce a feeling of alienation and helplessness in our people. The Bicentennial offers an opportunity for a Nation of over 200 million people of all races, religious, ethnic backgrounds, all economic levels to see ourselves in relation to the role we must play in shaping the type of society we have today and the heritage we are to leave to the future. We enjoy a heritage both rich in principle and daring in design. If we hope to leave a nation worth inheriting, our sense of principle and courage must be reinspired.

In the original version of this bill which I introduced during the last session of Congress, I proposed extending the Bicentennial through 1983, to correspond with the 200th anniversary of the signing of the Treaty of Paris. The bill which I introduce today would extend the Bicentennial through 1989 to correspond with the 200th anniversary of the Constitution of the United States—a period of time endorsed by the National Committee for the Bicentennial Era.

By extending the years of the Bicentennial to correspond with the historical Revolutionary period—from the Declaration of Independence to the Constitution—we can recapture the ideals, the wisdom, the courage, and forthrightness of early days. I believe that the manner in which we celebrate our Bicentennial will say something about ourselves as a people. If we have the courage to make the commitment, we can say that the spirit of Revolution is still very much alive in the American people.

Mr. President, in the February 24 edition of the Washington Post, there appeared "A Bicentennial Declaration." This declaration has been endorsed by a number of prominent Americans who share with me the belief that an extended observance is necessary in order to have a meaningful 200th anniversary. I ask unanimous consent that this declaration and its signers along with the text of my bill be printed in the RECORD. I also ask unanimous consent to have printed in the RECORD an interview with John W. Warner, the head of the American Revolution Bicentennial Administration, on the occasion of the official beginning of the Bicentennial celebration which appeared in the February 24 edition of the Washington Star.

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

S. 1006

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 7(a)(2) of the Act entitled "An Act to establish the American Revolution Bicentennial Administration, and for other purposes", Public Law 93-179, approved December 11, 1973, is amended by striking out "1976" and inserting in lieu thereof "1989".

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

"(b) An annual report on the activities of the Administration, including an accounting of funds received and expended, shall be furnished by the Administrator to the Congress and a final report shall be made to the Congress not later than December 31, 1989. The Administration and the Board shall terminate on December 31, 1989, or on the date of the filing of the final report, whichever is sooner."

SEC. 2. Section 10(i) of such Act is amended by striking out "June 30, 1977" and inserting in lieu thereof "December 31, 1989".

SEC. 3. The second sentence of section 3 of the Act entitled "An Act to provide for the striking of medals in commemoration of the bicentennial of the American Revolution", Public Law 92-228, approved February 15, 1972, is amended by striking out "June 30, 1977" and inserting in lieu thereof "December 31, 1989".

A BICENTENNIAL DECLARATION

This great country of ours stands at a crucial turning point in its history. We face new and serious problems and uncertainty as to the future.

Two hundred years ago, our founding fathers stood at a similar crossroads. Beset then by grave doubts, they ultimately resolved to stake everything on a handful of ideas and ideals.

They forged those ideas and ideals into founding principles and then fought to uphold them. The American Revolution brought forth a new system of government based on freedom, justice, and individual rights.

Today we are called upon to maintain and improve that system and to fulfill those principles in a world growing increasingly interdependent. We are called upon to resolve our problems in many areas such as the economy, education, the environment, equal opportunity, freedom of choice.

We, the undersigned, believe—and we feel confident we reflect the sense of the American people—that we have reached the point in our history when a *second* American Revolution is called for, a revolution not of violence, but of fulfillment, of fresh purposes, and of new directions.

We believe that the Bicentennial of our founding offers just such an opportunity. To realize this potential, we believe the Bicentennial must be based on four fundamentals.

Let us be inspired by our origins, and by the challenges we face.

If we are not today an inspired people, we need to be reminded that we once were, and must be again. There is high inspiration to be found in the great ideals that created our country. The phrases that have been worn smooth by use have fresh and urgent meaning for us today—"government by consent of the governed," "the blessings of liberty," "all men are created equal," "a nation of laws." The Bicentennial can and must become a time to celebrate those ideals, and to celebrate them in the profound sense of renewal and rededication.

Let us make the Bicentennial a great period of achievement, nationally and in every community.

What our forebears did 200 years ago had never been done before. What we must do today is equally unprecedented. At every level in our society, there is an urgent need for achievement—in education, housing, transportation, the arts, communications, new ways of solving social problems, new methods of setting goals for the future, increased citizen participation in government. We believe that dedicating the Bicentennial to achievement is the way to put the sense of alienation and powerlessness behind us, to become once again the masters of our own destiny.

Let us commit ourselves to a Bicentennial Era, to at least the same time span required for the founding of our nation.

The first American Revolution neither started nor ended on the Fourth of July, 1776. Thirteen difficult years elapsed between the signing of the Declaration of Independence and the creation of an enduring system of government based on the Constitution. Many of the problems of today are different from those of 200 years ago, but they are at least as grave. Therefore, the second American Revolution will require at least a comparable period of time to grow strong and firm roots. We endorse the concept of a Bicentennial Era from 1976 to 1989 as a realistic period for tough-minded planning and accomplishment.

Let us put our trust in individual initiative, in the participation of each individual citizen.

Our great experiment in democracy will surely erode unless the Bicentennial Era becomes a time when we once again assert the primacy of individual initiative in moving our country forward. Governmental units at all levels must play a vigorous part. But the primary responsibility lies with the people, not with government. Let each of us, acting alone and in groups, take our own initiatives. There is work for all—for each individual—in every part of the country, of every color, creed, age, and ethnic background. That work must begin now.

For our part, we, the undersigned, pledge ourselves to spread this message throughout the land, and to undertake our own individual initiatives. We earnestly invite our fellow citizens, all those who share our vision of what the Bicentennial Era can mean and accomplish, to lend their time, their energy, and their spirit to the work that lies ahead.

Charles F. Adams, Chairman, Raytheon Company, Lexington, Massachusetts.

Eddie Albert, Actor, Pacific Palisades, California.

Manuel Aragon, Deputy Mayor, City of Los Angeles, California.

Monsignor Geno Baroni, President, National Center for Urban Ethnic Affairs, Washington, D.C.

Benny Ray Bailey, Administrator, East Kentucky Health Services Center, Inc., Hindman, Kentucky.

Clifford M. Clarke, Executive Director, Bicentennial Council of the Thirteen Original States, Atlanta, Georgia.

A. W. Clausen, President, The Bank of America, San Francisco, California.

Joan Ganz Cooney, President, Children's Television Workshop, New York, New York.

Walter Cronkite, CBS News, New York, New York.

Vincent A. deForest, Chairman, Afro-American Bicentennial Corp., Washington, D.C.

William C. Friday, President, University of North Carolina, Chapel Hill, North Carolina.

John W. Gardner, Chairman, Common Cause, Washington, D.C.

Walter A. Haas, Jr., Chairman, Levi Strauss & Company, San Francisco, California.

Ladonna Harris, President, Americans for Indian Opportunity, Washington, D.C.

Reverend Theodore M. Hesburgh, President, Notre Dame University, South Bend, Indiana.

Lady Bird Johnson, Stonewall, Texas.

Erik Jonsson, Chairman, Texas Instruments, Dallas, Texas.

Vernon E. Jordan, Jr., Executive Director, National Urban League, Inc., New York, New York.

Billie Jean King, U.S. Open Tennis Champion, Los Angeles, California.

Robert S. McNamara, President, International Bank for Reconstruction and Development, Washington, D.C.

Dr. Margaret Mead, Anthropologist, American Museum of Natural History, New York, New York.

George Meany, President, AFL-CIO, Washington, D.C.

Ruben F. Mettler, President, TRW, Inc., Cleveland, Ohio.

Arjay Miller, Dean, Stanford Business School, Stanford, California.

Eleanor Holmes Norton, Chairman, Commission on Human Rights, New York, New York.

Joseph Papp, Producer, New York Shakespeare Festival, New York, New York.

Esther Peterson, Consumer Advisor, Giant Food, Inc., Washington, D.C.

Merrill D. Peterson, Professor of History, University of Virginia, Charlottesville, Virginia.

Elliott L. Richardson, former Attorney General of the U.S., McLean, Virginia.

John D. Rockefeller 3rd, New York, New York.

Dr. Jonas E. Salk, Director, The Salk Institute, La Jolla, California.

Frank Stanton, Chairman, The American National Red Cross, Washington, D.C.

Isaac Stern, Concert Violinist, New York, New York.

Cyrus Vance, President, Association of the Bar of the City of New York, New York, New York.

John Warner, Administrator, American Revolution Bicentennial Administration, Washington, D.C.

George H. Weyerhaeuser, President, Weyerhaeuser Company, Tacoma, Washington.

Dolores Wharton, Vice Chairperson, Michigan Bicentennial Commission, East Lansing, Michigan.

Roy Wilkens, Executive Director, National Association for the Advancement of Colored People, New York, New York.

Dr. Helen Wise, Chairperson, National Education Association Bicentennial Committee, Washington, D.C.

Leonard Woodcock, President, United Auto Workers, Detroit, Michigan.

Q. AND A.: JOHN WARNER LOOKS AT THE BICENTENNIAL

(The American bicentennial, 21 months of celebration, circumspection and controversy, officially gets underway today. John W. Warner, head of the American Revolution Bicentennial Administration, was interviewed by Washington Star Staff Writer Betty James.)

Question: Has the turmoil of the Vietnam era, the Watergate scandals and the economic crisis sapped any of the enthusiasm for the bicentennial?

Warner: I have found an enthusiasm for the bicentennial which has in large part, been motivated by the very things that you mention. For example, out of Watergate grew a motivation which resulted in more people going back on their own and reading the Declaration of Independence, the Constitution and the Bill of Rights than any other event in recent times. The economic situation is prompting people to come together, sort of work among themselves, and that is one of the mystiques of the Bicentennial. I can't give you the reason why but it does draw together in communities the diverse elements of that community.

Q: How successful have you been in stimulating business as contrasted with public dollars for the bicentennial?

A: The more important aspect is the contribution being made by the private sector. If it were possible to cost out the whole bicentennial, the largest segment of dollars is not coming from the federal government but from the private sector and from the individuals themselves. I've estimated that several hundred million dollars will be invested in the nation's bicentennial by major corporations, foundations and labor unions. Those companies are coming in and shouldering some of the financial responsibility, organizational responsibility and much of the implementation of the citizen program. In some instances, not all, the only recognition being that "this program has been made possible through a grant from the XYZ corporation."

Q: When you figure in what all the federal agencies have identified as bicentennial projects the federal expenditure is not that small, is it?

A: There are programs which have been submitted in connection with both the '75 and '76 budgets which add up to about $100 million each year. But the bicentennial label has been appended to many programs which would have gone on anyway. So I do hope to convey that Uncle Sam suddenly didn't begin to have enormous expenditures within the federal sector solely because of the bicentennial. But these programs adapt themselves to the bicentennial.

Q: Television shows inspired by the bicentennial have been appearing on prime time in recent months. According to national Nielsen ratings, the last of the CBS series on Benjamin Franklin finished 61st among 63 programs. What does this suggest to you?

A: Well, it's very difficult for me to try to superimpose my judgment on the professionals in this area but it's obvious that it did not receive the response that was hoped. I could only conjecture that perhaps much of the bicentennial media presentation—this one, for example—might have come too early for the people. I detect as I travel across the United States tremendous growing excitement and enthusiasm for the bicentennial. It's sort of coming on right now. And I suppose possibly that program was a little ahead of this enormous grassroots wave of enthusiasm and excitement across the country.

Q: Do you think that wave should have occurred a year ago?

A: No, in my judgment, as we watch certain events in the United States—be it the World Series, or a presidential election or any other national event—we see that people tend to begin to participate and get an interest and an identification with it on or about the eve of it. And we're on that eve right now. If you come back a year from now and show me that rating I'll be seriously troubled, but I'm not seriously troubled today.

Q: Can the issue of commercialization in the bicentennial, sometimes described as Buy-centennial, be resolved?

A: Now that will be an issue throughout the period. The word bicentennial is in the dictionary and anyone is free to use it in any manner he or she wishes. The Founding Fathers fought just as hard for the freedom of enterprise, economic freedom, as they did for freedom of speech. And therefore people should be able to use the word bicentennial as they see fit and manufacturers should try and meet the demands of the public. Traditionally in the United States we have always wanted to buy artifacts, memorabilia, souvenirs, connected with any major historical event or sports event such as the Olympics. But what appeals to one person may be distasteful to another. So we come right down to the Congress of the United States recognizing this dilemma. It directed me very clearly to "Provide for the preparation, distribution, dissemination, exhibition and sale of commemorative medals and other historical commemorative and informational materials and objects which will contribute to public information, awareness and interest in the bicentennial." We have a licensing program which will seek out certain manufacturers in the United States and offer them the opportunity to affix the official logo to an article. Before we do that we make some determination on the quality of that article, the workmanship, the price structure, so that in our judgment it's among the better class of items to be offered to the public. And also to see that it comports with the mandate of the Congress as relating to the bicentennial. As a consequence of letting the logo be used we are entitled to a small percentage of the proceeds of sale, which dollars come back to this administration and are used by us for purposes of funding national bicentennial programs. Now, a final point should also be made that the unwitting criticism tends to impute a lack of good judgment and common sense on the part of the average American citizen to determine for himself his likes and dislikes. While the free enterprise system does permit the manufacture and sale of a wide range in quality of items the common sense of the average citizen will in the end prevail so that the distasteful and discrediting items in all likelihood will be left on the vendors' shelves to gather dust.

Q: Why should we be spending the amounts of money that are being spent on the bicentennial at a time when there's so much need and so much unemployment?

A: The answer to that is that bicentennial dollars are going right back into the economy and they are creating jobs. What better example can I give you than that about a third of the bicentennial is devoted to some element of restoration of structures, and that's providing jobs for one of the hardest-hit industries, the electricians, the bricklayers, the carpenters, the laborers. Thousands upon thousands upon thousands are being employed on projects for restorations and new construction connected with the bicentennial.

Q: What plans have been made for the Fourth of July, 1976, here in Washington?

A: We're working on them now. I will recommend to the President the following: That the day will be subdivided into three basic segments. In the first segment, the early morning, the religious leaders—all denominations have consulted with me—are trying to organize, perhaps on a simultaneous basis, a national religious observance in thanksgiving. Now, the premise is that each individual go to his own place of worship and do it as he or she so desires, no organization other than perhaps the time. Then perhaps the center part of the day would be used for the leaders of our nation, for our President, our governors, the members of Congress, the mayors to lead the people in a reflection on the greatness of our past, the history, where we are today, and where we should be going in the future. That's a little rhetoric and a little speech-making but we should have it, hopefully out on the village greens, with the people having perhaps walked from their places of worship to a central location to listen to their chosen leaders discuss these subjects. Then I personally hope, as the twilight comes on across America, that we do engage in relaxation and some fun and frivolity which is traditional to this great time, with simultaneous fireworks across the nation.

Q: Where is your biggest difficulty as the administrator of ARBA?

A: There are going to be two questions which will remain unresolved to the end. First, the issue of commercialism—that will be debated throughout the bicentennial. The second is whether the United States government did enough or too much; whether it shouldn't have spent all that money and perhaps discouraged Americans elsewhere. I will remain for the next 18 months literally in the eye of the storm of controversy. But I volunteered and I'm happy to be here and I'll see it through.

Q: How do the native Americans, the Indians, view the bicentennial?

A: Well, with an understandable measure of skepticism. They have certainly, we recognize today in retrospect, legitimate basis for criticism of their treatment. And I have taken a personal interest in this. Recently I hosted the 15 Indian chiefs here in Washington and listened to their thoughts and then out of that meeting, surprisingly, grew

an invitation to me personally to come out and visit with the chief of the Crow nation.

Q: What did he want from you?

A: He seemed to be very impressed with my thought that the Crow Indian tribe could play a unique role in the bicentennial and he's going to take it up at his tribal council meeting to become a bicentennial community—the tribe itself would become a bicentennial community and fly the bicentennial flag. We stressed, that is I stressed, that his program could be one of the culture and the heritage of the Plains Indians and since he's centrally located he has the possibility of having other tribes participate and that could be a very constructive program of the richness of their culture as opposed to the reenactment of the battles and violence and things of this nature.

Q: Are some of the Indian tribes thinking of actively boycotting the bicentennial?

A: There are any number of tribes and I have now appointed a full-time assistant to me whose sole responsibility is working with the native Americans. He's a blueblood Blackfoot.

Q: What would you like to see emerge from the bicentennial?

A: First, a restoration in the people of their faith in themselves to achieve things, in other words, the community doing something for the bicentennial rather than sitting back and letting the Federal government do it all. I find as I cross the country a great despair that the individual cannot influence his daily life or even the eventual state of his family and that's a discouraging thing. I believe the bicentennial gives him an opportunity to get in and participate, and do something and emerge saying to himself, "By golly, I count after all." The second, restore faith in the blueprint of our Nation—The Declaration of Independence, the Constitution, the Bill of Rights. I hope emerging from the bicentennial will be a unanimous conviction of all Americans that those three great documents, that blueprint was indeed laid down right and can carry us into the Third Century.

By Mr. DOLE:

S. 1007. A bill to prohibit the Consumer Product Safety Commission from restricting the sale or manufacture of firearms or ammunition. Referred to the Committee on Commerce.

Mr. DOLE. Mr. President, I am today introducing legislation to prohibit the Consumer Product Safety Commission from imposing any ruling or restriction which would classify ammunition for handguns as a "hazardous substance," and thereby restrict its sale. In my opinion, such a gesture would be clearly beyond the authority granted the Commission by Congress, and a gross distortion of the intent of the Hazardous Substances Act of 1960.

Legislation to accomplish the same objective is already pending in this Congress, and I intend to give it my full support. I have chosen to introduce this separate measure, however, to demonstrate my emphatic endorsement of the cause against the propriety of the action contemplated by the CPSC.

The events leading to the necessity for this bill began when the Committee for Handgun Control, Inc.—a Chicago-based gun control lobby—petitioned the CPSC for a ruling that firearms and firearm ammunition constitute "hazardous substances" under the aforementioned 1960 act. Significantly, such petition was denied by the Commission September 5, 1974, on the grounds that the requested ruling, if made, would go beyond the scope of the law.

The gun control lobby then appealed that decision to the District of Columbia Federal Court, which, on December 19, 1974, ordered the Commission to "commence consideration" of the Handgun Control Committee's proposal. That brings us to the present.

From my State of Kansas I have received literally hundreds of letters, telegrams, and phone calls from citizens who are distressed and concerned over this attempt by a few people to bend the meaning of a statute that has been on the books for nearly 15 years. They quite properly point out, I think, that this whole endeavor is nothing more than a "backdoor" approach to gun control—which is clearly the business of Congress, and not that of either the courts or the Consumer Product Safety Commission.

The responsibilities of commissions like these is to protect consumers from fraudulent claims of manufacturers, improper labeling, and hidden dangers in products. Although it is certainly true that firearms and ammunition can become dangerous through misuse, the restriction of their sale is not necessarily the answer—and in any event, is not within the bounds of existing legislation.

If that were the case, who knows where such a theory might lead us in the regulatory arena—perhaps to banning the purchase of gasoline, perhaps to letter-openers, or may even to baseball bats? The point is that we cannot sit by and allow bureaucratic paternalism to reach such ridiculous proportions that it infringes on the legitimate rights of the average, law-abiding citizen.

I am not suggesting that Congress itself should not address this issue, because it surely has a duty to examine the entire matter. But until that happens—and unless it results in some definitive controls—I firmly believe we need to forestall any abuse of power which cannot help but prompt our constituents to ask: "Who is really making the laws which govern our lives and protect our basic freedoms—and elected Representatives, or a panel of appointed officials?"

Mr. President, it is indeed unfortunate that we even find ourselves in the situation of having to pass a law to interpret a law. But since that is apparently the only course of action which will suffice in this instance, I urge all my colleagues to get behind this effort to promote expeditious resolution of the controversy.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1007

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, no other provision of law withstanding, the United States Consumer Product Safety Commission shall make no ruling or order that restricts the manufacture or sale of firearms, firearm ammunition, or components of firearm ammunition, including blackpowder and gunpowder.

By Mr. STONE (for himself, Mr. McGEE, Mr. CANNON, Mr. CHILES, Mr. CRANSTON, Mr. DOMENICI, Mr. HANSEN, Mr. HASKELL, Mr. MONTOYA, and Mr. STEVENS):

S. 1009. A bill to amend title 13 of the United States Code to require the compilation of current data on total population between censuses and to require the use of such current data in the administration of Federal laws in which population is a factor. Referred to the Committee on Post Office and Civil Service.

Mr. STONE. Mr. President, today I am introducing legislation that would update and standardize the data used in determining total population for the distribution of Federal funds.

Many recent laws, including general revenue sharing, use the current population updates published by the Bureau of the Census to determine total population. However, many older laws use the decennial census to determine total population.

This bill will provide the uniform determination of total population by requiring the Bureau of the Census to produce and publish annual population updates for States, counties, and local governments which have a population of 50,000 or more, and biennial population updates for local governments. It does not require a yearly census or even a mid-decade census; rather it codifies the Bureau of Census' existing practice of producing population updates.

Equitable distribution of Federal benefits requires that the most current means of distributing these benefits be used. Given the highly mobile nature of our country, the total population figures included in the 1970 decennial census no longer accurately represent the present population. During the last 4 years many States have greatly increased in population while others have either declined or remained stable. By relying upon outdated population figures to distribute Federal benefits, many States are being deprived of funds necessary to provide services for their expanded population. The purpose of using the most recent population data in funding formulas is to insure that the benefits are directed to the people where they actually are. Therefore, this bill provides that in the administration of any law where population is used to help determine the amount of benefits received by State and local governments, the most recent data published by the Bureau of Census shall be used.

I feel that this bill will insure both the uniform production of data on total population as well as the most current and equitable basis for determining the distribution of Federal funds.

Mr. President, I ask unanimous consent to have the bill printed in the RECORD.

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

S. 1009

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subchapter IV of chapter 5 of title 13, United States Code, is amended to read as follows:

"SUBCHAPTER IV—CURRENT INTERIM DATA"

"§ 181. Population

"During the intervals between decennial censuses of population under section 141, the Secretary shall annually produce and

publish for each State, county, and local unit of general purpose government which has a population of 50,000 or more, current data on total population and shall biennially produce and publish for other local units of general purpose government current data on total population. Such data shall be produced and published for each State, county, and other local unit of general purpose government for which data is compiled in the most recent census of population taken under section 141. Such data may be produced by means of sampling or other methods which the Secretary determines will produce current, comprehensive, and reliable data.

"§ 182. Other current data

"The Secretary may make surveys deemed necessary to furnish annual and other interim current data on the subjects (other than population) covered by the censuses provided for in this title.

"§ 183. Use of most recent population data

"In the administration of any law of the United States in which population is used to determine the amount of benefit received by State, county and local units of general purpose government, the data most recently produced and published pursuant to section 181 shall be used except with respect to any date or period of time for which the census of population taken under section 141 is the most recent data. The preceding sentence shall apply with respect to any such law whether or not such law makes reference to the census of population taken under section 141.

"§ 184. Definition

"For purposes of this subchapter, the term 'local unit of general purpose government' means the government of a county, municipality, township, or other unit of government below the State which is a unit of general government."

(b) The table of contents for chapter 5 of title 13, United States Code, is amended by striking out

"181. Surveys."

and inserting in lieu thereof

"181. Population.
"182. Other current data.
"183. Use of most recent population data.
"184. Definition."

SEC. 2. (a) The Secretary of Commerce and the Director of the Office of Management and Budget shall jointly initiate the development and establishment of uniform methods and procedures to be used by the Bureau of the Census and all other bureaus and components of the Executive branch in producing statistical information used in effecting the delivery of federal benefits to State and local governments.

(b) Not later than one year after the date of the enactment of this Act, the Secretary and the Director shall report to the Committees on Post Office and Civil Service of the Senate and House of Representatives with respect to progress made toward the development and establishment of the methods and procedures described in subsection (a).

(c) Nothing in subsection (a) or (b) shall be construed as to limit the present authority of the Office of Management and Budget to develop and promulgate statistical standards and authority under the Federal Accounting and Procedure Act of 1950.

Mr. MONTOYA. Mr. President, I am pleased to join Senator STONE today as cosponsor of a bill which would provide for the use of annual and biennial population data in all Federal funding formulas where census data is currently used.

This bill would require that annually updated census data be used for each State and county, in the administration of Federal laws in which population is a factor. Also data would be provided, on a biennial basis, for other units of local government. Finally the bill would require the Office of Management and Budget to prepare, jointly with the Commerce Department, proposals for uniform methods and procedures to be used by all components of the exceutive branch in producing statistical data effecting the delivery of Federal benefits to State and local governments.

This bill will rectify what has for many years been an unjust situation for those areas of the country such as New Mexico, who are experiencing rapid population growth. In rapid growth States reliance on decennial census data, means that the funding formula which is based on population, becomes more inequitable as the time between censuses increases. However, by using, as this bill does, data updated on a regular basis funding can be adjusted to account for fluctuations which occur in population.

Mr. President, I urge that all my colleagues will give this measure their careful and sympathetic consideration, so that action can be completed at an early date.

By Mr. HASKELL:

S. 1010. A bill to clarify authorization for the approval by the Administrator of the Federal Aviation Agency of the exchange of a portion of real property conveyed to the city of Grand Junction, Colo., for airport purposes. Referred to the Committee on Commerce.

Mr. HASKELL. Mr. President, the legislation I am introducing today provides authority for an exchange of lands to enable the Walker Field, Colo., Public Airport Authority to operate more efficiently.

The Federal Airport Act of 1946 enabled the United States to grant certain lands to the city of Grand Junction for use as an airport. A condition of the grant of those lands prohibits exchanging any of the acreage. The grant specifies that in the event the lands are not developed or cease to be used for airport purposes the property interest shall automatically revert to the United States.

The airport would like to trade 18.59 of the original 321.04 acres granted to it with a private party. The purpose of the trade is to straighten the airport's boundaries and to make them more functional. The land which would be received is more valuable than the land which would be conveyed so there is no question of giving away public lands in an unfair trade.

Similar legislation was introduced last year in both the Senate and the House of Representatives but did not receive any action. I am hopeful my colleagues on the Senate Committee on Commerce will see fit to act on this legislation during the 94th Congress. I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 1010

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding section 16 of the Federal Airport Act, the Administrator of the Federal Aviation Agency is authorized, subject to the provisions of section 4 of the Act of October 1, 1949 (50 App. U.S.C. 1622C), to grant releases from any of the terms, conditions, reservations, and restrictions contained in the deed of conveyance dated September 14, 1951, under which the United States conveyed certain property to the city of Grand Junction, Colorado, for airport purposes.

By Mr. HASKELL (for Mr. JACKSON, for himself and Mr. FANNIN) (by request):

S. 1011. A bill to designate the Aldo Leopold Wilderness, Gila National Forest, N. Mex.;

S. 1012. A bill to designate the Blue Range Wilderness Apache National Forest, in the States of Arizona and New Mexico;

S. 1013. A bill to designate the Eagles Nest Wilderness, Arapaho and White River National Forest, in the State of Colorado;

S. 1014. A bill to designate the Flat Tops Wilderness, Routt and White River National Forests, in the State of Colorado;

S. 1015. A bill to designate the Glacier Wilderness, Soshone National Forest, in the State of Wyoming;

S. 1016. A bill to designate the High Uintas Wilderness, Ashley and Wasatch National Forests, in the State of Utah;

S. 1017. A bill to designate the Spanish Peaks Wilderness, Gallatin National Forest, in the State of Montana;

S. 1018. A bill to designate the Beartooth Wilderness, Custer and Gallatin National Forests in the State of Montana;

S. 1019. A bill to designate the Big Blue Wilderness, Courthouse Mountain Wilderness, Dolores Peak Wilderness, Mount Sneffels Wilderness, and Mount Wilson Wilderness, San Juan and Uncompahgre National Forests in the State of Colorado;

S. 1020. A bill to designate the Cloud Peak Wilderness, Bighorn National Forest, in the State of Wyoming;

S. 1021. A bill to designate the Gila Primitive Area as a part of the Gila Wilderness, Gila National Forest, N. Mex., and for other purposes;

S. 1022. A bill to designate the Monarch Wilderness, Sequoia, and Sierra National Forest in the State of California;

S. 1023. A bill to designate the Popo Agie Wilderness, Shoshone National Forest, in the State of Wyoming;

S. 1024. A bill to designate the Idaho Wilderness, Boise, Challis, Payette, and Salmon National Forests, Idaho and the Salmon River Wilderness, Bitterroott, Nezperce, and Salmon National Forests, Idaho;

S. 1025. A bill to designate the Trinity Alps Wilderness, Klamath, Shasta-Trinity, and Six Rivers National Forests in the State of California;

S. 1026. A bill to designate certain lands in the Chassahowitzka National Wildlife Refuge, Citrus County, Fla., as wilderness;

S. 1027. A bill to designate certain lands in the Crab Orchard National Wildlife Refuge, Jackson, Union, and Williamson Counties, Ill., as wilderness;

S. 1028. A bill to designate certain lands in the Crescent Lake National Wildlife Refuge, Garden County, Nebr., as wilderness;

S. 1029. A bill to designate certain lands in the Hart Mountain National Antelope Refuge, Lake County, Oreg., as wilderness;

S. 1030. A bill to designate certain lands in the Havasu National Wildlife Refuge, San Bernardino County, Calif., as wilderness;

S. 1031. A bill to designate certain lands in the Hawaiian Islands National Wildlife Refuge, city and county of Honolulu, Hawaii, as wilderness;

S. 1032. A bill to designate certain lands in the Imperial National Wildlife Refuge, Yuma County, Ariz., and Imperial County, Calif., as wilderness;

S. 1033. A bill to designate certain lands in the Malheur National Wildlife Refuge, Harney County, Oreg., as wilderness;

S. 1034. A bill to designate certain lands in the Rice Lake National Wildlife Refuge, Minn., and the entire Mille Lacs National Wildlife Refuge, Minn., as wilderness;

S. 1035. A bill to designate certain lands in the Mingo National Wildlife Refuge, Wayne and Stoddard Counties, Mo., as wilderness;

S. 1036. A bill to designate certain lands in the Missisquoi National Wildlife Refuge, Franklin County, Vt., as wilderness;

S. 1037. A bill to designate certain islands of the Oregon Islands National Wildlife Refuge, Clatsop, Tillamook, Lincoln Lane, Coos and Curry Counties, Oreg., as wilderness;

S. 1038. A bill to designate certain lands in the Red Rock Lakes National Wildlife Refuge, Beaverhead County, Mont., as wilderness;

S. 1039. A bill to designate certain lands in the Matia Island and San Juan National Wildlife Refuges, San Juan and Skagit Counties, Wash., as wilderness;

S. 1040. A bill to designate all of the Semidi National Wildlife Refuge, 3d Judicial Division, Alaska, as wilderness.

S. 1041. A bill to designate certain lands in the Simeonof National Wildlife Refuge, Third Judicial District, Alaska, as wilderness;

S. 1042. A bill to designate certain lands in the Tamarac National Wildlife Refuge, Becker County, Minn., as wilderness;

S. 1043. A bill to designate certain lands in the Aleutian Islands National Wildlife Refuge, Third Judicial Division, Alaska, as wilderness;

S. 1044. A bill to designate certain lands in the Valentine National Wildlife Refuge, Cherry County, Nebr., as wilderness;

S. 1045. A bill to designate certain lands in the White River National Wildlife Refuge, Desha County, Ark., as wilderness;

S. 1046. A bill to designate certain lands within the Agassiz National Wildlife Refuge in Marshall County, Minn., as wilderness;

S. 1047. A bill to designate certain lands in the Aleutian Islands National Wildlife Refuge, Third Judicial Division, Alaska, as wilderness;

S. 1048. A bill to designate all of the Anaho Island National Wildlife Refuge, Washoe County, Nev., as wilderness;

S. 1049. A bill to designate certain lands in the Chincoteague National Wildlife Refuge, and Assateague Island National Seashore, Accomack County, Va., and Worcester County, Md., as wilderness;

S. 1050. A bill to designate certain lands in the Back Bay National Wildlife Refuge, Princess Anne County, Va., as wilderness;

S. 1051. A bill to designate certain lands in the Big Lake National Wildlife Refuge, Mississippi County, Ark., as wilderness;

S. 1052. A bill to designate certain lands in the Bombay Hook National Wildlife Refuge, Kent County, Del. as wilderness;

S. 1053. A bill to designate certain lands in the Cedar Island National Wildlife Refuge, Carteret County, N.C., as wilderness;

S. 1054. A bill to designate certain lands in the J. N. "Ding" Darling National Wildlife Refuge, Lee County, Fla., as wilderness;

S. 1055. A bill to designate certain lands in the Fort Niobrara National Wildlife Refuge, Cherry County, Nebr., as wilderness;

S. 1056. A bill to designate certain lands in the Kenai National Moose Range, Kenai Peninsula Borough, Alaska, as wilderness;

S. 1057. A bill to designate certain lands in the Lacassine National Wildlife Refuge, Cameron Parish, La., as wilderness;

S. 1058. A bill to designate certain lands in the Lake Woodruff National Wildlife Refuge, Lake and Volusia Counties, Fla., as wilderness;

S. 1059. A bill to designate certain lands in the Mattamuskeet National Wildlife Refuge, Hyde County, N.C., as wilderness;

S. 1060. A bill to designate certain lands in the Medicine Lake National Wildlife Refuge, Sheridan and Roosevelt Counties, Mont., as wilderness;

S. 1061. A bill to designate certain lands in the Noxubee National Wildlife Refuge, Oktibbeha County, Miss., as wilderness;

S. 1062. A bill to designate certain lands in the Parker River National Wildlife Refuge, Essex County, Mass., as wilderness;

S. 1063. A bill to designate certain lands within the Pea Island National Wildlife Refuge, Dare County, N.C., as wilderness;

S. 1064. A bill to designate certain lands in the Santee National Wildlife Refuge, Clarendon County, S.C., as wilderness;

S. 1065. A bill to designate certain lands in the Sheldon National Antelope Refuge, Washoe County, Nev., as wilderness;

S. 1066. A bill to designate certain lands in the Swanquarter National Wildlife Refuge, Hyde County, N.C., as wilderness;

S. 1067. A bill to designate certain lands in the UL Bend National Wildlife Refuge, Phillips County, Mont., as wilderness;

S. 1068. A bill to designate certain lands in the Badlands National Monument, S. Dak., as wilderness;

S. 1069. A bill to designate certain lands in the Bandolier National Monument, N. Mex., as wilderness;

S. 1070. A bill to designate certain lands in the Big Bend National Park, Tex., as wilderness;

S. 1071. A bill to designate certain lands in the Black Canyon of the Gunnison National Monument, Colo., as wilderness;

S. 1072. A bill to designate certain lands in the Bryce Canyon National Park, Utah, as wilderness;

S. 1073. A bill to designate certain lands in the Carlsbad Caverns National Park, N. Mex., as wilderness;

S. 1074. A bill to designate as wilderness certain lands within Cedar Breaks National Monument in the State of Utah;

S. 1075. A bill to designate certain lands in the Chiricahua National Monument, Ariz., as wilderness;

S. 1076. A bill to designate certain lands in the Colorado National Monument, Colo., as wilderness;

S. 1077. A bill to designate certain lands in the Crater Lake National Park, Oreg., as wilderness;

S. 1078. A bill to designate certain lands in the Cumberland Gap National Historical Park, Tenn., Va., and Ky., as wilderness;

S. 1079. A bill to designate certain lands in the Glacier National Park, Mont., as wilderness;

S. 1080. A bill to designate certain lands in the Grand Canyon National Park and in the Grand Canyon and Marble Canyon National Monuments, Ariz., as wilderness;

S. 1081. A bill to designate certain lands in the Grand Teton National Park, Wyo., as wilderness;

S. 1082. A bill to designate certain lands in the Great Sand Dunes National Monument, Colo., as wilderness;

S. 1083. A bill to designate certain lands in the Guadalupe Mountains National Park, Tex., as wilderness;

S. 1084. A bill to designate certain lands in the Haleakala National Park, Hawaii, as wilderness;

S. 1085. A bill to designate as wilderness certain lands within Isle Royale National Park, in the State of Michigan;

S. 1086. A bill to designate certain lands in the Joshua Tree National Monument, Calif., as wilderness;

S. 1087. A bill to designate certain lands in the Katmai National Monument, Alaska, as wilderness;

S. 1088. A bill to designate as wilderness certain lands within Sequoia and Kings Canyon National Parks, in the State of California;

S. 1089. A bill to designate certain lands in the Mesa Verde National Park, Colo., as wilderness;

S. 1090. A bill to designate certain lands in the North Cascades National Park and in the Ross Lake and Lake Chelan National Recreation Areas, Wash., as wilderness;

S. 1091. A bill to designate certain lands in the Olympic National Park, Wash., as wilderness;

S. 1092. A bill to designate certain lands in the Pinnacles National Monument in California as wilderness;

S. 1093. A bill to designate certain lands in the Point Reyes National Seashore, Calif., as wilderness;

S. 1094. A bill to designate certain lands in the Rocky Mountain National Park, Colo., as wilderness;

S. 1095. A bill to designate certain lands in the Saguaro National Monument, Ariz., as wilderness;

S. 1096. A bill to designate certain lands in the Shenandoah National Park, Va., as wilderness;

S. 1097. A bill to designate certain lands in the Theodore Roosevelt National Memorial Park, N. Dak., as wilderness;

S. 1098. A bill to designate certain lands in the Yellowstone National Park, Idaho, Wyoming, and Montana, as wilderness;

S. 1099. A bill to designate certain lands in the Yosemite National Park, Calif., as wilderness;

S. 1100. A bill to designate certain lands in the Zion National Park as wilderness;

S. 1101. A bill to designate certain lands in the Death Valley National Monument, California and Nevada, as wilderness;

S. 1102. A bill to designate certain lands in the Dinosaur National Monument, Utah and Colorado, as wilderness;

S. 1103. A bill to designate certain lands in the Everglades National Park, Fla., as wilderness;

S. 1104. A bill to designate certain lands in the Great Smoky Mountains National Park, Tennessee and North Carolina, as wilderness.

S. 1105. A bill to designate certain lands in the Hawaii Volcanoes National Park, Hawaii, as wilderness;

S. 1106. A bill to designate certain lands in the Mount Ranier National Park, Wash., as wilderness; and

S. 1107. A bill to designate certain lands in the Organ Pipe National Monument, Ariz., as wilderness. Referred to the Committee on Interior and Insular Affairs.

Mr. HASKELL. Mr. President, on December 4, 1974, as a fitting and statutorily mandated conclusion to the first decade of experience under the Wilderness Act of 1964, the President submitted to the Congress legislative proposals to designate 37 new additions to the National Wilderness Preservation System. With minor exceptions, this completes the Wilderness Act requirement that, within that decade, the Secretary of the Interior study all roadless areas in the national parks and wildlife refuges to determine their suitability for wilderness designation and the Secretary of Agriculture do the same for the primitive areas within the national forests. As a result of these studies, during this past decade, Congress has added 77 areas totaling some 3,329,086 acres to the 52-unit, 9.1-million-acre National Wilderness Preservation System established by the 1964 act. Last Congress alone, we enacted legislation which expanded the system by 35 units and 1,271,035 acres. The President's December proposals would add an additional 37 units and 9 million acres to the System.

I share the chairman's belief that we must make action on these December proposals a priority item of business for the Interior Committee. This priority is required not only because of the intrinsic importance of the subject matter but also because of the existing and prospective backlog of wilderness proposals pending before the committee. Over the next few years, we will begin to receive the President's proposals concerning the 274 national forest roadless areas, totaling 12.3 million acres, which the Secretary of Agriculture has chosen for wilderness study and various Senators' proposals on roadless areas which the Secretary rejected for study. Last year, Congress enacted the Eastern Wilderness Areas Act which calls for the study of 17 proposed national forest wilderness areas east of the 100th meridian. These areas have a total of approximately 125,000 acres. The Senate versions of that law, S. 316 and S. 3433 contained 23 more study areas totaling in addition approximately 248,000 acres.

On February 3, 1975, the chairman and I introduced S. 520 which calls for the study of those additional areas. Furthermore, should S. 507 the National Resource Lands Management Act, be enacted, we will eventually be addressing the question of wilderness on the public domain. Finally, the so-called (d)(2) lands legislation proposing to place some 80 million acres in Alaska in the national park, forest, and wildlife refuge systems will also provide us with numerous wilderness proposals and issues.

Mr. President, this is the prospective backlog. We are not, however, free of a present backlog of wilderness proposals. Of the 125 wilderness proposals submitted by the President prior to December—excluding the eastern wilderness proposals submitted after the Senate had initiated action on its own larger and more numerous proposals—the Congress has enacted 64, in most cases expanding the size of the areas in the process. Of the 22 pre-December national forest wilderness proposals, 7 remain to be acted upon; of the 65 pre-December national wildlife refuge wilderness proposals 20 remain to be acted upon; and of the 37 pre-December national park wilderness proposals, 33 remain to be acted upon.

Today, I am introducing, on behalf of the chairman (for himself and Senator FANNIN, by request), these 60 pre-December Presidential proposals upon which action has not been completed and the 37 December Presidential proposals. I ask unanimous consent that a short summary of each of these proposals be included in the RECORD at this point.

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

SUMMARY

NATIONAL FOREST WILDERNESS

Pre-December proposals

1. S. 1011, Aldo Leopold Wilderness, approximately 151,024 acres, Gila National Forest, New Mexico;

2. S. 1012, Blue Range Wilderness, approximately 177,200 acres, Apache National Forest, Arizona and New Mexico;

3. S. 1013, Eagles Nest Wilderness, approximately 87,755 acres, Arapaho and White River National Forests, Colorado;

4. S. 1014, Flat Tops Wilderness, approximately 142,000 acres, Routt and White River National Forests, Colorado;

5. S. 1015, Glacier Wilderness, approximately 182,500 acres, Shoshone National Forest, Wyoming;

6. S. 1016, High Uintas Wilderness, approximately 323,000 acres, Ashley and Wasatch National Forest Utah; and

7. S. 1017, Spanish Peaks Wilderness, approximately 65,000 acres, Gallatin National Forest, Montana.

December proposals

8. S. 1018, Beartooth Wilderness, approximately 542,437 acres, Custer and Gallatin National Forests, Montana;

9. S. 1019, Big Blue, Courthouse Mountain, Dolores Peak, Mount Sneffels and Mount Wilson, approximately 80,130 acres, San Juan and Uncompaghre National Forests, Colorado;

10. S. 1020, Cloud Peak Wilderness, approximately 150,490 acres, Bighorn National Forest, Wyoming;

11. S. 1021, Addition to Gila Wilderness, approximately 115,648 acres, Gila National Forest, New Mexico;

12. S. 1022, Monarch Wilderness, approximately 30,689 acres, Sequoia and Sierra National Forests, California;

13. S. 1023, Popo Agie Wilderness, approximately 81,820 acres, Shoshone National Forest, Wyoming;

14. S. 1024, Salmon River and Idaho Wildernesses, approximately 1,143,487 acres, Boise, Challis, Payette, Salmon, Bitterroot, and Nez-perce National Forests, Idaho;

15. S. 1025, Trinity Alps Wilderness, approximately 267,561 acres, Klamath, Shasta-Trinity, and Six Rivers National Forests, California.

NATIONAL WILDLIFE REFUGE WILDERNESS

Pre-December proposals

1. S. 1026, Chassahowitzka Wilderness, approximately 16,900 acres, Chassahowitzka National Wildlife Refuge, Florida;

2. S. 1027, Crab Orchard, approximately 4,050 acres, Crab Orchard National Wildlife Refuge, Illinois;

3. S. 1028, Crescent Lake Wilderness, approximately 24,502 acres, Crescent Lake National Wildlife Refuge, Nebraska;

4. S. 1029, Hart Mountain Wilderness, approximately 16,500 acres, Hart Mountain National Wildlife Refuge, Oregon;

5. S. 1030, Havasu Wilderness, approximately 2,510 acres, Havasu National Wildlife Refuge, Arizona and California;

6. S. 1031, Hawaiian Islands Wilderness, approximately 1,742 acres, Hawaiian Islands National Wildlife Refuge, Hawaii;

7. S. 1032, Imperial Wilderness, approximately 12,010 acres, Imperial National Wildlife Refuge, Arizona and California;

8. S. 1033, Malheur Wilderness, approximately 30,000 acres, Malheur National Wildlife Refuge, Oregon;

9. S. 1034, Mille Lacs and Rice Lake Wilderness, approximately 0.6 acres in Mille Lacs National Wildlife Refuge and approximately 1,407 acres in the Rice Lake National Wildlife Refuge, Minnesota;

10. S. 1035, Mingo Wilderness, approximately 1,705 acres, Mingo National Wildlife Refuge, Missouri;

11. S. 1036, Missisquoi Wilderness, approximately 620 acres, Missisquoi National Wildlife Refuge, Vermont;

12. S. 1037, Oregon Islands Wilderness, approximately 346 acres (108 additional acres "potential" wilderness), Oregon Island National Wildlife Refuge, Oregon;

13. S. 1038, Red Rock Lakes Wilderness,

approximately 32,350 acres, Red Rock Lakes National Wildlife Refuge, Montana;

14. S. 1039, San Juan Islands Wilderness, approximately 168 acres, San Juan National Wildlife Refuge and Matia Island National Wildlife Refuge, Washington;

15. S. 1040, Semidi Wilderness, approximately 256,000 acres, Semidi National Wildlife Refuge, Alaska;

16. S. 1041, Simeonof Wilderness, approximately 25,140 acres, Simeonof National Wildlife Refuge, Alaska;

17. S. 1042, Tamarac Wilderness, approximately 2,138 acres, Tamarac National Wildlife Refuge, Minnesota;

18. S. 1043, Unimak Wilderness, approximately 973,000 acres, Unimak National Wildlife Refuge, Alaska;

19. S. 1044, Valentine Wilderness, approximately 16,317 acres, Valentine National Wildlife Refuge, Nebraska;

20. S. 1045, White River Wilderness, approximately 975 acres, White River National Wildlife Refuge, Arkansas.

December proposals

21. S. 1046, Agassiz Wilderness, approximately 4,000 acres, Agassiz National Wildlife Refuge, Minnesota;

22. S. 1047, Aleutian Islands Wilderness, approximately 1,395,357 acres, Aleutian Islands National Wildlife Refuge, Alaska;

23. S. 1048, Anaho Island Wilderness, approximately 747.73 acres, Anaho Island National Wildlife Refuge, Nevada;

24. S. 1049, Assateague Island Wilderness, approximately 1,300 acres, Chincoteague National Wildlife Refuge and Assateague Island National Seashore, 440 acres, Maryland and Virginia (4700 additional acres "potential" wilderness);

25. S. 1050, Back Bay Wilderness, approximately 2,165 acres, Back Bay National Wildlife Refuge, Virginia;

26. S. 1051, Big Lake Wilderness, approximately 1,818 acres, Bib Lake National Wildlife Refuge, Arkansas;

27. S. 1052 Bombay Hook Wilderness, approximately 2,000 acres, Bombay Hook National Wildlife Refuge, Delaware;

28. S. 1053, Cedar Island Wilderness, approximately 180 acres, Cedar Island National Wildlife Refuge, North Carolina;

29. S. 1054, J. N. "Ding" Darling Wilderness, approximately 2,735 acres, J. N. "Ding" Darling National Wildlife Refuge, Florida;

30. S. 1055, Fort Niobrara Wilderness, approximately 4,635 acres, Fort Niobrara National Wildlife Refuge, Nebraska;

31. S. 1056, Kenai Wilderness, approximately 829,000 acres, Kenai National Moose Range, Alaska;

32. S. 1057, Lacassine Wilderness, approximately 2,854 acres, Lacassine National Wildlife Refuge, Louisiana;

33. S. 1058, Lake Woodruff Wilderness, approximately 1,106 acres, Lake Woodruff National Wildlife Refuge, Florida;

34. S. 1059, Mattamuskeet Wilderness, approximately 590 acres, Mattamuskeet National Wildlife Refuge, North Carolina;

35. S. 1060, Medicine Lake Wilderness, approximately 11,366 acres, Medicine Lake National Wildlife Refuge, Montana;

36. S. 1061, Noxubee Wilderness, approximately 1,200 acres, Noxubee National Wildlife Refuge, Mississippi;

37. S. 1062, Parker River Wilderness, approximately 3,110 acres, Parker River National Wildlife Refuge, Massachusetts;

38. S. 1063, Pea Island Wilderness, approximately 180 acres, Pea Island National Wildlife Refuge, North Carolina;

39. S. 1064, Santee Wilderness, approximately 163 acres, Santee National Wildlife Refuge, South Carolina;

40. S. 1065, Sheldon Wilderness, approximately 20,100 acres, Sheldon National Antelope Refuge, Nevada;

41. S. 1066, Swanquarter Wilderness, approximately 9,000 acres, Swanquarter National Wildlife Refuge, North Carolina;

42. S. 1067, UL Bend Wilderness, approximately 19,693 acres, UL Bend National Wildlife Refuge, Montana;

NATIONAL PARK WILDERNESS SYSTEM

Pre-December proposals

1. S. 1068, Badlands Wilderness, approximately. 58,924 acres, Badlands National Monument, South Dakota;

2. S. 1069, Bandelier Wilderness, approximately 21,110 acres, Bandelier National Monument, New Mexico;

3. S. 1070, Big Bend Wilderness, approximately 533,900 acres, Big Bend National Park, Texas;

4. S. 1071, Black Canyon of the Gunnison Wilderness, approximately 8,780 acres, Black Canyon of the Gunnison National Monument, Colorado;

5. S. 1072, Bryce Canyon Wilderness, approximately 16,303 acres, Bryce Canyon National Park, Utah;

6. S. 1073, Carlsbad Caverns Wilderness, approximately 30,210 acres, Carlsbad Caverns National Park, New Mexico;

7. S. 1074, Cedar Breaks Wilderness, approximately 4,370 acres, Cedar Breaks National Monument, Utah;

8. S. 1075, Chiricahua Wilderness, approximately 6,925 acres, Chiricahua National Monument, Arizona;

9. S. 1076, Colorado Wilderness, approximately, 7,700 acres, Colorado National Monument, Colorado;

10. S. 1077, Crater Lake Wilderness, approximately 122,400 acres, Crater Lake National Park, Oregon;

11. S. 1078, Cumberland Gap Wilderness, approximately 6,375 acres Cumberland Gap National Historical Park, Tennessee, Virginia and Kentucky;

12. S. 1079, Glacier Wilderness, approximately 927,550 acres, Glacier National Park, Montana;

13. S. 1080, Grand Canyon Complex Wilderness, approximately 512,870 acres, Grand Canyon National Park, Arizona;

14. S. 1081, Grand Teton Wilderness, approximately 115,807 acres, Grand Teton National Park, Wyoming;

15. S. 1082, Great Sand Dunes Wilderness, approximately 32,930 Acres, Great Sand Dunes National Monument, Colorado;

16. S. 1083, Guadalupe Mountains Wilderness, approximately 46,850 acre, Guadalupe Mountains National Park, Texas;

17. S. 1084, Haleakala Wilderness, approximately 19,270 acres, Haleakala National Park. Hawaii;

18. S. 1085, Isle Royale Wilderness, approximately 120,588 acres, Isle Royale National Park, Michigan;

19. S. 1086, Joshua Tree Wilderness, approximately 372,700 acres, Joshua Tree National Monument, California;

20. S. 1087, Katmai Wilderness, approximately 2,603,547 acres, Katmai National Monument, Alaska;

21. S. 1088, Kings Canyon-Sequoia, approximately 750,690 acres, Kings Canyon Sequoia National Parks, California;

22. S. 1089, Mesa Verde Wilderness, approximately 8,100 acres, Mesa Verde National Park, Colorado;

23. S. 1090, North Cascades Complex Wilderness, approximately 515,880 acres, North Cascades National Park and Ross and Lake Chelan National Recreation Areas, Washington;

24. S. 1091, Olympic Wilderness, approximately 862,139 acres, Olympic National Park, Washington;

25. S. 1092, Pinnacles Wilderness, approximately 10,980 acres, Pinnacles National Monument, California;

26. S. 1093, Point Reyes Wilderness, approximately 10,600 acres, Point Reyes National Seashore, California;

27. S. 1094, Rocky Mountain Wilderness, approximately 239,835 acres (479 additional acres "potential" wilderness), Rocky Mountain National Park, Colorado;

28. S. 1095, Saguaro Wilderness, approximately 42,400 acres, Saguaro National Monument, Arizona;

29. S. 1096, Shenandoah Wilderness, approximately 79,699 acres (560 addition acres "potential" wilderness), Shenandoah National Park, Virginia;

30. S. 1097, Theodore Roosevelt Wilderness, approximately 28,335 acres, Theodore Roosevelt National Memorial Park, North Dakota;

31. S. 1098, Yellowstone Wilderness, approximately 2,016,181 acres (6,040 additional acres "potential" wilderness), Yellowstone National Park, Montana, Idaho and Wy.);

32. S. 1099, Yosemite Wilderness, approximately 646,700 acres, Yosemite National Park, California;

33. S. 1100, Zion Wilderness, approximately 120,620 acres (9,040 additional acres "potential" wilderness) Zion National Park, Utah:

December proposals

34. S. 1101, Death Valley Wilderness, approximately 1,908,000 acres, (6,900 additional acres "potential" wilderness) Death Valley National Monument, California and Nevada;

35. S. 1102, Dinosaur Wilderness, approximately 165,341 acres, (10,274 additional acres "potential" wilderness) Dinosaur National Monument, Utah and Colorado;

36. S. 1103, Everglades Wilderness, approximately 1,296,500 acres, (81,900 additional acres "potential" wilderness) Everglades National Park, Florida;

37. S. 1104, Great Smoky Mountains Wilderness, approximately 390,500 acres, (400 additional acres "potential" wilderness) Great Smoky Mountains National Park, North Carolina and Tennessee;

38. S. 1105, Hawaii Volcanoes Wilderness, approximately 123,100 acres, Hawaii Volcanoes National Park, Hawaii;

39. S. 1106, Mount Rainier Wilderness, approximately 210,700 acres, (165 additional acres "potential" wilderness) Mount Rainier National Park, Washington;

40. S. 1107, Organ Pipe Cactus Wilderness, approximately 299,600 acres, (10,100 additional acres "potential" wilderness), Organ Pipe Cactus National Monument, Arizona.

For various reasons, the Administration has asked for deferral of Congressional action on 16 proposed wilderness areas; 12 in the National Wildlife Refuge System (Arctic, Alaska; Cabeza Prieta, Arizona; Charles M. Russell, Montana; Charles Sheldon National Antelope Range, Nevada and Oregon; Clarence Rhode, Alaska; Desert, Nevada; Hazen Bay, Alaska; Izembek, Alaska; Kodiak, Alaska; Kofa, Arizona; Nunivak, Alaska; and Upper Mississippi, Iowa, Minnesota, Illinois, and Wisconsin) and 4 in the National Park System (Arches, Utah; Capitol Reef, Utah; Glacier Bay, Alaska; and Lake Mead, Nevada).

Mr. JACKSON. Mr. President, today, the senior Senator from Arizona and I are introducing, by request, a number of wilderness proposals submitted by the President prior to this year.

It is anticipated that over the next few years, we will begin to receive an increasingly heavy influx of wilderness proposals including recommendations on the 274 national forest roadless areas which the Secretary of Agriculture has chosen for wilderness study; additions to the Eastern Wilderness Areas Act; and the various wilderness proposals and issues that will undoubtedly arise in conjunction with the National Resource Lands Management Act and the so-called (d)(2) lands legislation in Alaska.

It is because of this prospective backlog, Mr. President, that I believe the Sen-

ate must move expeditiously to consider these 97 Presidential proposals which Senator FANNIN and myself are introducing today by request.

By Mr. PROXMIRE (for himself, Mr. RANDOLPH, Mr. BIDEN, Mr. MAGNUSON, Mr. MONDALE, Mr. HUMPHREY, Mr. MCGOVERN, Mr. ABOUREZK, Mr. TUNNEY, Mr. HATHAWAY, Mr. HOLLINGS, Mr. MONTOYA, and Mr. HARTKE):

S. 1108. A bill to establish an emergency mortgage credit program to reduce unemployment and aid middle-income home buyers. Referred to the Committee on Banking, Housing and Urban Affairs.

EMERGENCY HOUSING AND ECONOMIC RECOVERY ACT OF 1975

Mr. PROXMIRE. Mr. President, today I am introducing the Emergency Housing and Economic Recovery Act, which is cosponsored by 12 of my colleagues. This bill should be a top priority for the Congress. It would promote economic recovery by putting about 2 million American workers back on the job building homes.

There is no more efficient way to spend Federal tax dollars to create jobs—and no more urgent job to be done. Housing starts are running below a million units a year—about one-third the goal specified in the 1968 Housing Act. Millions of American families want to buy homes, but cannot do so because of the high interest rates.

This legislation would provide up to a million mortgage loans a year at a subsidized rate of 6 percent. The subsidy would amount to only about $300 per home per year, but it would create about 2 million jobs. In other words, we would create jobs in the private sector at a Federal cost of only $150 per job, which is incomparably more efficient than spending $16,000 to create a job building a highway that we probably do not need, or even $8,000 or $9,000 to create a conventional public service job.

Under my bill, private lenders—banks or savings and loan associations—would make the 6-percent loan, which would then be purchased by HUD. A revolving loan fund would be created through Treasury borrowing to finance HUD's purchases. The bank would receive a fee for servicing the loan, and after 3 years the subsidy would be gradually phased out.

The other key provision of the bill is that it could forever end the boom-and-bust cycles in homebuilding as it contains an automatic trigger. Whenever tight money caused homebuilding to fall below 1.7 million units and unemployment rose above 6 percent, this program would be automatically activated to revive housing construction and save jobs.

Our committee will be holding hearings beginning March 17. I am pleased to note that the Housing Subcommittee of the House Banking Committee yesterday reported similar legislation. One essential difference is that our bill establishes a permanent standby program, which in my view is necessary to rescue homebuilding from the tyranny of interest rate fluctuations in years to come. Another difference is that our bill uses Treasury borrowing, rather than subsidizing the market rate; and as a result we get more mileage for fewer tax dollars.

But the proposals are similar in many respects, and I am confident that if we act expeditiously we can get an emergency housing and economic recovery program enacted this year.

By Mr. BURDICK (for himself, Mr. PHILIP A. HART, Mr. HOLLINGS, Mr. HRUSKA, Mr. KENNEDY, Mr. PERCY, Mr. RANDOLPH, and Mr. MUSKIE):

S. 1109. A bill to amend title 18, United States Code, relating to parole, and for other purposes. Referred to the Committee on the Judiciary.

PAROLE COMMISSION ACT

Mr. BURDICK. Mr. President, I rise to introduce legislation to reform the system of parole for Federal prisoners. This legislation would abolish the present U.S. Board of Parole, and establish in its place a Parole Commission. The amount of time the Subcommittee on National Penitentiaries has spent in processing this legislation reflects the complexity of the questions which are raised by parole, which is the decision to release or retain a prisoner in a penal institutions

Virtually all persons sent to prison are one day released, some by a discretionary process such as parole, others at the expiration of their sentence. It would be theoretically possible to reduce the risk of crime by preventing convicted offenders from returning to society. But such a policy would give rise to such questions as to what constitutes just punishment for offenses which do not threaten the physical safety of other persons, and even more urgent questions as to what such a system would cost in taxpayers' dollars. Even a modest increase in the average amount of time served in jail by every prisoner would add up to billions of dollars in costs by the end of this decade. These astronomical costs would strain our already strained Federal budget resources.

The decisionmaking process by which a society decides which offenders are to be released, and when they are to be released is, therefore, of great importance. It is so important that we must develop better ways of selecting those individuals who can safely be released to the community, and those who must continue to be detained.

I do not delude myself into believing that the legislation being introduced today represents a perfect solution. I can only say that we strive to improve the system with this legislation. I believe that this bill, which is the culmination of 3½ years of hearings, study, and research, represents a substantial improvement. It is as far as we can reasonably go today.

The parole legislation being proposed today is a balanced system which continues the range of sentencing alternatives which Congress has previously enacted.

It gives the paroling authority neither too little discretion, nor too much, because either extreme involves dangers to the orderly administration of justice.

Too much discretion enables a parole agency to grant an early release to a dangerous offender, or to arbitrarily hold an inmate who represents no risk to society far beyond the period of just punishment for the offense. Too little discretion fails to take into account aggravating or mitigating circumstances of an offense, as well as the personal and family considerations which are the strongest predictors of whether or not an individual will return to a life of crime, or will be able to live a law-abiding lifestyle following his release from incarceration.

The most crushing problem facing the U.S. Board of Parole today is the caseload of decisions which must be made.

There are more than 22,000 prisoners in our Federal penal institutions, as well as several thousand more who are held under contract in State, county, and municipal institutions. The majority of these prisoners today are eligible for release on parole, and the paroling agency is obligated to review from time to time whether or not the individual should be released, whether a decision should be deferred to a later date, or whether the individual should serve out the remainder of a sentence.

In addition, today, there are 14,000 individuals on the street who are under parole supervision, and the board must decide the conditions of their supervision which make partial deprivations of liberty, and they must decide which offenders are to be returned to prison for having violated either the law, or the conditions of their release.

The paroling authority is responsible for more than 26,000 decisions annually, each involving somewhat unique circumstances, and it is the quality of this decisionmaking upon which our safety, to a significant degree, rests.

The need for change in the paroling system, which is dictated by the volume of cases and their increasing complexity, is based upon the fact that the present eight Parole Board members cannot make all decisions by themselves. The legislation which I introduce today provides two specific steps to improve decisionmaking within existing criteria for parole.

First, the Nation would be divided into five regions for purposes of parole, so that each regional parole commissioner could become more familiar with a smaller number of individual cases, fewer prison institutions, and the resources for release in a smaller number of communities. These Presidential appointees would have new procedures to assist them in their decisionmaking. First, the statute would recognize the role of hearing examiners, who would hear prisoners and parolees as the major step in the factfinding process. Although most hearing examiners in other Federal agencies work individually, parole examiners would work in pairs. The findings which are made by the examiners, after considering each case, would be subject to review by the parole commission members. The first step of review is with the regional parole commissioner, and following that with a panel of three

commissioners who constitute a National Appeals Board. In addition, the full commission of nine members, which meets periodically, would retain jurisdiction to reconsider and change any decision which has been made.

To meet this crushing caseload, it is also necessary to have one commissioner, who would be the chairman, free of most decisionmaking on individual cases, but with the necessary power to allocate resources so that the decisionmaking machinery keeps moving at a pace necessary to keep up with the workload.

As a means of improving parole decisionmaking, and of giving parole decisions a degree of consistency not heretofore reached, the legislation also recognizes a system that has been evolved by the parole board, with the cooperation of the Subcommittee on National Penitentiaries. This system for guidelines provides reasonable ranges of time in prison based upon the seriousness of the offense, the circumstances of the individual, and the probability of his becoming a recidivist, or repeat offender. These guidelines structure the use of discretion in a fashion that results in better decisions.

Those with an interest in parole are concerned both with substantive fairness, and also the appearance of fairness. We are concerned that the parole agency be as independent as necessary, and that the parole commissioners, whose appointments must be confirmed by the Senate, represent the public interest in their decisions. All of us are affected by parole decisions, and the appearance of fairness to all, both inside and outside the prison fence, fosters respect for our American Government.

The legislation which I introduce today makes no substantive changes in criteria for release on parole, or in other Federal sentencing statutes. A major change in the Federal sentencing procedures is now pending before the Judiciary Committee in the legislation to revise the entire Federal criminal code. In its procedural and administrative provisions, this legislation is in most ways identical to the code revision bill. It must, however, be considered separately, primarily because the effective date of any code revision legislation is some time in the future. The problems that face our present parole board, which are reflected in national concern about crime, are too immediate to leave to some date in the future.

In order to provide for prompt consideration of this legislation, I ask unanimous consent that the bill be printed at this point in the RECORD, together with the section-by-section analysis, a brief summary of the major provisions of the bill, and a comparison of this legislation with present law.

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

S. 1109

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Parole Commission Act".

SEC. 2. Chapter 311 of title 18, United States Code, is amended to read as follows:

"Chapter 311—PAROLE

"Sec.
"4201. Definitions.
"4202. Parole Commission created.
"4203. Powers and duties of the Commission.
"4204. Powers and duties of the Chairman.
"4205. Persons eligible.
"4206. Release on parole.
"4207. Conditions of parole.
"4208. Parole interview procedures.
"4209. Aliens.
"4210. Retaking parole violator under warrant.
"4211. Officer executing warrant to retake parole violator.
"4212. Parole modification and revocation.
"4213. Reconsideration and appeal.
"4214. Original jurisdiction cases.
"4215. Applicability of Administrative Procedure Act.
"4216. Young adult offenders.
"4217. Warrants to retake Canal Zone parole violators.

"§ 4201. Definitions

"As used in this chapter—

"(1) 'Commission' means the United States Parole Commission;

"(2) 'Commissioner' means any member of the United States Parole Commission;

"(3) 'Director' means the Director of the Bureau of Prisons;

"(4) 'Eligible person' means any Federal prisoner who is eligible for parole pursuant to this title or any other law including any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole;

"(5) 'Parolee' means any eligible person who has been released on parole or deemed as if released on parole under section 4164 or section 4205(d) of this title; and

"(6) 'Rules and regulations' means rules and regulations promulgated by the Commission pursuant to section 4203(b)(1) of this title and section 553 of title 5, United States Code."

"§ 4202. Parole Commission created

There is hereby established as an independent agency of the Department of Justice a United States Parole Commission which shall be comprised of nine members appointed by the President, by and with the advice and consent of the Senate. At no time shall more than six members be of the same political party. The Attorney General shall designate from among the commissioners one to serve as Chairman. The term of office of a commissioner shall be six years, except that the term of a person appointed as a commissioner to fill a vacancy shall expire years from the date upon which such person was appointed and qualified. Upon the expiration of a term of office of a commissioner, the commissioner shall continue to act until a successor has been appointed and qualified. Commissioners shall be compensated at the highest rate now or hereafter prescribed for grade 17 of the General Schedule pay rates (5 U.S.C. 5332).

"§ 4203. Powers and Duties of the Commission

"(a) The Commission, by majority vote, shall have the power to—

"(1) grant or deny any application or recommendation to parole any eligible person;

"(2) impose reasonable conditions on any order granting parole;

"(3) modify or revoke any order paroling any eligible person; and

"(4) establish the maximum length of time which any person whose parole has been revoked shall be required to serve, but in no case shall such time, together with such time as he previously served in connection with the offense for which he was paroled, be longer than the maximum term for which he was sentenced in connection with such offense; and where such revocation is based upon a subsequent conviction of the parolee of any Federal, State or local crime committed subsequent to his release on parole, determine whether all or any part of the unexpired term being served at time of such parole shall run concurrently or consecutively with the sentence imposed for such subsequent offense.

"(b) The Commission shall meet at least quarterly, and by majority vote shall—

"(1) promulgate rules and regulations establishing guidelines for the powers enumerated in subsection (a) of this section and such other rules and regulations as are necessary to carry out a national parole policy and the purposes of this chapter;

"(2) create such regions as are necessary to carry out the provisions of this chapter, but in no event less than five; and

"(3) ratify, revise, or deny any request for regular, supplemental, or deficiency appropriations, prior to the submission of the requests to the Office of Management and Budget by the Chairman, which requests shall be separate from those of any other agency of the Department of Justice.

"A record of the final vote of each commissioner on any action pursant to this subsection shall be maintained and made available for public inspection.

"(c) The Commission, by majority vote, and pursuant to rules and regulations—

"(1) may delegate to any commissioner or commissioners any powers enumerated in subsection (a) of this section;

"(2) may delegate to any panel of hearing examiners, any powers necessary to conduct hearings and interviews, take sworn testimony, obtain and make a record of pertinent information, make findings of probable cause, issue subpoenas for witnesses or evidence in parole revocation proceedings, and recommend disposition of any matters enumerated in subsection (a) of this section, except that any such findings or recommendations of any panel of hearing examiners shall be based upon the concurrence of not less than two members of such a panel; and

"(3) may review, or may delegate to the National Appeals Board the power to review, any decision made pursuant to subparagraph (1) of this subsection except that any such decision so reviewed must be reaffirmed, modified or reversed within thirty days of the date the decision is rendered, and, in case of such review, the individual to whom the decision applies shall be informed in writing of the Commission's actions with respect thereto and the reasons for such actions.

"(d) With respect to any decision made pursuant to the powers enumerated in subsection (a) of this section, the Commission upon request of the Attorney General filed not later than thirty days following any such decision, shall review such decision and shall by majority vote reaffirm, modify or reverse the decision within thirty days of the receipt of the Attorney General's request, and shall inform the Attorney General and the individual to whom the decision applies in writing of its decision and the reasons therefore.

"(e) Except to the extent otherwise herein provided, in every decision or action made by the Commission pursuant to the powers enumerated in this section, each commissioner shall have equal responsibility and authority, shall have full access to all information relating to the performance of such duties and responsibilities, and shall have one vote.

"§ 4204. Powers and duties of the Chairman

"(a) The Chairman shall—

"(1) convene and preside at meetings of the Commission pursuant to section 4203 of this title and such additional meetings of

the Commission as the Chairman may call or as may be requested in writing by at least three commissioners;

"(2) appoint, fix the compensation of, assign, and supervise all personnel employed by the Commission except that:

"(A) the appointment of any hearing examiner shall be subject to approval of the Commission within the first year of such hearing examiner's employment; and

"(B) regional commissioners shall appoint and supervise such personnel employed regularly and full time in their respective regions as are compensated at a rate up to and including grade 9 of the General Schedule pay rates (5 U.S.C. 5332);

"(3) assign duties among officers and employees of the Commission, including commissioners, so as to balance the workload and provide for orderly administration;

"(4) designate three commissioners to serve on the National Appeals Board of whom one shall be so designated to serve as Vice Chairman, and designate, for each such region established pursuant to section 4203 (b)(2) of this title, one commissioner to serve as regional commissioner in each such region; except that in each such designation the Chairman shall consider years of service, preference and fitness, and no such designation shall take effect unless concurred in by the Attorney General;

"(5) direct the preparation of request for appropriations and the use and expenditure of funds;

"(6) make reports on the position and policies of the Commission to the Attorney General, the Administrative Office of the United States Courts, and the Congress;

"(7) provide for research and training, including, but not limited to—

"(A) collecting data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process and parolees:

"(B) disseminating pertinent data and studies, to individuals, agencies, and organizations concerned with the parole process and parolees;

"(C) publishing data concerning the parole process and parolees; and

"(D) conducting seminars, workshops, and training programs on methods of parole for parole personnel and other persons connected with the parole process;

"(8) accept voluntary and uncompensated services;

"(9) utilize, on a cost-reimbursable basis, the services of officers or employees of the executive or judicial branches of Federal or State government, for the purpose of carrying out the provisions of section 10 of this title; and

"(10) perform such administrative and other duties and responsibilities as may be necessary to carry out the provisions of this chapter.

"(b) In carrying out his functions under this section, the Chairman shall be governed by the national parole policies promulgated by the Commission.

"§ 4205. Persons eligible

"(a) An eligible person, other than a juvenile delinquent or committed youth offender, wherever confined and serving a definite term or terms of more than one year, may be released on parole after serving one-third of such term or terms or after serving fifteen years of a life sentence or of a sentence in excess of forty-five years, except to the extent otherwise provided by law.

"(b) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interest of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the person shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the person may be released on parole at such time as the Commission may determine.

"(c) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may, for purposes of study, commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law. The results of such study, together with any recommendations which the Director believes would be helpful in determining the disposition of the case, shall be furnished to the court within sixty days, or such additional period, but not to exceed sixty days, as the court may grant. After receiving such reports and recommendations, the court may in its discretion—

"(1) place the person on probation as authorized by section 3651 of this title; or

"(2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from date of original commitment under this section.

"(d) Any person sentenced to imprisonment for a term or terms of one year or less, who after one hundred and eighty days has not served his term or terms less good time deductions, shall be released as if on parole, notwithstanding the provisions of section 4164 of this title, unless the court which imposed sentence, shall, at the time of sentencing, find that such release is not in accord with the ends of justice and the best interest of the public and sets another time for such release. This subsection shall not prevent delivery of any person released on parole to the authorities of any state otherwise entitled to his custody.

"(e) At any time upon motion of the Bureau of Prisons and upon notice to the attorney for the government, the court may reduce any minimum term to the time the defendant has served.

"(f) Except to the extent otherwise herein specifically provided, nothing in this section shall be construed to affect or otherwise alter, amend, modify, or repeal any provision of law relating to eligibility for release on parole, or any other provision of law which empowers the court to suspend the imposition or execution of any sentence, to place any person on probation, or to correct, reduce, or otherwise modify any sentence.

"§ 4206. Release on parole

"(a) If it appears from a report or recommendation by the proper institution officers or upon application by a person eligible for release on parole, that such person has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society, the Commission may authorize release of such person on parole.

"(b) Upon commitment of any person sentenced to imprisonment under any law for a definite term or terms of more than one year, the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the person and shall furnish to the Commission a summary report, together with any recommendations which in the Director's opinion would be helpful in determining the suitability of the prisoner for parole. Such report may include, but shall not be limited to, data regarding the eligible person's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Commission may make such other investigation as it may deem necessary. Such report and recommendations shall be made not less than ninety days prior to the date upon which such person becomes eligible for parole, except where such person may become eligible for parole less than one hundred and twenty days following commitment the Director, in the absence of exceptional circumstances, shall have not less than thirty days, but not more than sixty days, to make such report and recommendations.

"(c) Upon request of the Commission, it shall be the duty of the various probation officers and government bureaus and agencies to furnish the Commission information available to such officer, bureau or agency, concerning any eligible person or parolee and whenever not incompatible with the public interest, their views and recommendation with respect to any matter within the jurisdiction of the Commission.

"§ 4207. Conditions of parole

"(a) A parolee shall remain in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which such parolee was sentenced.

"(b) In every case, the Commission shall impose as a condition of parole that the parolee not commit another Federal, State or local crime during the term of his parole. In imposing any other condition or conditions of parole the Commission shall consider the following:

"(1) there should be a reasonable relationship between the conditions imposed and the person's conduct and present situation;

"(2) the conditions may provide for such deprivations of liberty as are reasonably necessary for the protection of the public welfare; and

"(3) the conditions should be sufficiently specific to serve as a guide to supervision and conduct.

"(c) An order of parole or release as if on parole may as a condition of such order require—

"(1) a parolee to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of such parole or release. A person residing in a community treatment center may be required to pay such costs incident to residence as the Attorney General deems appropriate;

"(2) a parolee, who is an addict within the meaning of section 4251(a) of this title, or a drug dependent person within the meaning of section 2(q) of the Public Health Service Act, as amended (42 U.S.C. 201), to participate in the community supervision programs authorized by section 4255 of this title for all or part of the period of parole.

"(d) The Commission may discharge any parolee from parole supervision or release him from one or more conditions of parole at any time after release on parole. In addition, the Commission shall—

"(1) review, at least annually, the status of any parolee who has had two years of continuous parole supervision, to determine the need for continued parole supervision; and

"(2) discharge from parole supervision any parolee who has had five years of continuous parole supervision unless it is determined, after a hearing, that he should not be so discharged because there is a likelihood that he will either engage in conduct violating any criminal law or would jeopardize the public welfare. In any case in which parole supervision is continued pursuant to this

subparagraph, the parolee shall receive a hearing at least every two years for the purpose of determining need for further parole supervision. Any hearing held pursuant to this subparagraph shall be in accordance with the procedures set out in section 4210 (b) (2) of this title at a time and location determined by the Commission.

"§ 4208. Parole interview procedures

"(a) Any person eligible for parole shall promptly be given a parole interview and such additional parole interviews as the Commission deems necessary, but in no case shall there be less than one additional parole interview every two years, except that an eligible person may waive any interview.

"(b) Any interview of an eligible person by the Commission in connection with the consideration of a parole application or recommendation shall be conducted in accordance with the following procedure—

"(1) an eligible person shall be given written notice of the time, place, and purpose of such interview; and

"(2) an eligible person shall be allowed to select a representative to aid him in such interview. The representative may be any person who qualifies under rules and regulations promulgated by the Commission. Such rules shall not exclude attorneys as a class.

"(c) Following notification that a parole interview is pending, an eligible person shall have reasonable access to progress reports and such other materials as are prepared by or for the use of the Commission in making any determination, except that the following materials may be excluded from inspection—

"(1) diagnostic opinions which, if made known to the eligible person, would lead to a serious disruption of his institutional program of rehabilitation;

"(2) any document which contains information which was obtained on the basis of a pledge of confidentiality made by or in behalf of a public official in the performance of his official duties if such official has substantial reason to believe that such information would place any person in jeopardy of life or limb;

"(3) any other information that would place any person in jeopardy of life or limb, or if any document is deemed by either the Commission, the Bureau of Prisons, or any other agency to fall within the exclusionary provisions of subparagraphs 1, 2, or 3 of this subsection, then it shall become the duty of the Commission, the Buerau, or such other agency, as the case may be, to summarize the basic contents of the material withheld, bearing in mind the need for confidentiality or the impact on the inmate, or both, and furnish such summary to the inmate.

"(d) A full and complete record of every interview shall be retained by the Commission. For good cause shown, the Commission may make a transcript of such record available to any eligible person.

"(e) Not later than fifteen working days after the date of the interview, the Commission shall notify the eligible person in writing of its determination. In any case, in which parole release is denied or parole conditions are imposed other than those commonly imposed, the Commission shall include the reasons for such determination, and, if possible, a personal conference to explain such reasons shall be held between the eligible person and the Commissioners or examiners conducting the interview.

"§ 4209. Aliens

"When an alien prisoner subject to deportation becomes eligible for parole, the Commission may authorize the release of such person on condition that such person be deported and remain outside the United States.

"Such person, when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

"§ 4210. Retaking parole violator under warrant

"(a) A warrant for the taking of any person who is alleged to have violated his parole may be issued by the Commission within the maximum term or terms for which such person was sentenced.

"(b) (1) Except as provided in subsection (c), any alleged parole violator retaken upon a warrant under this section shall be accorded the opportunity to have—

"(A) a preliminary hearing at or reasonably near the place of the alleged parole violation or arrest, without unnecessary delay, to determine if there is probable cause to believe that he has violated a condition of his parole; and upon a finding of probable cause a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for the decision, a copy of which shall be given to the parolee within a reasonable period of time;

"(B) upon a finding of probable cause under subparagraph (1) (A), a revocation hearing at or reasonably near the place of the alleged parole violation or arrest within sixty days of such determination of probable cause except that a revocation hearing may be held at the same time and place set for the preliminary hearing.

"(2) Hearings held pursuant to subparagraph (1) of this subsection shall be conducted by the Commission in accordance with the following procedures:

"(A) notice to the parolee of the conditions of parole alleged to have been violated, and the time, place, and purposes of the scheduled hearing;

"(B) opportunity for the parolee to appear and testify, and present witnesses and documentary evidence on his own behalf;

"(C) opportunity for the parolee to be represented by retained counsel, or if he is unable to retain counsel, counsel may be provided pursuant to section 3006A of this title, and

"(D) opportunity for the parolee to be apprised of the evidence against him, and, if he so requests, to confront and cross-examine adverse witnesses, unless the Commission specifically finds good cause for not allowing confrontation. The Commission may subpena witnesses and evidence, and pay witness fees as established for the courts of the United States. If a person refuses to obey such a subpena, the Commission may petition a court of the United States for the judicial district in which such parole proceeding is being conducted, or in which such person may be found, to request such person to attend, testify, and produce evidence. The court may issue an order requiring such person to appear before the Commission, when the court finds such information, thing, or testimony directly related to a matter with respect to which the Commission is empowered to make a determination under this section. Failure to obey such an order is punishable by such court as a contempt. All process in such a case may be served in the judicial district in which such a parole proceeding is being conducted, in which such person resides or carries on business, or in which such person may be found.

"(c) (1) Any parolee convicted of any Federal, State or local crime committed subsequent to his release on parole and sentenced for such crime to a term or terms of imprisonment who has a detainer for a warrant issued under this section placed against him shall receive an institutional revocation hearing within one hundred and eighty days of such placement, or promptly upon release from such commitment whichever comes first.

"(2) Any alleged parole violator, who waives his right to any hearing under subsection (b), shall receive an institutional revocation hearing within ninety days of the date of retaking.

"(3) Hearings held pursuant to subparagraphs (1) and (2) of this subsection shall be conducted by the Commission. The alleged parole violator shall have notice of such hearing, be allowed to appear and testify on his own behalf, and to select a representative, in accordance with the procedures of section 4208(b) (2) of this title, to aid him in such appearance.

"(d) Following any revocation hearing held pursuant to this section, the Commission may dismiss the warrant or take any action provided under section 4212 of this title: *Provided, however,* That in any case in which parole is modified or revoked, a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for such action, a copy of which shall be given to the parolee.

"(e) The Commission, pursuant to rules and regulations, may delegate authority to conduct hearings held pursuant to this section to any officer or employee of the executive or judicial branches of Federal or State Government.

"§ 4211. Officer executing warrant to retake parole violator

"Any officer of any Federal penal or correctional institutions, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant for the retaking of a parole violator is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the Attorney General.

"§ 4212. Parole modification and revocation

"When a warrant has been executed pursuant to section 4210 of this title, and such warrant is not dismissed, the decision of the Commission may include—

"(1) a reprimand;

"(2) an alteration of parole conditions;

"(3) referral to a residential community treatment center for all or part of the remainder of the original sentence;

"(4) formal revocation of parole or release as if on parole pursuant to this title; or

"(5) any other action deemed necessary for successful rehabilitation of the violator, or which promotes the ends of justice.

The Commission may take any action pursuant to this section it deems appropriate taking into consideration whether or not the parolee has been convicted of any Federal, State, or local crime subsequent to his release on parole or whether such action is warranted by the frequency or seriousness of the parolee's violation of any other condition or conditions of his parole.

"§ 4213. Reconsideration and appeal

"(a) Whenever parole release is denied under section 4206 of this title, parole conditions are imposed other than those commonly imposed under section 4207 of this title, parole discharge is denied under section 4207(d) (2) of this title, or parole is modified or revoked under section 4212 of this title, the individual to whom any such decision applies may have the decision reconsidered by submitting a written application to the regional commissioner not later than forty-five days following the date on which the decision is rendered. The regional commissioner, upon receipt of such application, must act pursuant to rules and regulations within sixty days to reaffirm, modify or reverse his original decision and shall inform the applicant in writing of the decision and the reasons therefore.

"(b) Any decision made pursuant to subsection (a) of this section which is adverse to the applicant for reconsideration may be appealed by such individual to the National Appeals Board by submitting a written notice of appeal not later than forty-five days following the date on which such decision is rendered. The National Appeals Board, upon receipt of the appellant's papers, must act pursuant to rules and regulations with-

in sixty days to reaffirm, modify or reverse the decision and shall inform the appellant in writing of the decision and the reasons therefore.

"§ 4214. Original Jurisdiction Cases

"The regional commissioner, pursuant to rules and regulations, may designate certain cases as original jurisdiction cases, and shall forward any case so designated to the National Appeals Board with his vote and the reasons therefore. Decisions shall be based upon the concurrence of three votes with the appropriate regional director and the members of the National Appeals Board each having one vote. In case of a tie vote, and pursuant to rules and regulations, an additional vote shall be cast by one of the other regional commissioners. The individual to whom such decision applies, or any commissioner who voted in the decision, may appeal such decision directly to the Commission by submitting a written notice of appeal not later than 45 days following the date on which such decision is rendered. The Commission, by majority vote, shall decide the appeal at its next regularly scheduled meeting and shall inform the individual to which such decision applies of the decision and the reasons therefore.

"§ 4215. Applicability of the Administrative Procedure Act

"Except as otherwise provided in this chapter, the provisions of sections 551 through 559 and sections 701 through 706 of title 5, United States Code, shall not apply to the making of any determination, decision, or order made pursuant to this chapter or any other law."

SEC. 3. Sections 4209 and 4210 of title 18, United States Code, are renumbered to appear as sections 4216 and 4217 of such title.

SEC. 4. Section 5002 of title 18, United States Code, is repealed.

SEC. 5. Section 5005 of title 18, United States Code, is amended to read as follows:

"§ 5005. Youth correction decisions

"The Commission and, where appropriate, its authorized representative as provided in sections 4203(c) and 4210(e) of this title, may grant or deny any application or recommendation for conditional release, or modify or revoke any order of conditional release, of any person sentenced pursuant to this chapter, and perform such other duties and responsibilities as may be required by law. Except as otherwise provided, decisions of the Commission shall be made in accordance with the procedures set out in chapter 311 of this title."

SEC. 6. Section 5006 of title 18, United States Code, is amended to read as follows:

"§ 5006. Definitions

"As used in this chapter—

"(a) 'Commission' means the United States Parole Commission.

"(b) 'Bureau' means the Bureau of Prisons;

"(c) 'Director' means the Director of the Bureau of Prisons;

"(d) 'Youth offender' means a person under the age of twenty-two years at the time of conviction;

"(e) 'Committed youth offender' is one commited for treatment hereunder to the custody of the Attorney General pursuant to sections 5010(b) and 5010(c) of this chapter;

"(f) 'Treatment' means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders; and

"(g) 'Conviction' means the judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere."

SEC. 7. Sections 5007, 5008, and 5009 of title 18, United States Code, are repealed.

SEC. 8. Section 5014 of title 18, United States Code, is amended to read as follows:

"§ 5014. Classification studies and reports

"The Director shall provide classification centers and agencies. Every committed youth offender shall first be sent to a classification center or agency. The classification center or agency shall make a complete study of each committed youth offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the absence of exceptional circumstances, such study shall be completed within a period of thirty days. The agency shall promptly forward to the Director and to the Commission a report of its findings with respect to the youth offender and its recommendations as to his treatment. As soon as practicable after commitment, the youth offender shall receive a parole interview."

SEC. 9. Section 5017(a) of title 18, United States Code, is amended to read as follows:

"(a) The Commission may at any time after reasonable notice to the Director release conditionally under supervision a committed youth offender when it appears that such person has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Commission."

SEC. 10. Section 5020 of title 18, United States Code, is amended to read as follows:

"§ 5020. Apprehension of released offenders

"If, at any time before the unconditional discharge of a committed youth offender, the Commission is of the opinion that such youth offender will be benefited by further treatment in an institution or other facility the Commission may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youthful offender and cause such warrant to be executed by a United States probation officer, an appointed supervisory agent, a United States marshal, or any officer of a Federal penal or correctional institution. Upon return to custody, such youth offender shall be given a revocation hearing by the Commission."

SEC. 11. Chapter 402 of title 18, United States Code, is amended by deleting the term "division" whenever it appears therein and inserting in lieu thereof the word "Commission".

SEC. 12. The table of sections for chapter 402 of title 18, United States Code, is amended to read as follows:

"Sec.
"5005. Youth correction decisions.
"5006. Definitions.
"5010. Sentence.
"5011. Treatment.
"5012. Certificate as to availability of facilities.
"5013. Provision of facilities.
"5014. Classification studies and reports.
"5015. Powers of Director as to placement of youth offenders.
"5016. Reports concerning offenders.
"5017. Release of youth offenders.
"5018. Revocation of Commission orders.
"5019. Supervision of released youth offenders.
"5020. Apprehension for released offenders.
"5021. Certificate setting aside conviction.
"5022. Applicable date.
"5023. Relationship to Probation and Juvenile Delinquency Acts.
"5024. Where applicable.
"5025. Applicability to the District of Columbia.
"5026. Parole of other offenders not affected.".

SEC. 13. Section 5041 of title 18, United States Code, is amended to read as follows:

"§ 5041. Parole

"A juvenile delinquent who has been committed and who, by his conduct, has given sufficient evidence that he has reformed, may be released on parole at any time under such conditions and regulations as the United States Parole Commission deems proper if it shall appear to the satisfaction of such Commission that the juvenile has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society."

SEC. 14. Whenever in any of the laws of the United States or the District of Columbia the term "United States Parole Board", or any other term referring thereto, is used, such term or terms, on and after the expiration of the one-year period following the date of the enactment of this Act, shall be deemed to refer to the United States Parole Commission as established by the amendments made by this Act.

SEC. 15. The parole of any person sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by law.

SEC. 16. Section 5108(c)(7) of title 5, United States Code, is amended to read as follows:

"(7) the Attorney General, without regard to any other provision of this section, may place a total of ten positions of warden in the Bureau of Prisons in GS-16".

SEC. 17. There is hereby authorized to be appropriated such sums as are necessary to carry out the purposes of the amendments made by this Act.

SEC. 18. (a) The foregoing amendments made by this Act shall take effect upon the expiration of the thirty-day period following the date of the enactment of this Act.

(b) Upon the effective date of the amendments made by this Act, each person holding office as a member of the Board of Parole on the date immediately preceding such effective date shall be deemed to be a Commissioner and shall be entitled to serve as such for the remainder of the term for which such person was appointed as a member of such Board of Parole.

(c) All powers, duties, and functions of the aforementioned Board of Parole shall, on and after such effective date, be deemed to be vested in the Commission, and shall, on and after such date, be carried out by the Commission in accordance with the provisions of applicable law, except that the Commission may make such transitional rules as are necessary to be in effect for not to exceed one year following such effective date.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title, The Parole Commission Act.

Sec. 2. Chapter 311 of title 18, United State Code, is amended to read as follows:

§ 4201. Definitions:

As used in this chapter—

(1) 'Commission' means the U.S. Parole Commission created by this Act;

(2) 'Commissioner' is any one of the nine members of the U.S. Parole Commission;

(3) 'Director' means the Director of the U.S. Bureau of Prisons;

(4) 'Eligible person' means any Federal prisoner in the custody of the Attorney General who is by law eligible for parole, including any individual whose parole has been previously revoked;

(5) 'Parolee' means any eligible person who has been released on parole or deemed to have been released on parole under sections 4164 and 4204(d) of title 18, U.S. Code, which provide for release as if on parole; and

(6) 'Rules and regulations' means the rules and regulations made by the full Commission. The rulemaking procedures of § 553 of title 5, U.S. Code, apply; notice is required in the Federal Register, and interested parties shall have an opportunity to comment. Guidelines promulgated by the full Commission for parole decision-making are rules and regulations within the meaning of this definition. *Pickus et al v. U.S. Board of Parole*, 507 F2d 1107 (1974).

§ 4202. This section establishes a nine member U.S. Parole Commission as an independent agency of the Department of Justice. No more than six members of the Commission can be of the same political party. The Commission is attached to the Department for administrative reasons but its decision making machinery is independent so as to guard against influence in case decisions. Commissioners serve a term of six years under Presidential appointment by and with the advice and consent of the Senate; the Chairman is appointed by the Attorney General. The terms are staggered with the Commission members continuing to serve until their successors have been qualified. The rate of pay for a member of the Commission shall be the highest step of G.S. level 17.

§ 4203(a) The Commission, acting by majority vote, has authority to: (1) grant or deny parole to any Federal prisoner who is eligible for parole; (2) impose conditions under which any prisoner would be released on parole; (3) modify or revoke the parole of any individual who violated the conditions of his release; and (4) decide on the period of reimprisonment for any individual whose parole has been revoked, except that the length of such reimprisonment together with the time served for the offense before parole was granted cannot be longer than the maximum length of the sentence; where revocation is based on a conviction for a new crime the Commission may also determine whether all or any part of the unexpired term shall run concurrently or consecutively with the new sentence.

(b) The full Commission will meet periodically as a policy making group to: (1) establish procedural rules and guidelines for parole determinations so that the administration of parole throughout the Federal system will be uniform; (2) set boundaries for the nation's five parole regions; and (3) act upon budget recommendations, which will be separate from other agencies of the Department of Justice.

Records of the final vote of the commissioners on these policy making actions will be availabe for pubic inspection.

(c) The Commission, acting by majority vote and pursuant to rules and regulations, may (1) delegate any of its decision making authority set out in subsection (a) of this section to one or more commissioners, enabling the Commission to allocate its decision making workload to regional commissioners who are responsible for initial parole determinations and to the three commissioners on the National Appeals Board who review these decisions on appeal; (2) delegate to panels of hearing examiners certain Commission functions which are necessary to provide regional commissioners with recommendations and a hearing record on which to base their decisions, including conducting hearings and interviews, taking sworn testimony, making findings of probable cause and issuing subpoenas in parole revocation proceedings, and making a record of the pertinent evidence presented at any such hearing or interview; and (3) review any delegated decision, or delegate authority to the National Appeals Board to review decisions made by a regional commissioner or commissioners.

(d) The Attorney General has an unqualified right to have the Commission review any delegated decision or to reconsider any of its own decisions. The Commission must act promptly on any such request and must give a written copy of its decision to both the Attorney General and the individual whose case is involved.

(e) When the full Commission is required to make decisions under the powers and duties set out in this section, each member will have an equal voice in policy or decision determinations, be provided with all necessary information, and have one vote.

§ 4204. (a) The Chairman, who functions as the chief executive officer of the Commission, is authorized to: (1) preside at the regular meetings of the full Commission as well as special meetings that are called upon his own request or that of any three commissioners; (2) make all personnel decisions except that the full Commission must confirm the appointment of any hearing examiner before his probationary status as a first-year government employee terminates and each regional commissioner will be responsible for the appointment and supervision of certain clerical personnel employed in his region; (3) delegate work among the commissioners and the various units and employees of the Commission; (4) designate three commissioners to serve on a National Appellate Board, one of which will also serve as Vice Chairman, and designate one commissioner to serve in each of the parole regions as regional commissioner, except that in making any such delegation the Chairman must consider certain pertinent criteria and must obtain the concurrence of the Attorney General; (5) carry out fiscal responsibilities including preparation of appropriation requests and oversight of Commission expenditures; (6) serve as spokesman for the Commission and make reports to the Congress, the courts, and the Attorney General; (7) provide for a research and training component in the Commission which will provide studies and information concerning the parole process to public and private agencies; (8) accept voluntary and uncompensated services of volunteers who assist in the counseling and supervision of individuals who have been released on parole; (9) utilize, on a cost reimbursible basis, Federal or State officials for certain parole revocation proceedings; and (10) perform other necessary duties.

(b) The Chairman shall carry out his administrative duties and responsibilities in line with the national parole policies promulgated by the Commission.

§ 4205. (a) The statutory basis for eligibility for parole for Federal prisoners under regular adult and special sentencing procedures remains unchanged. A Federal prisoner is eligible for parole after serving one-third of his maximum term or after serving fifteen years and there is no change in this from present language of title 18.

(b) This subsection reenacts the existing provisions of law which enables the court to: (1) direct that the prisoner be eligible for parole at any time up to one-third of his maximum sentence, or (2) specify that the Commission shall decide when the prisoner shall be considered for parole.

(c) This subsection amends existing provisions of law which give the judge an opportunity to request that the Bureau of Prisons conduct a study of the individual by reducing the time period allowed for such study from 90 to 60 days, and preserves existing provisions of sentencing law.

(d) This subsection reenacts in part and amends in part the present law on eligibility for parole of offenders with maximum sentences of one year or less. For individuals whose maximum term or terms is six months or less, there is no change from present law, under which the sentencing judge may set any release date, including a split sentence under 18 U.S.C. 3651, of up to six months incarceration and five years probation. For individuals sentenced to a maximum term or terms of more than six months, but not more than one year, the sentencing judge sets the date for release of the offender as if on parole, except if the judge sets no release date, the individual would be released after having served six months. Present law concerning good time reductions and surrender of prisoners to other authorities is unchanged.

(e) This subsection provides a means by which the minimum term of any Federal prisoner may be reduced to make the individual eligible for parole consideration. The Bureau of Prisons would make a motion to the court which imposed sentence, and the appropriate U. S. Attorney would have an opportunity to oppose it.

(f) Present law and practice relating to existing powers of the sentencing court and certain special provisions relating to eligibility for parole are preserved.

§ 4206. (a) The present statutory criteria utilized by the Federal parole authorities in making their decision as to whether or not to grant parole are preserved. Before granting parole, the Commission must decide that an individual who is eligible for parole has substantially observed the rules of the institution in which he is confined, there is a reasonable probability that he will not violate the law on release, and his release is compatible with the general welfare of society.

(b) When an individual is about to become eligible for parole consideration the Bureau of Prisons prepares a progress report which includes a summary of his criminal and social background, his mental and physical health, his behavior in the institution and his participation in institution programs. The Commission is authorized to make such other investigations as it may deem appropriate.

(c) The Commission is authorized to seek information from other government agencies such as the U.S. Probation Service and the Federal Bureau of Investigation. Upon request, these agencies will furnish available information, and, where appropriate, their views and recommendations with respect to Commission matters.

§ 4207. (a) An individual released on parole remains in the legal custody of the Attorney General but time spent on parole is not automatically credited toward service of the maximum sentence.

(b) Every parolee shall have as a condition of parole that he cannot commit any criminal offense during his parole. In imposing any other condition or conditions of parole the Commission shall consider the following guidelines: (1) there should be a reasonable relationship between the standards of behavior required and the individual's circumstances; (2) deprivations of liberty which are necessary for the protection of the public welfare may be imposed; (3) the conditions must be specific and not vague so that they can serve as a guide to behavior. In addition, the parolee is given a written statement of his conditions.

(c) As provided under present law, the conditions of parole may require that an individual reside in or participate in the program of a community treatment center or an addict treatment program.

(d) An orderly procedure under which the Commission may suspend parole supervision of parolees who no longer need it is established. (1) Systematic evaluation for parole discharge begins after an individual has been under parole supervision for two years, but discharge remains entirely in the discretion of the Commission. (2) After five years an individual shall receive a hearing to decide

whether or not such supervision shall be terminated. Similar consideration will be accorded at least every two years thereafter.

Parole discharge under this section is not the same as unconditional discharge provided for youth offenders under the Federal Youth Corrections Act, Chapter 402 of title 18, United States Code. The Youth Act provides a procedure for certain conditionally released youth offenders who achieve the status of unconditional discharge within a specific time period to earn a set aside of their conviction.

§ 4208. (a) Once an individual becomes eligible for parole he is entitled to a hearing and additional rehearings at least once every two years, but he may waive any hearing.

(b) When a commissioner or panel of hearing examiners conducts an interview of any individual who is eligible for parole, that individual will receive written notice of the time of the interview and will be allowed to select a representative to assist him both before and during the interview. The Commission is authorized to promulgate rules and regulations as to who a representative may be. Persons appropriate for such position include members of the immediate family, including common-law relations; other relatives; friends; ministers, or prospective employers. The phrase, "Such rules shall not exclude attorneys as a class", means that inmates may utilize retained counsel as representatives but that any other provision for legal assistance is within the discretion of the Commission.

(c) An eligible Federal prisoner shall have reasonable access to certain documents which are utilized by the Commission to determine parole eligibility. Three categories of documents, however, may be excluded: (1) diagnostic opinions such as psychological or psychiatric reports which if revealed to the individual might cause a serious disruption in his program of rehabilitation; (2) documents which contain information obtained on the basis of a pledge of confidentialty by, or on behalf of, any public official who has substantial reason to believe that revealing the information would jeopardize the life or limb of any person; or (3) any other information which if revealed would jeopardize the life or limb of any person. The Commission, the Bureau of Prisons, or any other agency which deems a document excludable under subparagraphs (1), (2) or (3) of this subsection shall be responsible for preparing a summary of such document. In recognition of administrative time constraints, agencies, other than the Commission or the Bureau of Prisons, submitting excludable documents shall enclose summarized versions which meet the requirements of this subsection. The Bureau of Prisons recently implemented a procedure for disclosing progress reports and, in some cases, psychiatric reports to Federal prisoners awaiting parole consideration. BOP Policy Statement, No. 7200.13, "Disclosure of Parole/Special Progress Reports", (1-28-74).

(d) The Commission is required to retain a record of all parole interviews. Where an individual is denied parole or granted parole under conditions other than those commonly imposed, he can obtain a copy of the transcript of the interview record if he can demonstrate to the satisfaction of the Commission that it is necessary for purposes of administrative appeal. In any case in which the Commission has transcribed the interview record for the purposes of any appellate determination, the inmate, if he so requests, should be provided with a copy of such transcript.

(e) The Commission has fifteen working days in which to notify the individual in writing of the initial parole decision. Individuals denied parole or granted parole under conditions other than those commonly imposed will receive a written statement which spells out clearly the reasons for this adverse action. The Committee does not wish to tie the hands of the Parole Commission by specifying a particular format for such statement of reasons. A formal judicial fact-finding is not required, but the inmate must receive an understandable explanation of his parole status. For example, under the published rules of the U.S. Board of Parole, 28 CFR 2.20 (1975 Vol. as amended), the Board utilizes a set of guidelines for parole release determinations. The guidelines take into consideration certain primary elements in the parole decision-making process and indicate, for any individual combination thereof, the general range of time to be served before release. This subsection would operate in the following manner in relation to the present guidelines system. If a prisoner who has not served the minimum period recommended by the guidelines is denied parole, he should receive a statement containing his severity of offense rating, the calculation of his salient factors score and an explanation of how such a determination utilizing the guidelines was reached. On the other hand, if a prisoner who has served the time required to be eligible for parole under the guidelines is denied parole and this denial results in delaying his release beyond the time period recommended by the guidelines, he should receive not only the above information but also a specific explanation of the factors which caused the Commission to reach a determination outside the guidelines. Parole Form R-2, Notice of Action Worksheet, (revised June 1974), which was implemented by the U.S. Parole Board in the northeast region on April 1, 1974, provides the necessary information. The Committee realizes that these guidelines and procedures may change and reserves the right of continuing oversight to ensure that individuals receiving adverse parole determinations are given an adequate explanation of the reasons for such action.

The phrase, "parole conditions other than those commonly imposed", refers to any condition imposed by the Commission on any order of parole release which the individual wishes to contest on the grounds that such a deprivation of liberty is unwarranted. Typically imposed proscriptions relating to violations of law, use of narcotics, excessive use of alcohol, etc., would not fit this category.

§ 4209. Existing law with respect to delivery of convicted aliens for deportation is recodified under a new section number.

§ 4210. This section, with certain modifications, codifies the recent Supreme Court decisions, *Morrissey v. Brewer*, 408 U.S. 471 (1972) and *Gagnon v. Scarpelli*, 411 U.S. 788 (1973), relating to the revocation of parole under circumstances in which there may be a need to ascertain facts concerning an alleged violation of the conditions of such release on parole.

(a) Provides for issuing a warrant for the arrest of a parolee alleged to have violated a condition of parole before the expiration of his maximum sentence.

(b)(1) This subsection provides revocation procedures for any alleged parole violator who wishes to contest the revocation and whose revocation is not based on a conviction for a new offense. (A) Such parolee is entitled to an immediate hearing, near where the violation is alleged to have occurred or where the parolee was arrested, to determine if there is probable cause to believe that he has violated his parole conditions. The timing of the preliminary hearing is particularly crucial; even if probable cause is not found, if a parolee is held in jail awaiting his hearing for more than one or two days, his job will probably be lost and his reintegration efforts badly disrupted. The Commission upon a finding of probable cause shall make a written summary of the hearing which states the reasons for the decision and the factors considered in the hearing. The parolee shall be given a copy of this written summary a reasonable period of time before his revocation hearing, unless the revocation hearing is held at the same time as the probable cause hearing in which case he will be given a document summarizing the joint proceedings within fifteen working days. (B) Upon a finding of probable cause under subparagraph (A) of this subsection, the alleged parole violator is entitled to a revocation hearing which also takes place reasonably near the place where the alleged violation occurred or where the parolee was arrested. In the words of Chief Justice Burger, "This hearing must be the basis for more than determining probable cause; it must lead to a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation. The parolee must have an opportunity to be heard and to show, if he can, that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest the violation does not warrant revocation." 471 U.S. 488 (1972). While the revocation hearing must be held within sixty days of the preliminary hearing held pursuant to subparagraph (A), it may be held at the same time.

(2) In any hearing held pursuant to subparagraph (1) (A) or (B) of this subsection, the alleged parole violator is entitled to the following procedures: (A) notice of the violations of parole and the time, place, and purposes of the scheduled hearings; (B) the right to appear and testify and to present witnesses and documentary evidence on his own behalf; (C) the right to be represented by retained counsel or if he is unable to retain counsel, counsel may be provided pursuant to the Criminal Justice Act (18 U.S.C. 3006A) and (D) the right to be apprised of evidence against him and the qualified right to confront and cross-examine adverse witnesses. This subparagraph would permit an inmate who so requests to confront and cross-examine adverse witnesses unless the hearing officer designated by the Commission makes a determination that there is good cause for not allowing confrontation. This determination requires the hearing officer to balance the parolee's need to confront his accusers in view of the particular facts and circumstances of his case against factors, which include but are not necessarily limited to, the probability and severity of either the risk of harm to the informant or the danger that the rights of someone in any pending criminal prosecution would be jeopardized. The Commission, where appropriate, may subpoena adverse witnesses but only for the purposes set out in this subparagraph.

(c)(1) Any parolee, who is convicted of a new offense and sentenced to imprisonment in any Federal, State or local correctional facility and who has a parole revocation detainer lodged against him at such institution, shall receive an institutional revocation hearing within one hundred and eighty days of the placement of such detainer, or upon his release, whichever comes first.

(2) Any alleged parole violator, who waives any of his hearing rights under subsection (b), shall receive an institutional revocation hearing within three months of recommitment.

(3) Hearings held under this subsection shall be conducted by the Commission. The alleged parole violator will have notice of the hearing and be allowed to appear and testify in his own behalf and to select a representative, as provided in § 4208(b)(2), to aid him in his appearance.

(d) The Commission, after any revocation hearing held under this section, may dismiss the warrant or take any other action which it deems appropriate in accordance with the provisions of § 4212 of this chapter.

In any case in which parole is modified or revoked pursuant to a hearing under this section, the Commission shall provide a written summary of the hearing which states the reasons for the adverse action and indicates the evidence considered and relied upon. It is important to remember that this is not a formal judicial determination. In *Morrisey* the Court observed, "no interest would be served by formalism in this process; informality will not lessen the utility of this inquiry in reducing the risk of error." 408 U.S.C. 487 (1972). The alleged violator shall receive a copy of this document.

(e) To facilitate speedy parole revocation determinations, the Commission may delegate authority to State or Federal officials to conduct hearings pursuant to this section. The Commission would promulgate regulations setting out appropriate categories of government officials to be used in this capacity such as U.S. magistrates, administrative law judges, and officials of State parole authorities, etc.

§ 4211. Existing law with respect to the enumeration of individuals entitled to serve parole revocation warrants is recodified under a new section number.

§ 4212. If the parole revocation warrant is not dismissed, the range of possible responses by the Commission to a parolee who has been found to have violated the conditions of his parole include: (1) a reprimand; (2) an alteration of parole conditions; (3) referral to a half-way house or other residential facility for all or part of the remainder of the original sentence; (4) formal revocation of parole or release as if on parole; or (5) any other action deemed necessary for the purposes of successful rehabilitation of the parole violator, or which promotes the ends of justice.

In taking any action under this section, the Commission shall take into consideration whether or not the parolee has been convicted of a new criminal offense or whether such action is warranted by either the frequency or seriousness of the parolee's violation of any other condition or conditions of his parole.

§ 4213(a) Initial decisions involving a grant or denial of parole, the imposition of unusual parole conditions, denial of parole discharge after five or more years of continuous parole supervision, or the modification or revocation of parole, are made by regional commissioners in accordance with rules and regulations promulgated by the full Commission. The eligible person or parolee adversely affected by any such decision is entitled, by filing a timely application, to have the regional commissioner reconsider the decision. The regional commissioner, in accordance with rules and regulations promulgated by the full Commission, must act on the application within sixty days and shall notify the applicant of the reconsidered decision and the reasons therefore.

(b) If the decision is affirmed by the regional commissioner or is in some way still adverse to the applicant, he may take his case to the three member National Appeals Board. In accordance with the same time and notice requirements as provided in subsection (b), this final administrative appeal will be decided by the majority vote of the three members.

§ 4214. This section sets out the review procedure for parole determinations in which original jurisdiction is retained by the Commission. The initial decision is made by the regional commissioner, the members of the National Appeals Board, and, in the event of a tie vote, an additional regional commissioner. The eligible person or parolee adversely affected by this decision, or any commissioner who took part in the decision, may appeal the decision within forty-five days to the full Commission which shall decide the case at its next quarterly meeting.

§ 4215. Except where this statute provides for the application of section 553 of title 5, U.S. Code, the provisions of the Administrative Procedure Act shall not apply to the making of any determination, decision, or order of the United States Parole Commission.

Sec. 3. Section 4209, relating to the application of the Federal Youth Corrections Act, and Section 4210, relating to Canal Zone warrants, are reenacted under new section numbers.

Sec. 4. Section 5002 of title 18, U.S. Code, is replaced.

Sec. 5. Section 5005 of title 18, U.S. Code, is amended to make procedures for consideration of individuals sentenced under the Youth Corrections Act an intrical part of the Commission's responsibilities. Decisions regarding parole of youthful offenders will be made in the manner prescribed for all other eligible offenders, with the exception of certain provisions relating to unconditional discharge of youth offenders.

Sec. 6. Section 5006 of title 18, U.S. Code, is amended to reflect the change in name from Youth Division to U.S. Parole Commission.

Sec. 7. Sections 5007, 5008, 5009 of title 18, U.S. Code, which conflict with the provisions of Chapter 311 of title 18, relating to the organization and operation of the U.S. Parole Commission, are repealed.

Sec. 8. Section 5014 of title 18, U.S. Code, is amended to provide that parole interviews for youth offenders are conducted in the same manner as prescribed for other eligible offenders.

Sec. 9. Section 5017(a) of title 18, U.S. Code, is amended to provide for parallel parole release criteria for all offenders.

Sec. 10. Section 5020 of title 18, U.S. Code, is amended to provide that parole revocations for youth offenders are conducted in the same manner as prescribed for other parolees.

Sec. 11. Chapter 402 of title 18, U.S. Code, is amended to reflect the change in name from Youth Division to U.S. Parole Commission.

Sec. 12. Amends the Table of Sections of Chapter 402 of title 18, U.S. Code.

Sec. 13. Section 5041 of title 18, U.S. Code, is amended to provide for parallel parole release criteria for all offenders.

Sec. 14. This section provides that wherever the term United States Parole Board is used in any law it shall be replaced with the term U.S. Parole Commission.

SEC. 15. Protects the eligibility of the one prisoner remaining in the Federal system who was sentenced prior to June 29, 1932, in order to preserve the possibility that he may be released under applicable provisions of law.

SEC. 16. Section 5108(c)(7) of title 5, U.S. Code, is amended to delete from the control of the Attorney General the salary of members of the U.S. Parole Commission which shall be set by the Congress under the provisions of Section 4202 of title 18, U.S. Code.

SEC. 17. Authorizes the appropriation of such sums as are necessary to carry out the purposes of this Act.

SEC. 18. (a) This legislation would take effect ninety days following enactment.

(b) All members of the Board of Parole on the effective date of this legislation would become commissioners, entitled to serve for the remainder of the terms for which they were appointed as members of the Board of Parole.

(c) All powers, duties and functions of the Board of Parole would be transferred to the U.S. Parole Commission on or after the effective date. The U.S. Parole Commission may make such transitional rules as are necessary for a period of one year following the effective date.

MAJOR CHANGES IN PRESENT LAW

A PAROLE COMMISSION

The bill replaces the present U.S. Board of Parole with a nine-membered Parole Commission, headed by a Chairman who serves as administrative head of the agency.

REGIONALIZATION

In order to make the present Federal parole workload more manageable, the nation is divided into five parole regions. Each region is headed by a member of the Commission serving as Regional Commissioner. Regional commissioners consider recommendations from two-man hearing examiner panels which are delegated fact-finding authority. In addition, three members of the Commission sitting as a National Appeals Board hear appeals from decisions of the Regional Commissioner.

NEW PROCEDURES FOR PAROLE RELEASE AND REVOCATION DETERMINATIONS

To insure fairness in parole release hearings, the bill provides the inmate with a parole advocate and allows both the inmate and his advocate access to the parole file. In addition, the Attorney General may require reconsideration of any parole decision.

In line with the recent Supreme Court decision, *Morrissey* v. *Brewer*, 408 U.S. 471 (1972), the bill provides the following due process procedures for parole revocation: the right to a preliminatory hearing to determine probable cause, written notice of the claimed violations of parole, disclosure to the parolee of evidence against him, opportunity to be heard in person and to present witnesses and documentary evidence, the right to confront and cross-examine adverse witnesses, and written reasons for the decision.

MANDATORY PAROLE SUPERVISION FOR CERTAIN OFFENDERS

The bill provides for parole supervision of certain offenders who did not receive split sentences pursuant to 18 U.S.C. 3651 but were sentenced to imprisonment for a year or less and who had not been released after six months. Such persons would return to the community under parole supervision after one hundred and eighty days unless the government objects to his release and the Commission concurs in their reasoning.

COMPARISON

Present law and new legislation:

Parole board members, eight members, nine members, five in regional offices, three on a national appeals board, and one as chairman and administrative officer.

Parole interviews, no standards, interview procedures include notice, opportunity for inmate to prepare for interview, oral and written reasons for parole denial.

Parole examiners, examiners authorized to recommend approval or denial of parole, panels of parole examiners make provisional decisions, subject to approval or rejection by regional parole commissioners.

Criteria for parole release, inmate has obeyed rules of institution, reasonable probability inmate will not violate law, and if release is not incompatible with the welfare of society, release criteria not changed, except that the same criteria would be used for inmates under all three of the major sentencing alternatives.

Parole revocation, all revocations subject to procedural due process criteria in 1972 Supreme Court decision, same, except due process criteria eliminated where individual has been convicted of a new offense.

Judicial review, no standard, some district and circuit opinions favoring court review under certain circumstances, administrative Procedures Act exempted, administrative appeal process established.

Powers of chairman, no guidelines on administrative powers, chairman sits on all appeals, chairman given administrative powers, but isolated from appeals so as to prevent dominance of policy.

By Mr. NUNN (for himself, Mr. ALLEN, and Mr. GARN):

S. 1110. A bill to establish a Council on Judicial Tenure in the judicial branch of the Government, to establish a procedure in addition to impeachment for the retirement of disabled Justices and judges of the United States, and the removal of Justices and judges whose conduct is or has been inconsistent with the good behavior required by article III, section 1 of the Constitution, and for other purposes. Referred to the Committee on the Judiciary.

JUDICIAL TENURE ACT

Mr. NUNN. Mr. President, this bill is identical to S. 4153 which I introduced October 17, 1974. It will establish an effective alternative to impeachment for removing misbehaving or disabled Federal judges from office.

Recent experiences of the Watergate era have reminded us that power can be abused by public officials. Although Watergate taught us that our system of government works, we must be ever vigilant to improve that system in order to insure that it works better in the future.

Although the abuses of Watergate were centered in the executive branch of Government, we must remember that no branch of Government is immune to an abuse of power. The power of the Presidency and the Congress is subject to the control of the people through the periodic election process and by the checks and balances that exist between these two great institutions. Our appointed Federal judges, on the other hand, have a high degree of independence and are not accountable to the people through the periodic election process.

No man or group of men is perfect. Despite the overall high quality and integrity of our Federal Bench, which was graphically demonstrated during the numerous complex cases of the Watergate era, an occasional judge misbehaves or becomes physically or mentally disabled and continues on the Bench. One such judge can undermine the public trust in the efforts of 100 good judges.

Currently, impeachment is the only remedy available for removing a misbehaving or disabled judge from office. History demonstrates that impeachment is a complex, slow and cumbersome process, and is not a real deterrent to misconduct on the bench.

Impeachment also is disruptive to the legislative process of Congress. As the legislative load increases each year, the use of impeachment as a remedy is likely to decrease. In the Nation's history, only nine Federal judges have been impeached by the House, and only four have been convicted by the Senate. The last impeachment trial was in 1936, but I believe that few people would contend that all of our Federal judges since 1936 have maintained the constitutional criteria of "good behavior."

The House impeachment process has generally been lengthy, and Senate impeachment trials have continued for as long as 6 weeks. The average trial has lasted 16 days. As the House Judiciary Committee pointed out in 1940 when reporting a bill to establish an alternate removal procedure:

> It is a governmental absurdity that the cumbersome machinery of impeachment must be resorted to in order to procure the ouster of a district or circuit judge.
>
> There must be a logical relationship between the importance and power of the respondent and the taking up of the time of the whole Senate in order to try him. Stability is essential, but there is nothing more ridiculous than the picture of a whole Senate sitting for 10 days to determine whether or not a district judge ought to be removed.

Impeachment also fails to deal humanely with the problems presented in the case of a judge who is afflicted with permanent mental or physical disability. Such a judge must be replaced, but impeachment, with its accompanying humiliation and loss of benefits, is too harsh a remedy. In my estimation, we should be able to remove such disabled judges without inflicting additional suffering.

Mr. President, the national legislative process must not be unduly disrupted. In order to maintain the public's confidence in the integrity of the judicial branch, we must deal with judicial misbehavior or disability in a thorough, efficient and impartial manner.

My bill will provide an alternative removal procedure. This legislation is not intended in any way to displace the right of Congress to impeach judges under the Constitution. It is just another removal mechanism. This bill is based on the constitutional premise that the independent judicial branch, as the exclusive holder of Federal judicial power, has the inherent power to enforce the standard of conduct required of its members. It provides machinery to implement this power.

My bill would establish a Council on Judicial Tenure within the judicial branch. The Council would be composed of judges elected by their fellow judges from each circuit, the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court. A panel of the Council would receive and investigate any written claims of misconduct or disability of a judge, including a Supreme Court Justice. The panel could either dismiss the complaint or report it to the Judicial Conference of the United States along with its recommendations.

The Judicial Conference is already established pursuant to section 331 of title 28 of the United States Code. It consists of the Chief Justice of the United States and the Chief Judge of each Judicial Circuit, the Chief Judge of the Court of Claims, the Chief Judge of the Court of Customs and Patent Appeals, and a District Judge from each Judicial Circuit.

The Judicial Conference or one of its committees would then sit as a Federal court to decide the case. The Chief Justice would be precluded from taking part in the Conference's consideration of the case.

The Council would act as an advocate for its recommendations in the proceedings before the Judicial Conference. The Conference could dismiss the complaint, censure, or remove the judge from office for misbehavior. In addition, a judge could be involuntarily retired if a mental or physical disability was seriously interfering with the performance of one or more of the critical duties of his office.

Experience has also shown that some method is needed to suspend the judicial powers of a judge until the conclusion of an inquiry where there is a substantial question as to that judge's fitness for office. This is essential for keeping the public trust.

This bill would give the Judicial Conference of the United States the discretion to suspend temporarily the judicial powers of a judge after a recommendation is received from the Council of Judicial Tenure that he be censured, removed, or retired from office.

All rights of due process would be accorded the judge. He could appear before the Council and present a statement in his own behalf. At any hearing before the Judicial Conference the judge could be present, introduce evidence, be represented by counsel, and confront and cross-examine witnesses. If the Conference voted to remove the judge, he would have the right of appeal to the Supreme Court. Only after all these procedures are completed would the judge be removed from office and a successor appointed. It is important to note that a judge involuntarily retired under this bill would have an enforceable right to be assigned such work as he is willing and able to perform.

The idea for an alternative to impeachment has a long history. Professor Shartell stimulated much debate on the subject in the 1930's with his article on the supervision and removal of Federal judges. More recently, in the 1960's Joseph Borkin has documented many of the abuses of judicial power in his book entitled, "The Corrupt Judge." Donald Jackson's new book entitled, "Judges" also shows that problems exist within the judiciary. Numerous bills have been introduced to establish an alternative removal procedure. In 1940, the House passed such a bill introduced by Representative Hatton Summers, then chairman of the House Judiciary Committee. Over one-half of the States have established procedures within their respective governments for the removal of misbehaving or disabled State judges in addition to impeachment.

A great amount of credit is also due to former Senator Joseph Tydings who introduced legislation, modeled after California's procedure, to establish a commission with power to remove or retire Federal judges. Representative RODINO, chairman of the House Committee on the Judiciary, also actively supported the Tydings bill and introduced parallel legislation in the House.

Senator Tydings' bill received impressive support from such respected people as Chief Justice Burger, Justice Rehnquist, and numerous Federal judges. The American Bar Association strongly endorsed the Tydings bill.

Of course there has been criticism of the various proposals in this important

area of judicial reform. I have tried to respond fairly to these criticisms, and I have taken into account the weaknesses of former bills. In effect, the bill I am introducing today is a refinement and modification of the Tydings concept.

Any bill of this type raises immediate constitutional questions. However, I have no doubt of its constitutionality. The Subcommittee on Improvements in Judicial Machinery has held extensive hearings concerning the constitutional questions of such a bill, and found strong support for its constitutionality from various sectors.

Chief Justice Burger, Justice Rehnquist, the American Bar Association, the National Association of Attorneys General, eminent impeachment expert Raol Berger, numerous Federal judges, and various law professors and law review articles have expressed the belief that such an approach is constitutional.

In conclusion, it is important to reemphasize that this bill would not encroach on the independence of the judiciary. Every procedure provided for in this bill would take place entirely within the judicial branch. The bill only provides enabling legislation which would assist the judiciary in exercising its inherent powers under the Constitution.

I believe that this new procedure would be effective for dealing with questions of judicial fitness. Members of the judiciary have a strong self-interest in insuring that the integrity of the courts is beyond question and that each judge is able to maintain his workload unimpaired by mental or physical disability.

I urge that this legislation be given careful consideration by my colleagues, and I am hopeful that after timely hearings this legislation will receive the approval of Congress.

Mr. President, I ask unanimous consent that the text of the bill be inserted in the RECORD.

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

S. 1110

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Tenure Act".

PROCEDURES FOR REMOVAL AND INVOLUNTARY RETIREMENT

SEC. 2. (a) Chapter 17 of title 28, United States Code, is amended by adding at the end thereof the following new sections:

"§ 377. Council on Judicial Tenure; establishment

"(a) There is established in the judicial branch of Government a Council on Judicial Tenure to further the honest, impartial, and efficient administration of justice in the courts of the United States in accordance with the duties imposed upon it by law.

"(b) The Council shall be composed of one member from each circuit, one member from the Court of Claims, one member from the Court of Customs and Patent Appeals, and one member from the Customs Court. Each member shall be a judge who is in regular active service. The member from each circuit shall be elected by the circuit and district judges of each circuit at a judicial conference of each circuit held pursuant to section 333 of this title. The members from the Court of Claims, Court of Customs and Patent Appeals, and Customs Court shall be elected by the judges of their respective courts. A judge who is a member of the Judicial Conference of the United States may not serve simultaneously as a member of the Council on Judicial Tenure. The members of the Council shall elect one of the members as Chairman of the Council.

"(c)(1) The term of each member of the Council shall be three years except that a member elected to fill a vacancy shall serve for the remainder of the term for which his predecessor was elected. A judge may serve on the Council for not more than two full terms except that a judge who fills a term that has been vacated may be reelected to the Council for one full term only.

"(2) The term of a member of the Council shall become vacant automatically when such member (A) resigns, retires, or is permanently separated from regular active service as a judicial officer, (B) becomes a member of the Judicial Conference of the United States, or (C) becomes a Justice of the United States.

"(d) Performance of duties as a member of the Council shall constitute the transaction of official business within the meaning of section 456 of this title.

"§ 378. Council on Judicial Tenure; duties and powers

"(a) It shall be the duty of the Council to receive and investigate each written complaint by any person concerning a Justice or judge of the United States and to determine whether the grounds specified in section 372a of this title for removal of a Justice or judge from office or censure or, in section 372 of this title for involuntary retirement of a Justice or judge, exist. If, after a preliminary inquiry by the Chairman, any such complaint is found to be frivolous, unwarranted, or insufficient in law or fact, the Council may dismiss such complaint. If such complaint is not dismissed, a panel appointed under subsection (b) shall conduct a hearing with respect to the fitness of such Justice or judge.

"(b)(1) In carrying out its duties under this section the Chairman of the Council shall appoint such panels, consisting of five members of the Council, at least four of whom are representatives of the circuit or district courts, as may be necessary in order that each complaint not dismissed under subsection (a) may be considered by such a panel.

"(2) For the purpose of the transaction of any business a quorum of any panel appointed under pargraph (1) shall be three members. A panel shall act upon the concurrence of any three of its members, except that the concurrence of four members is required to effect a recommendation to the Judicial Conference of the United States that any of the grounds specified in section 372 or 372a of this title for the involuntary retirement, removal of a Justice or judge from office, or censure exist.

"(c) Whenever the Council orders an investigation or hearing with respect to the fitness of any Justice or judge to continue in office, it shall provide not less than thirty days' notice to such Justice or judge of the date on which any hearing is to be conducted. Any Justice or judge who is the subject of such an investigation has the right to appear at any such hearing, and make a statement in his own behalf. The Council shall maintain a record of any such hearing.

"(d) The panel shall make findings of fact and a determination regarding the fitness of such Justice or judge not later than ninety days after the conclusion of any proceedings conducted pursuant to this section. Such findings and determination shall be entered on the record of such proceedings and shall be transmitted, together with any recommendation thereon, directly to the Judicial Conference of the United States, to the Justice or judge under inquiry, and the complainant.

"(e)(1) The Council, or any panel designated by it, in carrying out its duties under this section may sit and act at such times and places, hold such hearings, take such testimony, require by subpena the attendance of such witnesses and the production of such books, records, papers, accounts, and documents, administer such oaths and issue such other orders as may be necessary. Subpenas and other orders shall be issued under the signature of the Chairman or the member of a panel designated by the Chairman. Any member of the Council or panel may administer oaths or affirmations to witnesses.

"(2) No person except the Justice or judge who is the subject of an inquiry under this chapter shall be excused from attending and testifying or producing anything ordered to be produced by the Council or panel on the ground that the testimony or material required to be produced may tend to incriminate such person or subject such person to penalty or forfeiture. No such person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce, after having claimed his privilege against self-incrimination, except that such person shall not be exempt from prosecution and punishment for perjury committed while so testifying.

"(3) In case of disobeyance to a subpena or other order issued under paragraph (1) of this subsection, the Council or panel may invoke the aid of any district court of the United States in requiring compliance with such subpena or order. Any district court of the United States within the jurisdiction in which the person is found or transacts business may, in case of contumacy or refusal to obey a subpena or order issued by the Council or panel, issue an order to issue such person to appear and testify, to produce such books, records, papers, accounts, and documents, and any failure to obey the order of the court shall be punished by the court as contempt thereof.

"(f) The Council is authorized to appoint and fix the compensation of an executive director and a permanent staff of attorneys and such other personnel as may necessary to carry out its duties under this section.

"§ 379. Duties of the Judicial Conference relating to proceedings with respect to removal, censure, and involuntary retirement

"(a)(1) It shall be the duty of the Judicial Conference of the United States to elect, at its annual meeting, one member of the Conference to be the presiding officer on any matter concerning the removal, censure, or involuntary retirement of a Justice or judge of the United States. The Chief Justice shall not participate in any activity or action, including the election of a presiding officer, by the Conference concerning the removal, censure, or involuntary retirement of any Justice of the United States.

"(2) The Conference, or with the concurrence of a majority of its members, a committee of nine judges, appointed by the presiding officer elected under paragraph (1) (one of whom shall be the presiding officer elected under paragraph (1)), shall sit as a court to hear any cause relating to the removal, censure, or involuntary retirement of a Justice or judge of the United States, or any proceeding under section 380 of this title. When so sitting, the Conference or committee shall be a court of the United States within the meaning of section 451 of this title and may exercise all appropriate judicial powers. Upon receipt of a recommendation from the Council on Judicial Tenure that a Justice or judge be removed, censured, or involuntarily retired, the presiding officer shall convene the Conference or committee designated under this paragraph to hear and

determine the recommendation of the Council.

"(b) A proceeding under this section shall be de novo, and shall be conducted on the record. The Council on Judicial Tenure, or representatives from the Council, shall appear and present materials and testimony in support of the recommendation of the Council. Any Justice or judge whose conduct is the subject of any such inquiry shall be given adequate notice of any hearing, shall be admitted to any such hearing, may be represented by counsel, offer evidence in his own behalf, and confront and cross-examine any witness against him.

"(c) During the pendency of any proceeding under this section the Conference or committee may order any judge of the United States who is the subject of such inquiry to cease the exercise of any judicial powers or prerogatives pending disposition of the inquiry. Such an order shall be issued over the signature of the presiding officer. Upon issuing such an order the Conference or committee shall, after consultation with that authority within the court of the judge affected by such order who is responsible for the assigning of business to judges, formulate such orders regarding the business pending before such judge as it may deem appropriate.

"(d) The Conference or committee shall have the power in all cases brought before it, by majority vote—

"(1) to order the censure of any Justice or judge whose conduct is found to be inconsistent with the good behavior required by the Constitution;

"(2) to order the removal of any such Justice or judge from office;

"(3) to order the involuntary retirement of any Justice or judge in accordance with section 372(b) of this title; and

"(4) to dismiss or remand (to the Council) any such case.

All orders of the Conference or committee shall be in writing and any Justice or judge affected by any such order shall be so notified in writing.

"(e) No person except the Justice or judge who is the subject of an inquiry under this chapter shall be excused from attending and testifying or producing anything ordered to be produced by the Conference or committee on the ground that the testimony or material required to be produced may tend to incriminate such person or subject such person to penalty or forfeiture. No such person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce, after having claimed his privilege against self-incrimination, except that such person shall not be exempt from prosecution and punishment for perjury committed while so testifying.

"(f) (1) The Conference or committee shall stay (A) any order of removal of a judge and (B) any order of removal, censure, or involuntary retirement of any Justice pending final disposition of the case by the Supreme Court. Any such stay shall expire on the day after the day on which the time for seeking review has passed without the filing of an appeal. Upon affirmance by the Supreme Court of the order of the Conference directing removal, censure, or involuntary retirement of a Justice or removal of a judge or upon the expiration of the time for seeking review of any such order without the filing of an appeal, the order of the Conference shall become final and the judge shall be removed from office or, in a case affecting a Justice, the Justice shall be censured, involuntarily retired, or removed from office according to the order of the Conference.

"(2) In any case in which a Justice or judge is removed or involuntarily retired under this chapter, the Conference shall certify, at the time its order becomes final, notice to the President that a vacancy exists in the office from which the Justice or judge has been removed or involuntarily retired. The President shall appoint, by and with the advice and consent of the Senate, a successor to fill any vacancy caused by the removal of a Justice or judge under this section.

"(g) The Conference or committee shall notify any Justice or judge of its determination that the conduct or fitness of such Justice or judge does not warrant removal, censure, or involuntary retirement. The Justice or judge shall be informed that, upon receipt of his written request, the Conference shall make information regarding the nature of its investigation, its hearings, findings, and such other matters regarding its proceedings in his case as are not confidential, privileged under law, or otherwise prejudicial to the rights of any individual available to the public. Upon receipt of such request the Conference shall make such information available to the public.

"(h) The Conference is authorized to employ such permanent staff assistance as may be necessary to carry out its duties under this chapter. The Conference may employ on a temporary basis such other personnel as may be necessary to carry out its duties under this chapter in any particular case. The Conference may arrange for and compensate medical and other experts and reporters, and arrange for the attendance of witnesses including witnesses not subject to subpena.

"§ 380. Failure to assign judicial duties

"(a) The Council on Judicial Tenure shall designate a panel from among its members to hear any claim by a judge involuntarily retired under section 372(b) of this title that he is not being assigned such judicial duties within his court as he is willing and able to undertake. Whenever any such claim is substantiated to the satisfaction of a majority of such panel, it shall promptly report its findings to the Judicial Conference of the United States, together with a recommendation that the Conference issue an order to the appropriate authority responsible for the assignment of judicial duties to such judge. Upon receipt of such recommendation the presiding officer of the Conference (elected under section 379(a)(1) of this title) shall refer the matter to the Conference, or the committee designated to hear such matters, and the Conference or committee shall, at the earliest reasonable opportunity, consider the recomendation and resolve the claim of the retired judge. Action on any such matter shall be by majority vote. Upon resolution of any such matter, the presiding officer of the Conference shall transmit an appropriate order to the authority responsible for the assignment of judicial duties to such judge.

"§ 381. Disqualification of judges

"(a) A judge who is a member of the Council on Judicial Tenure or the Judicial Conference of the United States shall not participate in any proceeding of either such body when it inquires into his own conduct, fitness, or claim. No judge of the same court or circuit as the judge whose conduct, fitness, or claim is the subject of any inquiry by the Council or the Conference shall participate in such inquiry or in the determination by such body thereof.

"§ 382. Confidentiality of proceedings

"Notwithstanding any other provision of law, all matters filed with and all testimony given before a panel of the Council on Judicial Tenure or the Judicial Conference of the United States or its committee in connection with the removal or censure of a Justice or judge under section 372a of this title or the involuntary retirement of a Justice or judge under section 372(b) of this title shall be confidential. Unless otherwise authorized by the Justice or judge whose conduct, fitness, or claim is the subject of such a proceeding under this chapter, or otherwise authorized by this section, all such matters shall remain confidential, except that the taking of an appeal to the Supreme Court, under section 1259 of this title, shall render public all such matters to the extent that they are required for the disposition of the claim and for the conduct of any subsequent proceedings.".

(b) The analysis of chapter 17 of title 28, United States Code, is amended by adding at the end thereof the following new items:

"377. Council on Judicial Tenure; establishment.

"378. Council on Judicial Tenure; duties and powers.

"379. Duties and powers of the Judicial Conference relating to proceedings with respect to removal, censure, and involuntary retirement.

"380. Failure to assign judicial duties.

"381. Disqualification of judges.

"382. Confidentiality of proceedings.".

GROUNDS FOR REMOVAL AND INVOLUNTARY RETIREMENT

SEC. 3. (a)(1) Chapter 17, of title 28, United States Code, is further amended by inserting after section 372 the following new section.

"§ 372a. Removal of judges

"A Justice or judge of the United States may be removed from office or censured in accordance with the procedures established under this chapter upon a finding by the Judicial Conference of the United States that the conduct of such Justice or judge is or has been inconsistent with the good behavior required by article III section 1 of the Constitution.".

(2) The analysis of such chapter is amended by inserting immediately below item 372 the following new item:

"372a. Removal of Justices and judges.".

(b) Section 372(b) of such title is amended to read as follows:

"(b) Whenever any Justice or judge of the United States appointed to hold office during good behavior who is eligible to retire under this section does not do so and a majority of the Judicial Conference of the United States finds, subject to the requirements of section 379 of this title, that such Justice or judge is unable to discharge efficiently one or more of the critical duties of his office by reason of a permanent mental or physical disability, the Conference shall certify the disability of such Justice or judge and issue an order removing such Justice or judge from active service. Habitual intemperance that seriously interferes with the performance of any one of the critical duties of a Justice or judge shall be deemed to be a permanent disability for the purposes of this subsection. Such Justice or judge shall then be involuntarily retired from regular active service and the Conference shall send notice of its action to the President.

"(c) The President shall, by and with the advice and consent of the Senate, appoint a successor to any Justice or judge retired involuntarily under the provisions of subsection (b) of this section. Whenever such successor shall have been appointed, the vacancy subsequently caused by the death or resignation of the Justice or judge involuntarily retired shall not be filled.".

SUPREME COURT REVIEW

SEC. 4. (a) Chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1259. Judicial Conference of the United States; appeal

"Upon the petition of the aggrieved Justice or judge the Supreme Court shall review the order of the Judicial Conference of the United States, pursuant to chapter 17 of this title, that such Justice be censured, involuntarily retired, or removed from office or that

such judge be removed from office for conduct inconsistent with the good behavior required by article III of the Constitution. Review under this section shall not be had unless such petition is filed within ten days after written notice of the determination of the Conference is received by such Justice or judge.".

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

"1259. Judicial Conference of the United States; appeal.".

DISABILITY RETIREMENT

SEC. 5. (a) Section 294(a) of title 28, United States Code, is amended by striking out "retired" and by inserting immediately after "Court" the following: "retired voluntarily or involuntarily".

(b) Section 294(b) of such title is amended by inserting immediately after "title" the following: ", or who has been involuntarily retired under section 372(b) of this title".

(c) Section 294(c) of title 28, United States Code, is amended—

(1) by striking out in the first sentence thereof "Any retired circuit or district judge may" and inserting in lieu thereof the following: "A circuit or district judge retired voluntarily under section 371(b) or 372(a) of this title or involuntarily under section 372(b) of this title may"; and

(2) by adding at the end thereof the following new sentence: "A judge of the United States retired involuntarily under section 372(b) of this title may be designated and assigned by the chief judge of his court to perform such judicial duties in such court as such judge is willing and able to undertake.".

FEES

SEC. 6. Section 604 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) The Director shall pay necessary expenses incurred by the Judicial Conference of the United States and the Council on Judicial Tenure under chapter 17 of this title including mileage allowance and witness fees at the same rate as provided in section 1821 of this title.".

ASSISTANCE OF UNITED STATES MARSHALS

SEC. 7. Section 569(b) of title 28, United States Code, is amended immediately after "Canal Zone" by inserting "and of the Judicial Conference of the United States and the Council on Judicial Tenure under chapter 17 of this title".

MISCELLANEOUS

SEC. 8. (a) Within one hundred and eighty days after the date of enactment of this Act, the judges of each circuit, the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court shall elect one member from each such circuit and such courts to serve on the Council on Judicial Tenure in accordance with section 377(b) of title 28, United States Code (as added by section 2(a) of this Act).

(b) Within one year after the date of enactment of this Act, the Council on Judicial Tenure shall promulgate rules for the conduct of its activities.

(c) Within one year after the date of enactment of this Act, the Judicial Conference of the United States shall promulgate rules of evidence for use in proceedings required under chapter 17 of title 28, United States Code.

(d) All rules promulgated pursuant to subsections (b) and (c), and amendments thereto, shall be matters of public record, and shall be effective upon promulgation.

AUTHORIZATION OF APPROPRIATIONS

SEC. 9. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

By Mr. HUGH SCOTT (for himself, Mr. BAKER, Mr. CRANSTON, Mr. HARTKE, Mr. TUNNEY, Mr. WILLIAMS, and Mr. BAYH):

S. 1111. A bill to amend the Copyright Act of 1909, and for other purposes. Referred to the Committee on the Judiciary.

PERFORMANCE RIGHTS AMENDMENT OF 1975

Mr. HUGH SCOTT. Mr. President, today I am pleased to introduce legislation amending the 1909 Copyright Act to establish the concept of a performance royalty.

The performance royalty would recognize a copyright interest in sound recordings for those who perform the music. This has been a principle I have advocated for more than 30 years. Essentially, those who use sound recordings for profit would be required to pay a fee—a performance royalty—to those who make a creative contribution to the recorded music.

The amount of the royalty payment for those who use recorded music for profit would be small but it would provide a fund out of which these creative individuals—musicians, vocalists, narrators—could be compensated.

The real issue here is whether or not a person who uses his creative talents to produce music should be entitled to compensation from someone who takes the music and profits from it. Nearly 40 countries around the world have already endorsed this idea in one form or another. I cannot understand why the performers are currently denied this copyright protection while present copyright laws provide for royalty payments to the composers and publishers of the music.

I look forward to hearings which Senator MCCLELLAN has indicated the Subcommittee on Patents, Trademarks, and Copyrights will hold on this issue. I believe fair hearings will illustrate the equity embodied in a performance royalty concept.

I hope to gain the support of my colleagues in the Senate for this essential legislation.

By Mr. GRAVEL:

S. 1112. A bill to establish an Energy Trust Fund funded by a tax on energy sources, to provide for the development of domestic sources of energy and for the more efficient utilization of energy, and for other purposes. Referred to the Committee on Finance.

ENERGY REVENUE AND DEVELOPMENT ACT OF 1975

Mr. GRAVEL. Mr. President, I am today introducing legislation to initiate and finance a national energy program, the aim of which is to develop our massive indigenous fossil fuel resources and to assist the development of alternative sources of energy including coal gasification and liquefaction, solar, geothermal, nuclear, tidal, conversion of combustible waste materials, and other.

The United States is presently facing a severe crisis. This crisis is due to a rapidly declining economy and serious shortages in domestic energy supplies. The advent of this crisis was predictable and measures should have been taken long before this time to prevent it. Although Congress has passed a significant amount of legislation in the energy field over the past 2 years, Congress has failed to focus on the major immediate problem—underdevelopment of domestic energy resources. Recent energy legislation has not addressed the problem of increasing fossil fuel production which can rapidly meet our short run needs. The public has developed a misperception of the energy shortage thereby impairing its ability through the democratic process to pressure properly and productively the Congress to develop correct policies. Measures proposed for energy conservation will not solve the Nation's severe economic problems, either at the present time or during the next decade.

Clearly, we must increase our efforts to conserve energy. However, we must also realize that our supplies of domestic oil and gas must be increased, until viable alternative sources of energy are available. In order to return our Nation to a period of full employment, we must have an adequate supply of oil and gas. Energy shortages creates a spiraling downward trend by reducing production, which creates further unemployment, thereby reducing consumer spending and causing further reductions in industrial output. In order to reverse this spiraling effect, we must produce adequate supplies of oil and gas.

The present economic condition in the United States should convince us that we can no longer continue to thwart development of oil and gas production. We have learned a bitter lesson that the stringent regulation of oil and gas simply does not work. Better experience has taught us not to regulate food or health care services, so why should we regulate the oil and gas on which our Nation's economy so heavily depends?

The American people must be made aware that in this problem area we do not need more Government regulation, but less. We have not allowed our free market system to operate with respect to oil and gas and the results have been disastrous. People must become aware that if producers are able to sell their products at reasonable prices, they will invest more capital in new production. For those people who still believe our free market system is not sufficient to provide adequate checks and balances on producers in the energy area, the safeguard of an excessive profits tax can be established. This would be the only sector of our free enterprise system to have such a tax. It is necessary in order to correct the public misperception and reestablish the energy industry's credibility.

Congress can no longer continue its counterproductive proliferation of energy legislation.

Attempts to stimulate the economy by the imposition of tax rebates such as those presently being proposed are not sufficient alone to solve the Nation's present economic problems. We must begin to encourage the development of oil and gas, the most immediate and responsive sector of our energy spectrum, if we are to reduce unemployment and

relieve our Nation from dependency on foreign oil sources.

The energy shortage is not a resource shortage, but a policy shortage. We must have a strong energy policy and we must have it now. I am, therefore, introducing a bill which directly addresses our Nation's energy problems. I hope my colleagues will give this bill their careful consideration.

Mr. President, I ask unanimous consent to have a summary of major provisions of the bill printed in the RECORD.

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

SUMMARY OF MAJOR PROVISIONS OF ENERGY REVENUE AND DEVELOPMENT ACT OF 1975

TITLE I—STATEMENT OF POLICY AND PURPOSES

This title sets forth the basic policy of the Act to provide a comprehensive national program to achieve energy independence by 1985.

TITLE II—ENERGY TRUST FUND

The bill establishes an Energy Trust Fund, administered by the Energy Research and Development Administration, to carry out a national energy program, including research and development of new and improved energy sources and production techniques, creation of a national energy reserve and the exploration of new oil and gas fields in remote areas of the United States. The Trust Fund will be partially financed by a BTU tax which will be levied equally on all forms of energy. No section of the country will be unduly burdened by the tax because it will be levied at the source of production or importation on all energy resources at the rate of 2¢ per million BTUs. The Trust Fund will also be financed by outer continental shelf revenues, a portion of which would be allocated to States adjacent to offshore drilling areas. Thus, government revenues from energy production will be used to promote further energy development.

TITLE III—COMMISSION ON ENERGY TECHNOLOGY ASSESSMENT

A panel of scientists, engineers, and economists will be created to establish standards and goals for energy research and development conducted under the Energy Research and Development Administration. All publicly financed research and development would be critically evaluated by CETA in order to prevent taxpayers' money from being wasted on ill-conceived projects. CETA would enter into contracts with private, non-profit educational or research institutions to perform adversary studies on publicly financed programs.

TITLE IV—RESIDENTIAL ENERGY CONSERVATION INCENTIVES

Tax credits and deductions are provided for the installation of storm windows, insulation, and other materials designed for residential energy conservation. A tax credit or deduction is also allowed for the installation of systems designed to utilize solar or other unconventional forms of energy to provide residential heating or cooling if such systems meet performance criteria established by the Energy Research and Development Administration.

TITLE V—DEREGULATION OF NATURAL GAS AND END OF PRICE CONTROLS

In order to encourage domestic energy production, price controls on petroleum, petroleum products, and natural gas at the wellhead, old and new, are to be deregulated.

TITLE VI—EXCESSIVE PROFITS TAX

The bill provides an 80% tax on all profits from oil and gas industry if such profits exceed a 15% return on net investment. In order to guarantee a plow back of excessive profits from deregulated oil and natural gas, the bill provides that excess profits which are reinvested in new energy production will be taxed pursuant to normal corporate tax regulations. The excessive profits tax and reinvestment provisions will expire at the end of five years.

TITLE VII—VARIABLE DEPLETION ALLOWANCE

The bill would repeal the *foreign* depletion allowance. The *domestic* depletion allowance is necessary to entice needed capital to the oil and gas industry. The independent sector of that industry accounts for 80% of the exploratory drilling in the United States. The bill establishes a variable domestic depletion allowance which allows producers a fraction of the percentage depletion allowance which would be proportional to the ratio of the producer's domestic energy expenditures to its total foreign and domestic energy expenditures. To illustrate:

New domestic depletion allowance = 22% x domestic energy expenditures (over) total foreign and domestic expenditures.

TITLE VIII—NATIONAL ENERGY RESERVE

In order to reduce the vulnerability of the United States to an embargo on imported energy supplies, the bill establishes a national energy reserve which would be capable of replacing energy imports for at least 120 days. The reserve would be administered by ERDA and funds to create it would be apportioned from the Energy Trust Fund.

TITLE IX—REMOTE OIL AND GAS DISCOVERY ACT

The United States has large unexplored oil and gas reserves in remote areas of the United States. In order to stimulate production in remote areas where transportation facilities do not exist, the bill provides that the United States guarantee the purchase in place, at current market prices, of 50% of the annual production capability of such wells. Once transportation facilities become available, the United States would have the option of keeping its oil or gas in the well as a reserve, or of selling the oil or gas at current market prices.

TITLE X—TRANSFER OF JURISDICTION OVER NAVAL PETROLEUM RESERVES TO SECRETARY OF INTERIOR

The bill transfers the management of all energy resources located in naval petroleum reserves to the Department of the Interior. Pursuant to existing provisions of the Mineral Leasing Act of 1920, a portion of the revenues from the petroleum reserves would inure to the States.

TITLE XI—CONSOLIDATION OF ERDA AND FEA

The bill provides for a consolidation of the Federal Energy Administration into the Energy Research and Development Administration in order to avoid overlapping and conflicting bureaucracies and to insure a unified national energy policy and effort.

By Mr. HATFIELD:

S. 1113. A bill to authorize the Secretary of the Interior to establish, on certain public lands of the United States, national petroleum reserves, the development of which needs to be regulated in a manner consistent with the total energy needs of the Nation, and for other purposes. Referred to the Committee on Armed Services, the Committee on Interior and Insular Affairs, and the Committee on Banking, Housing and Urban Affairs, jointly, by unanimous consent.

Mr. HARRY F. BYRD, JR. subsequently said: Mr. President, I ask unanimous consent that the bill introduced earlier by the Senator from Oregon (Mr. HATFIELD) S. 1113, relative to the establishment of national petroleum reserves be jointly referred to the Committees on Interior and Insular Affairs, Armed Services, and Banking, Housing and Urban Affairs.

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

By Mr. CHURCH:

S. 1114. A bill to provide that time spent by American civilians in enemy prisoner-of-war camps and similar places shall be creditable—as though it were military service—toward pensions, annuities, or similar benefits under various Federal retirement programs. Referred to the Committee on Finance, the Committee on Labor and Public Welfare, the Committee on Post Office and Civil Service, and the Committee on Armed Services, jointly, by unanimous consent.

CIVILIAN POW RELIEF

Mr. CHURCH. Mr. President, today I introduce legislation whose purpose is to provide retirement credit for time spent as a prisoner-of-war subsequent to December 7, 1941. This bill is identical to H.R. 1716, which has been introduced in the House of Representatives by Congresswoman PATSY MINK. It would provide credit toward social security, railroad, civil service and military retirement, with a provision that such credit could not duplicate credit available without regard to this legislation.

Among those who would benefit are civilians who were employed by contractors at Pacific Naval Air Bases during World War Two. A number of these civilians were captured at the outset of World War Two, on Wake Island, Guam and Cavite, and interned by the Japanese.

They endured grievous suffering during their internment, and their remaining numbers and the numbers of their survivors are small. As Congresswoman MINK has cited, providing this credit would be consistent with the purposes of the section of Public Law 92-603, which extends social security wage credits for time spent in American detention camps by Japanese-Americans during the same period. Although some other Federal benefits are already available to this group, I feel that allowing retirement credit for the periods of their internment is an eminently fair measure. I urge that it be given every consideration by my distinguished colleagues in the Senate.

Mr. FORD subsequently said: Mr. President, I ask unanimous consent that a bill introduced earlier today by the Senator from Idaho (Mr. CHURCH) relative to creditable service toward Federal pensions and annuities, et cetera, for time spent as prisoners of war by American civilians be jointly referred to the Committee on Finance, the Committee on Labor and Public Welfare, the Committee on Post Office and Civil Service, and the Committee on Armed Services.

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

By Mr. DOMENICI (for himself, Mr. BAKER, Mr. RANDOLPH, Mr. BELLMON, Mr. HUMPHREY, and Mr. TAFT):

S. 1115. A bill to amend the Federal Nonnuclear Energy Research and Devel-

opment Act of 1974, so as to authorize research, development, and demonstration in the field of ground propulsion systems. Referred to the Committee on Commerce and the Committee on Interior and Insular Affairs, by unanimous consent.

Mr. DOMENICI. Mr. President, today I am introducing legislation in the form of a substitute bill for S. 783, which would authorize the creation of a division within ERDA to research and demonstrate improved or alternative ground propulsion systems. Special emphasis is to be placed on efficiency, performance, and usefulness.

The scope of my substitute bill is identical with that of S. 783 except for minor clarifications. In addition, it would amend the Nonnuclear Act of 1974 which presently defines the nonnuclear functions of ERDA.

It should be noted that ERDA has been most fortunate in inheriting an existing facility dealing in automobile propulsion and fuel economy. This laboratory is located in the Energy Research Center, formerly of the U.S. Bureau of Mines in Bartlesville, Okla.

Mr. President, this research center with its distinguished work in both oil and gas and more recently ground propulsion systems could logically play a key role in the research and development under this new division.

Mr. President, I will not present a lengthy explanation of the substitute bill because my remarks, given on February 20, page 3791 of the CONGRESSIONAL RECORD, were directed toward the same concept. I do, however, wish to remind my colleagues of some rather alarming facts. Today there are over 90 million automobiles in operation today which consume more than one-fifth of the U.S. energy consumption, or 4.7 million barrels of oil per day.

These figures alone vividly indicate the need for a comprehensive research and demonstration program to develop more efficient ground propulsion systems which are not so dependent on petroleum products.

Mr. President, I strongly urge my colleagues to join in support of this bill because, unless the priority given to this type of research is greatly increased, our Nation will be unable to meet its transportation needs of tomorrow.

Mr. President, I ask unanimous consent that the full text of the substitute bill be printed in the RECORD.

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

S. 1115

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6(b) of the Federal Nonnuclear Energy Research and Development Act of 1974 is amended (1) by redesignating paragraphs (P) and (Q) thereof as paragraphs (Q) and (R), respectively, and (2) by inserting immediately after paragraph (O) the following new paragraph:

"(P)(1) to develop ground propulsion systems which are energy conserving, have clean emission characteristics, and are capable of being produced in large numbers at a reasonable mass production per unit costs, such systems to meet or better all air quality standards set by or under the Clean Air Act; and

"(2) to develop alternative energy sources for use in ground propulsion systems;".

SEC. 2. The Federal Nonnuclear Energy Research and Development Act of 1974 is amended by adding at the end thereof the following new section:

"SEC. 17. (a) For the purpose of section 6 (a)(P) of this Act, there is established within the Energy Research and Development Administration a Division of Ground Propulsion Systems and the Administrator shall carry out all the research, development, and demonstration activities regarding ground propulsion systems, including alternative energy sources for use therein, through such Division.

"(b) Such research, development, and demonstration shall be conducted so as to contribute, among others, to the following objectives—

(1) the improvement of and verifying of ground propulsion systems with emphasis on efficiency, performance, and usefulness;

(2) the development of energy conserving ground propulsion systems;

(3) the development of ground propulsion systems with clean emission characteristics, economical per unit cost, and low per mile energy consumption;

(4) the most effective utilization of the scientific and engineering resources of the United States already in existence, with close cooperation among all interested agencies of the United States in order to avoid unnecessary duplication and waste of effort, facilities, and equipment.

"(c) In carrying out his functions under section 6(b)(P) of this Act, the Administrator shall evaluate and make a continuing comparative assessment of all ground propulsion systems presently in use, or in a conceptual or development stage.

"(d) As used in section 6(b)(P) of this Act, 'ground propulsion systems' means the engine, transmission, or drive, and associated controls, necessary to power automobiles, trucks, trains, buses, and selected light marine vehicles.

"(e) The Administrator is authorized to enter into contracts and other agreements or arrangements, and to make such grants, as he may determine necessary and appropriate in carrying out his functions under this section. The Administrator shall, in carrying out such functions, utilize, to the maximum extent, the resources and cooperation of the private sector.

"(f) The Administrator, utilizing his authority under section 106(g) of the Energy Reorganization Act of 1974, shall establish an advisory board for the purposes, among others, of encouraging the private sector to participate in the research, development, and demonstration carried out pursuant to this section, and to advise with and make recommendations to the Administrator on legislation, policies, administration, research, and other matters affecting this section.

"(g) Notwithstanding any other provisions of this Act, for the purposes of carrying out the provisions of section 6(b)(P) and this section, there are authorized to be appropriated for the fiscal year ending June 30, 1976, the sum of $20,000,000; for the fiscal year ending September 30, 1977, the sum of $40,000,000; for the fiscal year ending September 30, 1978, the sum of $100,000,000; for the fiscal year ending September 30, 1979, the sum of $100,000,000; and for the fiscal year ending September 30, 1980, the sum of $100,000,000.".

Mr. DOMENICI. Mr. President, today I introduced a substitute to a former bill that I had introduced, Senate bill 783.

I have checked with both sides of the aisle. They are in accord.

I ask unanimous consent that the bill be referred jointly to the Committee on Interior and Insular Affairs and the Committee on Commerce.

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

By Mr. STEVENSON (for himself and Mr. CRANSTON):

S.J. Res. 51. A joint resolution to disapprove Export-Import Bank Financing of a nuclear reactor sale to South Korea. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. STEVENSON. Mr. President, on February 25 the Export-Import Bank of the United States notified the Congress of its intent to assist the construction and initial operation of a 600-megawatt nuclear powerplant in the Republic of Korea. Under the proposal, the Export-Import Bank would extend a direct loan in the amount of $78,900,000 to the Korea Electric Co.—KECO—together with a guarantee of loans by private financial institutions to is required under section 2(b)(3) of the Export-Import Bank Act of 1945 as amended at least 25 days of continuous session of the Congress prior to the date of final approval.

I am today introducing a joint resolution to defer final aproval of the transaction pending receipt and review by the Congress next month of statutory required reports from the President on the adequacy of U.S. laws and regulations in preventing the proliferation of nuclear capability for nonpeaceful purposes; the adequacy of domestic and international safeguards in preventing the proliferation, diversion, or theft of nuclear materials; and the efforts by the United States and other countries to strengthen international nuclear safeguards in anticipation of the Nuclear Nonproliferation Treaty Review Conference to be held this year pursuant to the Treaty on the Nonproliferation of Nuclear Weapons. Such reports are required by section 14 of the Export Administration Amendments of 1974.

Deferral of final approval of this transaction until the executive branch and the Congress have had an opportunity to assess the adequacy of United States and international efforts in preventing unrestricted nuclear proliferation is essential. Unlawful diversion or theft of nuclear materials and technology and their potential use for nonpeaceful purposes presents one of the greatest threats to international peace and security. It is widely acknowledged that there are serious potential deficiencies in domestic and international nuclear safeguard and security systems. The Nonproliferation Treaty Review Conference will address these issues in the near future.

U.S. laws and regulations are now undergoing extensive scrutiny to determine their adequacy in preventing proliferation of nonpeaceful nuclear capability. The recently created Nuclear Regulatory Commission, which is intended to regulate the construction, operation, and use of nuclear reactors and materials, and the Energy Research and Development Authority, which is intended to play a role in U.S. assisted nuclear development, have yet to become fully organized and operational.

Under these circumstances, it would be folly for the United States to proceed at this point with subsidized assistance for the further development of nuclear capability in South Korea. That country is not a party to the Nuclear Nonproliferation Treaty. The cooperation agreement between the United States and South Korea is weak. It does not prohibit "peaceful" nuclear explosions, and South Korean intentions with respect to NPT ratification, the development of reprocessing facilities and nuclear explosives are not clearly understood.

Prudence dictates that we assure ourselves that safeguards are adequate and that the United States do nothing to undermine the Nuclear Non-Proliferation Treaty before going ahead. The Nuclear Non-Proliferation Review Conference takes place in May. The executive branch will soon complete its analysis of the adequacy of domestic and international nuclear safeguards. Congress will shortly have an opportunity to review the results. At that time we will be in a position to assess the wisdom of continued Export-Import Bank assistance for foreign nuclear development in South Korea and other nations, as well as the circumstances and conditions under which such assistance should be extended. It is for these reasons that I urge a temporary deferral—not a prohibition—of the proposed Export-Import Bank transaction.

Mr. President, I intend to hold hearings in the Subcommittee on International Finance on this resolution, Friday, March 14 at 10 a.m. Persons desiring further information should contact Stanley Marcuss, 224-2854.

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

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

S.J. RES. 51

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

Whereas, the Export-Import Bank, pursuant to section 2(b)(3) of the Export Import Bank Act of 1945, as amended, has notified the Congress of its intent to extend a direct loan in the amount of $78,900,000 to Korea Electric Company (KECO) of the Republic of Korea together with a guarantee of loans by private financial institutions to KECO in the amount of $105,200,000 for the purpose of purchasing goods and services for the construction and initial operation of a 600 megawatt nuclear power plant;

Whereas, the Republic of Korea is not a party to the Nuclear Non-Proliferation Treaty;

Whereas, uncontrolled nuclear proliferation presents grave dangers to international peace and security;

Whereas, there is doubt about the adequacy of present international and bilateral arrangements for nuclear safety and security to prevent unlawful diversion, theft, or proliferation of nuclear materials and technology or their use for non-peaceful purposes;

Whereas, the President has been directed, pursuant to section 14 of the Export Administration Amendments of 1974, to review all U.S. laws and regulations governing the export and re-export of materials, supplies, articles, technical data or other information relating to the design, fabrication, development, supply, repair, or replacement of any nuclear facility and to report no later than the end of April, 1975, to the Congress on the adequacy of such laws and regulations in preventing the proliferation of nuclear capability for non-peaceful purposes; and

Whereas, the President has also been directed, pursuant to such statute, to review domestic and international safeguards and to report to the Congress no later than the end of April, 1975, on the adequacy of such safeguards in preventing the proliferation, diversion of theft of all such nuclear materials as well as on efforts by the United States and other countries to strengthen international nuclear safeguards in anticipation of the nuclear Non-Proliferation Treaty Review Conference to be held this year pursuant to section 3 of the Treaty on the Non-Proliferation of Nuclear Weapons;

Now, therefore, be it resolved, That the Board of Directors of the Export-Import Bank shall defer approval of such loan and guarantee of loans to KECO pending receipt and review by the Congress of the aforesaid reports.

ADDITIONAL COSPONSORS OF BILLS AND RESOLUTIONS

S. 95

At the request of Mr. MATHIAS, the Senator from Connecticut (Mr. WEICKER) and the Senator from California (Mr. TUNNEY) were added as cosponsors of S. 95, a bill to guarantee the constitutional right to vote and to provide uniform procedures for absentee voting in Federal elections in the case of citizens outside the United States.

S. 149

At the request of Mr. PACKWOOD, the Senator from New Mexico (Mr. MONTOYA) was added as a cosponsor of the bill (S. 149) to extend to all unmarried individuals the full tax benefits of income splitting now enjoyed by married individuals filing joint returns.

S. 306

At the request of Mr. GRAVEL, the Senator from Montana (Mr. METCALF) was added as a cosponsor of S. 306, a bill to terminate the mutual aid agreement.

S. 331

At the request of Mr. HRUSKA, the Senator from North Dakota (Mr. BURDICK) was added as a cosponsor of the bill (S. 331) to return Veterans Day to its traditional date of celebration, November 11 of each year.

S. 389

At the request of Mr. CHURCH, the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 389, a bill to amend the Internal Revenue Code of 1954 to revise the retirement income credit and to increase the amount of such credit.

S. 474

At the request of Mr. HOLLINGS, the Senator from New York (Mr. BUCKLEY), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from Nevada (Mr. LAXALT), and the Senator from New Mexico (Mr. MONTOYA) were added as cosponsors of S. 474, a bill relating to changes in status of members of the uniformed services who are missing in action as a result of their service in Indochina.

S. 497

At the request of Mr. BUCKLEY, the Senator from Wyoming (Mr. HANSEN) and the Senator from Tennessee (Mr. BROCK) were added as cosponsors of S. 497, to establish a cost-of-living index for the elderly.

S. 546

At the request of Mr. HATHAWAY, the Senator from South Dakota (Mr. MCGOVERN) was added as a cosponsor of the bill (S. 546) to amend the Social Security Act and the Internal Revenue Code of 1954.

S. 549

At the request of Mr. MCGOVERN, the Senator from New Mexico (Mr. MONTOYA) was added as a cosponsor of S. 549, the Food and Agriculture Act of 1975.

S. 609

At the request of Mr. JAVITS, the Senator from California (Mr. TUNNEY) was added as a cosponsor of S. 609, the "Emergency Public Service Employment Extension Act of 1975."

S. 692

At the request of Mr. HOLLINGS, the Senator from Indiana (Mr. HARTKE) was added as a cosponsor of S. 692, a bill to regulate commerce to assure increased supplies of natural gas at reasonable prices for the consumer.

S. 772

At the request of Mr. TALMADGE, the Senator from Utah (Mr. MOSS), the Senator from Missouri (Mr. EAGLETON), and the Senator from Arkansas (Mr. BUMPERS) were added as cosponsors of S. 772, the Beef Research and Consumer Information Act.

S. 792

At the request of Mr. TUNNEY, the Senator from New Hampshire (Mr. MCINTYRE) was added as a cosponsor of S. 792, the Part Time Career Opportunity Act.

S. 805

At the request of Mr. DOMENICI, the Senator from Utah (Mr. GARN) was added as a cosponsor of the bill (S. 805) to amend section 5(c) of the National Trails System Act.

S. 841

At the request of Mr. NELSON, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of S. 841, a bill to protect individuals against conduct creating serious potential environmental health hazards.

S. 850

At the request of Mr. MCGOVERN, the Senator from New Jersey (Mr. CASE), the Senator from South Dakota (Mr. ABOUREZK), the Senator from Maine (Mr. HATHAWAY), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Pennsylvania (Mr. HUGH SCOTT), the Senator from Missouri (Mr. EAGLETON), the Senator from Connecticut (Mr. WEICKER), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Minnesota (Mr. MONDALE), the Senator from Missouri (Mr. SYMINGTON), and the Senator from North Dakota (Mr. BURDICK) were added as cosponsors of S. 850,

a bill to amend the National School Lunch and Child Nutrition Acts in order to extend and revise the special food service program for children, and for other purposes.

S. 862

At the request or Mr. CHURCH, the Senator from Illinois (Mr. STEVENSON) was added as a cosponsor of S. 862, a bill to amend the Social Security Act to provide for the coverage of certain drugs under part A of the health insurance program established by title XVIII of such act.

S. 953

At the request of Mr. STEVENSON, the Senator from Connecticut (Mr. RIBICOFF) was added as a cosponsor of S. 953, a bill to amend the Export Administration Act of 1969.

S. 969

At the request of Mr. HARTKE, the Senator from North Dakota (Mr. BURDICK) was added as cosponsor of S. 969, a bill to amend chapter 34 of title 38, United States Code, to extend the basic educational assistance eligibility for veterans under chapter 34 and for certain dependents under chapter 35 from 36 to 45 months.

S. 969

Mr. HARTKE. Mr. President, yesterday when I introduced the bill S. 969, to amend chapter 34 of title 38, United States Code, to extend the basic educational assistance eligibility for veterans under chapter 34 and for certain dependents under chapter 35 from 36 to 45 months the distinguished senior Senator from Idaho (Mr. CHURCH) was to have been listed as one of the original cosponsors.

I ask unanimous consent that Senator CHURCH appear as one of the cosponsors of the bill, S. 969, as introduced yesterday, and that his name appear on the next printing of the bill.

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

SENATE JOINT RESOLUTION 40

At the request of Mr. WILLIAM L. SCOTT, the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of Senate Joint Resolution 40, a joint resolution proposing an amendment to the Constitution of the United States relative to freedom from forced assignment to schools or jobs because of race, creed, or color.

SENATE RESOLUTION 48

At the request of Mr. SPARKMAN, the Senator from Arizona (Mr. FANNIN) was added as a cosponsor of Senate Resolution 48 urging continuing efforts in behalf of Americans missing in action in Southeast Asia.

SENATE RESOLUTION 94

At the request of Mr. HATFIELD, the Senator from Washington (Mr. MAGNUSON) was added as a cosponsor of Senate Resolution 94, relating to shipments to Cambodia under Public Law 480.

SENATE CONCURRENT RESOLUTION 21

At the request of Mr. HOLLINGS, the Senator from Colorado (Mr. GARY W. HART) and the Senator from Wisconsin (Mr. NELSON) were added as cosponsors of Senate Concurrent Resolution 21, relating to the embargo against the shipment of arms to Pakistan and India.

SENATE RESOLUTION 101—SUBMISSION OF A RESOLUTION RELATING TO THE USE OF GOVERNMENT-OWNED PEANUTS

(Referred to the Committee on Agriculture and Forestry.)

Mr. TALMADGE submitted the following resolution:

S. RES. 101

Resolved, Whereas the United States is suffering from a severe economic recession, with a high rate of unemployment, and

Whereas the poor and the unemployed in the United States need substantial additional quantities of high quality protein, and

Whereas the recent World Food Conference estimated that almost a half a billion people suffer from malnutrition in the world today, and

Whereas a basic cause of malnutrition is protein deficiency, and

Whereas it is the commitment of the United States, as expressed in various statutes, including the Agricultural Trade Development and Assistance Act of 1954 (P.L. 480), to share our agricultural abundance with needy persons domestically and in other parts of the world, and

Whereas the Department of Agriculture has accumulated almost 400,000 tons of peanuts through its price support program, and

Whereas American peanuts represent an important source of high quality protein, and

Whereas peanuts are a perishable commodity, and

Whereas this valuable source of protein will be lost through spoilage unless soon utilized: Now, therefore, be it

Resolved, that it is the sense of the Senate that the Secretary of Agriculture immediately take steps to distribute excess peanut stocks in useful edible forms to needy persons at home and abroad under the domestic food assistance programs and the P.L. 480 program.

SENATE RESOLUTION 102—SUBMISSION OF A RESOLUTION DISAPPROVING PROPOSED DEFERRAL OF BUDGET AUTHORITY OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION FUNDS

(Referred to the Committee on Commerce.)

Mr. MUSKIE. Mr. President, my colleague (Senator HATHAWAY) and I are today submitting a resolution to disapprove the President's deferral of National Oceanic and Atmospheric Administration funds. This deferral message, containing several items, adversely affects State programs across the country which are involved in the conservation and management of our marine resources.

Several problems presently confront the U.S. fishing industry. Aside from the difficulties involved in our general economic situation, the U.S. fishing industry must compete with heavily subsidized foreign fleets, which fish near—or even within—the present 12-mile economic zones. Faced with this situation, our fleets have found themselves at a competitive disadvantage, and offshore U.S. fishing stocks have been severely depleted. Now is not the time to cut back on our fisheries management programs; world food shortages and depletion of our fish stocks compel a renewed commitment to these programs.

The fishing industry is, of course, of great importance in the economy of the State of Maine. Two of the program cuts which are of particular interest are the deferral of fisheries research and development funds and anadromous conservation funds and the deferral of the sea grant program funds.

The amount deferred in research and development and conservation is only $600,000. But coming halfway through the fiscal year, this deferral has the impact of a 20 percent reduction in funds for my home State of Maine and other beneficiaries of the program. In Maine this means the loss of two full-time position, 3 summer research positions, as well as reductions in travel, equipment and maintenance, and laboratory supply funds. So this apparently small reduction is deceptive; it will result in irreversible cutbacks in personnel and termination of ongoing research and development projects.

In addition to this, the administration would reduce the sea grant programs this year by more than a million dollars. In Maine these funds are primarily used to carry out aquaculture programs—programs of fish farming—innovations which show such promise of developing new regional industries and revitalizing various segments of our fisheries. At a time which the position of the U.S. fishing industry has remained stable or declines, while domestic consumption of fish has increased dramatically over the past several years, we should be increasing our support of such management and conservation programs. At a minimum we must require that they be funded at the levels approved by Congress.

Mr. HATHAWAY. Mr. President, I take the floor today to submit, along with the senior Senator from Maine (Mr. MUSKIE) a resolution to disapprove the President's deferral of National Oceanic and Atmospheric Administration funds. This action by the President would defer allocation of authorized and appropriated funds to the many States which have ongoing projects to assist the fisheries industries. Spending would be curtailed by $6.8 million under this original deferral message.

The President is right in his thinking that some funds already appropriated by Congress should be deferred until the state of the economy regains its healthy hue. But I submit that he is terribly wrong in his action against the expenditure of NOAA's moneys.

A short time ago, I chaired hearings in my State on the subject of the fisheries industry in an effort to assess what benefits were being accorded our fisheries industries as small businesses. During those hearings the common theme expressed by our citizens who earn their living from the water was the glaring lack of attention and concern by the Federal Government for them. There are agencies to deal with small businesses, and funds to assist many segments of our small business community. But there is very little in the way of Federal assist-

ance that finds its way to our marine industries.

The funds the President would ask us to cut are minute when compared to the national budget. But despite their nominal size, those dollars advance and assist programs which are vital to our knowledge of the sea. Without the knowledge these programs can provide, we lose the ability to fully harvest our marine resources. In Maine, this cutback is less severe in terms of dollars than in other coastal States. That fact, however, does not mitigate the impact this will have on Maine fisheries.

NOAA has contributed much toward our ability to reap the benefits of the sea. We are now involved in our State with the Apollo-Soyuz test project, whereby Soviet and American astronauts and cosmonauts will extensively photograph our coast so that we may better understand the causes of the red tide. We already know all too well the terrible effects of this natural phenomenon. Cutting back funds for related ocean research, or any research which will better equip us to feed ourselves, does not make much sense to me.

I shall support the President in any effort to eradicate nonproductive spending of our tax dollars. But to curb spending in areas which affect our ability to produce or harvest food is simply not a very intelligent way to save money. I cannot support his proposal to defer these funds.

The resolution reads as follows:

S. Res. 102

Resolved, That the Senate disapproves the proposed deferral of budget authority (D75-94) for the Department of Commerce, an appropriation for operation, research and facilities for the National Oceanic and Atmospheric Administration, set forth in the special message transmitted by the President to Congress on November 26, 1974, under section 1013 of the Impoundment Control Act of 1974.

SENATE RESOLUTION 103—ORIGINAL RESOLUTION REPORTED RELATING TO MEMBERS ON THE PART OF THE SENATE OF THE JOINT COMMITTEE ON PRINTING AND THE JOINT COMMITTEE ON THE LIBRARY

(Placed on the Calendar.)

Mr. CANNON, from the Committee on Rules and Administration, reported the following resolution:

Resolved, That the following-named Members be, and they are hereby, elected members of the following joint committees of Congress:

Joint Committee on Printing: Mr. HATFIELD of Oregon vice Mr. HUGH SCOTT of Pennsylvania, resigned.

Joint Committee of Congress on the Library: Mr. HUGH SCOTT of Pennsylvania vice Mr. HATFIELD of Oregon, resigned.

AMENDMENTS SUBMITTED FOR PRINTING

AMENDMENT OF RULE XXII—SENATE RESOLUTION 4

AMENDMENTS NOS. 54 THROUGH 67

(Ordered to be printed and to lie on the table.)

Mr. ALLEN submitted 13 amendments intended to be proposed by him to the resolution (S. Res. 4) amending rule XXII of the Standing Rules of the Senate with respect to the limitation of debate.

AMENDMENT NO. 68

(Ordered to be printed and to lie on the table.)

Mr. ALLEN submitted an amendment intended to be proposed by him to an Allen amendment, intended to be proposed by him, to the resolution (S. Res. 4), supra.

AMENDMENT NO. 69

(Ordered to be printed and to lie on the table.)

Mr. ALLEN submitted an amendment intended to be proposed by him to a Hathaway amendment, intended to be proposed, to the resolution (S. Res. 4), supra.

AMENDMENT NO. 70

(Ordered to be printed and to lie on the table.)

Mr. ROBERT C. BYRD submitted an amendment intended to be proposed by him to amendment No. 71, intended to be proposed by him, to the resolution (S. Res. 4), supra.

AMENDMENT NO. 71

(Ordered to be printed and to lie on the table.)

Mr. ROBERT C. BYRD submitted an amendment intended to be proposed by him to the resolution (S. Res. 4), supra.

TAX REDUCTION ACT OF 1975—H.R. 2166

AMENDMENT NO. 72

(Ordered to be printed and to lie on the table.)

AMENDMENT TO REPEAL THE PERCENTAGE DEPLETION ALLOWANCE FOR OIL OR GAS WELLS

Mr. HOLLINGS. Mr. President, on behalf of myself and Senators KENNEDY, MAGNUSON, ABOUREZK, BIDEN, BROOKE, CASE, CHILES, HARTKE, HATFIELD, HATHAWAY, MCGOVERN, MCINTYRE, MUSKIE, BAYH, PROXMIRE, SCHWEIKER, STEVENSON, STONE, TUNNEY, and WILLIAMS, I send to the desk an amendment to H.R. 2166, the tax reduction bill passed last week by the House of Representatives.

Mr. President, I ask unanimous consent that a brief fact sheet explaining the amendment, and the text of the amendment, may be printed at this point in the RECORD.

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

Fact sheet

THE AMENDMENT

The Hollings-Kennedy-Magnuson Amendment to HR 2166, The Tax Reduction Act, will accomplish the following:

1. Repeal of the percentage depletion allowance effective January 1, 1975 for all major, integrated companies and for all royalty owners.

2. Phase out of the percentage depletion allowance for all independent, non-integrated companies which produce less than 3,000 barrels per day and which do not own or operate any retail outlets, the phase out to be accomplished is as follows:

[In percent]

1975 and 1976	15
1977 and 1978	8
1979 and thereafter	0

3. Regulated natural gas and natural gas sold under fixed contract prior to February 1, 1975 and not readjusted to reflect repeal of percentage depletion allowance would be exempted from the repeal.

WHAT IS PERCENTAGE DEPLETION?

Percentage depletion is not related to the cost of the property but is a percentage of gross income from the property. Originally at 27½%, the Revenue Act of 1969 set percentage depletion at a rate of 22% of the gross income from the property, which is based on the wellhead prices of oil and gas produced and sold during the year. The percentage depletion deduction may not exceed 50% of taxable income from the property computed before the allowance for depletion, that is, after all deductions other than depletion. For example, as the price of oil rises, gross income rises as well and hence the percentage deduction is more valuable.

Each taxpayer with a direct economic interest may take percentage depletion on his share of the gross income. The operator deducts royalty payments from the gross income of the property before he computes his depletion allowance and the royalty holder takes depletion on the share of the depletion represented by his royalty.

Percentage depletion usually results in a faster recovery than cost depletion does, and the cost may be recovered many times over since percentage depletion is not limited to original cost. A current estimate provided to the Ways and Means Committee in 1973 was that percentage depletion deductions are 16 times original cost.

WHY REPEAL PERCENTAGE DEPLETION NOW?

1. It has not been effective as an incentive for exploratory drilling. In 1969, for example, the revenue loss from this deduction was $1.4 billion while only $150 million worth of oil reserves were discovered. Further, since depletion only applies to successful, producing wells, there is greater incentive to drill multiple wells in known fields than it is to take the one in ten risk of exploratory well drilling. Additionally, the Treasury Department has estimated that 42% of the allowance goes to non-operating interests, such as royalty owners. Dry hole and intangible drilling cost expensing provide direct drilling incentive.

2. The recent and substantial increases in oil prices provide a generous return on investment for oil producers and more than offset any profit allegedly lost by depletion repeal. Industry profits have risen 52% over last year. In 1973, oil was selling at $3.50 per barrel and depletion was worth 77 cents per barrel. Since oil is now selling at an average of $7.50 per barrel, producers have increased their per barrel profits by five times that depletion factor.

3. Former energy chief Simon recognized the unimportance of depletion to drilling incentive when he stated in a letter to the Senate Interior Committee that: "in the short run, changes in percentage depletion should have little effect on the rate of expenditure of discovery efforts . . . in the long run, a change in depletion should have no effect, per se, on the rate of production."

4. Depletion allowance discourages production of cheaper, alternate energy sources. The tax benefits are based on the value of the minerals in the ground. Hence, a $7.00 barrel of crude oil gets the full benefit of the allowance, about $1.30, while a $7.50 barrel of oil made from coal only receives the benefit of the original coal cost, about 10 cents, and a BTU equivalent of energy

based on solar technology would receive no depletion benefit.

AMENDMENT NO. 72

At the appropriate place in the Act, add or substitute the following section:

REPEAL OF PERCENTAGE DEPLETION FOR OIL OR GAS WELLS

SEC. . (a) Part 1 of subchapter I of chapter 1 (relating to deductions with respect to natural resources) is amended by adding at the end thereof the following new section:

"SEC. 613A. DENIAL OF PERCENTAGE DEPLETION IN CASE OF OIL OR GAS WELL.

"(a) GENERAL RULE.—Except as otherwise provided in this section, the allowance for depletion under section 611 with respect to any oil or gas well shall be computed without reference to section 613.

"(b) SPECIAL RULE FOR CERTAIN GAS WELLS.—

"(1) IN GENERAL.—In the case of an operating mineral interest as defined in section 614(d), the allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

"(A) wells producing regulated natural gas,

"(B) wells producing natural gas sold under a fixed contract, and

"(C) any geothermal deposit which is determined to be a gas well within the meaning of section 613(b)(1)(A).

"(2) DEFINITIONS.—For purposes of this section—

"(A) NATURAL GAS SOLD UNDER A FIXED CONTRACT.—The term 'natural gas sold under a fixed contract' means domestic natural gas sold by the producer under a contract, in effect on February 1, 1975, and all times thereafter before such sale, under which the price for such gas cannot be adjusted to reflect to any extent the increase in liabilities of the seller for tax under this chapter by reason of the repeal of percentage depletion. Price increases subsequent to February 1, 1975, shall be presumed to take increases in tax liabilities into account unless the taxpayer demonstrates to the contrary by clear and convincing evidence.

"(B) REGULATED NATURAL GAS.—The term 'regulated natural gas' means domestic natural gas produced and sold by the producer, prior to July 1, 1976, subject to the jurisdiction of the Federal Power Commission, the price for which has not been adjusted to reflect to any extent the increase in liability of the seller for tax by reason of the repeal of percentage depletion. Price increases subsequent to February 1, 1975, shall be presumed to take increases in tax liabilities into account unless the taxpayer demonstrates the contrary by clear and convincing evidence.

"(C) The term 'natural gas' means any product (other than crude oil) of an oil or gas well if a deduction for depletion is allowable under Section 611 with respect to such product.

"(D) The term 'domestic' refers to petroleum from an oil or gas well located in the United States or in a possession of the United States.

"(E) The term 'crude oil' includes a natural gas liquid recovered from a gas well in lease separators or field facilities.

"(c) 3,000 BARREL-A-DAY CRUDE OIL EXEMPTION FOR INDEPENDENT PRODUCERS.—

"(1) IN GENERAL.—Except as provided in subsection (d), the allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to so much of the taxpayer's average daily production of domestic crude oil as does not exceed 3,000 barrels, but the percentage referred to in section 613(a) shall be (in lieu of 22 percent) the percentage determined in accordance with the following table:

"In the case of gross income from the property for the following calendar years:

	The percentage shall be:
1975 and 1976	15
1977 and 1978	8
1979 and thereafter	0.

"(2) AVERAGE DAILY PRODUCTION.—For purposes of paragraph (1), the taxpayer's average daily production of domestic crude oil shall be determined by dividing his aggregate production of domestic crude oil during the taxable year by the number of days in such taxable year.

"(3) BARRELS WITHIN EXEMPTION TO BE DETERMINED ON A PROPORTIONATE BASIS.—If the taxpayer's average daily production of domestic crude oil exceeds 3,000 barrels, the barrels to which paragraph (1) applies shall be determined by taking from the production of each property a number of barrels which bears the same proportion to the total production of the taxpayer for such year from such property as 3,000 barrels bears to the aggregate number of barrels representing the average daily production of domestic crude oil of the taxpayer for such year.

"(4) BARREL.—As used in this subsection, the term 'barrel' means 42 United States gallons.

"(5) BUSINESSES UNDER COMMON CONTROL; MEMBERS OF THE SAME FAMILY.—

"(A) COMPONENT MEMBERS OF CONTROLLED GROUP TREATED AS ONE TAXPAYER.—For purposes of this subsection, persons who are members of the same controlled group of corporations shall be treated as one taxpayer.

"(B) AGGREGATION OF BUSINESS ENTITIES UNDER COMMON CONTROL.—If 50 percent or more of the beneficial interest in two or more corporations, partnerships, trusts, estates, or other entities is owned by the same or related persons (taking into account only persons who own at least 5 percent of such beneficial interest), the 3,000 barrel per day exemption provided by this subsection shall be allocated among all such entities in proportion to the respective production of domestic crude oil during the period in question by such entities.

"(C) ALLOCATION AMONG MEMBERS OF THE SAME FAMILY.—In the case of individuals who are members of the same family, the 3,000-barrel-per-day exemption provided by this subsection shall be allocated among such individuals in proportion to the respective production of domestic crude oil during the period in question by such individuals.

"(D) DEFINITION AND SPECIAL RULES.—For purposes of this paragraph—

"(i) the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that section 1563(b)(2) shall not apply and except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a),

"(ii) a person is a related person to another person if such persons are members of the same controlled group of corporations or if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), except that for this purpose the family of an individual includes only his spouse and minor children, and

"(iii) the family of an individual includes only his spouse and minor children.

"(d) NOA-Application of SUBSECTION (c) TO ROYALTY OWNER OR INTEGRATED PRODUCER.—

"(1) ROYALTY OWNER.—Subsection (c) shall not apply to income derived from a nonoperating mineral interest as defined in section 614.

"(2) RETAILERS EXCLUDED.—Subsection (c) shall not apply in the case of any taxpayer who directly, or through a related person, sells oil or natural gas, or any product derived from oil or natural gas—

"(A) through any retail outlet operated by the taxpayer or a related person, or

"(B) to any person—

"(i) obligated under an agreement or contract with the taxpayer or a related person to use a trademark, trade name, or service mark or name owned by such taxpayer or a related person, in marketing or distributing oil or natural gas or any product derived from oil or natural gas, or

"(ii) given authority, pursuant to an agreement or contract with the taxpayer or a related person, to occupy premises owned, leased, or in any way controlled by the taxpayer or a related person.

"(3) REFINERS EXCLUDED.—Subsection (c) shall not apply in the case of any taxpayer where such taxpayer or a related person engages in the refining of oil or natural gas.

"(4) RELATED PERSON.—For purposes of this subsection, a person is a related person with respect to the taxpayer if a significant ownership interest in either the taxpayer or such person is held by the other, or if a third person has a significant ownership interest in both the taxpayer and such person. For purposes of the preceding sentence, the term 'significant ownership interest' means—

"(A) with respect to any corporation, 5 percent or more in value of the outstanding stock of such corporation,

"(B) with respect to a partnership, 5 percent or more interest in the profits or capital of such partnership, and

"(C) with respect to an estate or trust, 5 percent or more of the beneficial interests in such estate or trust.".

(b) TECHNICAL AMENDMENTS.—

(1) Subparagraph (A) of section 613(b)(1) (relating to 22-percent depletion rate for certain minerals) is amended to read as follows:

"(A) oil and gas wells, to the extent allowable under section 613A;".

(2) The last sentence of paragraph (7) of section 613(b) (relating to 14-percent depletion rate for certain other minerals) is amended by striking out "or" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof "; or", and by adding at the end thereof the following new subparagraph:

"(C) oil or gas wells.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on January 1, 1975.

CIVIL GOVERNMENT FOR THE TRUST TERRITORY OF THE PACIFIC ISLANDS—S. 326

AMENDMENT NO. 73

(Ordered to be printed and to lie on the table.)

Mr. GARY W. HART submitted an amendment intended to be proposed by him to the bill (S. 326) to amend section 2 of the act of June 30, 1954 (68 Stat. 330), as amended, providing for the continuance of civil government for the Trust Territory of the Pacific Islands.

ADDITIONAL COSPONSOR OF AN AMENDMENT

AMENDMENT NO. 21

At the request of Mr. NELSON, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of amendment No. 21, intended to be proposed to S. 776, a bill to regulate commerce and to protect human health and the environment by requiring testing and necessary use restrictions on certain chemical substances, and for other purposes.

NOTICE OF HEARINGS ON DRUGS

Mr. NELSON. Mr. President, I wish to announce that the Subcommittee on Monopoly of the Senate Small Business Committee has scheduled hearings which will deal with Federal expenditures on pharmaceuticals on March 19, 20, and 21 starting each day at 10 a.m. On the 20th and 21st they will be held in room 1318, NSOB. The location for the hearing on the 19th will be announced at a later date.

NOTICE OF HEARING ON AMENDMENTS TO THE INTERGOVERNMENTAL PERSONNEL ACT OF 1970 (PUBLIC LAW 91-648)

Mr. MUSKIE. Mr. President, on March 14, the Subcommittee on Intergovernmental Relations, Committee on Government Operations, will hold a hearing on S. 957, a bill to amend the Intergovernmental Personnel Act of 1970.

The hearing will begin at 10 a.m. in room 3302 of the Dirksen Senate Office Building.

ADDITIONAL STATEMENTS

FACT-FINDERS IN INDOCHINA

Mr. MORGAN. Mr. President, I continue to be concerned as I hear comments and statements from some of my distinguished colleagues, many of whom were in the Senate and voted for the Tonkin Gulf resolution, to the effect that we should now abandon our friends in South Vietnam and Cambodia even though more than 50,000 American lives were lost there in an effort to preserve for the people the right of self-determination.

I have felt for a long time that many of these opinions were based on false or incomplete information.

I am impressed by the fact that many of those who have taken the time to find some of the facts for themselves now support our President's plea for assistance. Some of those have been openly critical in the past but have had the courage to modify their opinions.

A number of editorials have recently commented on their trip. I think the Members of Congress would do well to consider the views of these writers. So that they may be available to the Members, Mr. President, I ask unanimous consent that the article that appeared in the Christian Science Monitor on March 5, 1975, be printed in the RECORD.

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

FACT-FINDERS IN INDO-CHINA

It would be too much to expect that eight American lawmakers visiting Indo-China for a week could return with hard-and-fast political and military assessments that have eluded even the most knowledgeable experts. Their whirlwind visit was necessarily a superficial one. Yet the fact that even after such a short time on the scene some of them have altered their perceptions of the American commitment there is significant.

Clearly nothing is as simple as it seems from the isolated halls of Congress. It is one thing to be dogmatic in Washington. But we are struck by the undogmatic comments by more delegation members, comments that reflect the ambiguous situation in Indo-China. Perhaps now there will be a new appreciation of the difficult decisions that confront President Ford on this whole question.

This newspaper has consistently felt that the magnitude of American aid to Indo-China can be legitimately argued, and indeed should be. But we also believe that the United States, because of the very conditions which it helped create in Indo-China, now bears a responsibility there. It cannot abruptly abandon former allies who demonstrate a willingness to fight and to try to survive.

This view appears to have won some sympathy from the congressional fact-finders after such experiences as a visit with President Thieu, a meeting with political prisoners in Saigon, and a confrontation with North Vietnamese and Viet Cong representatives.

Congressman Paul McCloskey, a vigorous opponent of the wars in Cambodia and South Vietnam, said nonetheless he was not prepared to cut off food, medicine, or ammunition to the people of Phnom Penh in the present critical situation. "I think we owe them that much as a result of what we've done to them," he commented.

The formal recommendations of the delegation to the Congress and the President are still awaited. But it looks as if some compromise on aid for Cambodia at least will be reached.

Equally noteworthy is the view of some of the delegation members that there is a crucial need now for shaping a new foreign policy toward the region. It seems self-evident, in the case of Cambodia, that negotiations are not possible unless there is a military stalemate on the ground. The one hope now is that, with new infusions of American ammunition, the Cambodians will be able to hold out until the rainy season and that a subsequent military standoff will provide the opening for a new diplomatic initiative.

As Congress ponders the question of aid, it is hoped the White House is giving equal attention to a fresh diplomatic strategy.

THE FOOD AND AGRICULTURAL ACT OF 1975

Mr. MONTOYA. Mr. President, I am pleased to join with Senator MCGOVERN as cosponsor of S. 549—The Food and Agriculture Act of 1975.

This bill covers many of the areas of special concern to New Mexico farmers and ranchers, which I addressed myself to during an appearance before the Senate Committee on Agriculture and Forestry on February 4, 1974. In addition the bill presents, for action by the Senate, a broad program which seeks to restore stability and production incentive to an industry which has not enjoyed these features for several years.

This bill advocates corrective action in four areas of our agriculture industry: First it sets new price support levels for wheat, feed grains, cotton and dairy products; second, the bill creates a food and fiber reserve, which would lend a measure of stability by balancing the effects of good and lean harvest years; third, and very significantly for New Mexico ranchers, the bill provides for Government purchase of livestock and meat products in the amount of $1 to $2 billion; fourth, the bill also suggests major improvements in the food stamp program.

Mr. President, in cosponsoring this measure I am, of course, lending my full support to each of its provisions. However, title II of the bill which provides for the purchase of animal and animal food products, is of very special importance to New Mexico livestock producers. Cattlemen in New Mexico, as in other parts of the country have been hard hit by the recent market fluctuation which has been caused by surplus production, and accelerating feed grain prices. This title will require that the Secretary of Agriculture purchase between $1 and $2 billion worth of live animals and animal products. Similar legislation is currently before the House of Representatives and I am hopeful that broad support will lead to early enactment.

Mr. President, our agriculture industry needs assistance at the earliest possible time, and I would urge that this measure be considered in a timely fashion.

IN MEMORY OF ANN SCOTT

Mr. MATHIAS. Mr. President, a vigorous, tough, and effective fighter for equal rights is lost to us. Ann Scott has died, a victim of cancer. She was a leader of the broad coalition which worked for passage of the equal rights amendment, here in the Congress, and which continues to press for adoption by the States. She was of great assistance in the work which lead to approval of the rape prevention and control amendment, passed last year.

These issues, and the entire field of women's rights, however, did not comprehend the range of her interests. The teacher, the poet, and the activist coexisted within her. I regret that I did not know her as a humanist to the same degree that I knew her as an activist. We are fortunate, however, to have her legacy; legislation for which she worked so hard; reforms of many kinds which may not have gotten their momentum without her efforts; and a book of her poetry to be published in the near future.

In addition, I recall a uniquely moving filmed interview with her, broadcast less than a month ago on a local television station. Her spirit came through the screen, despite the shocking inroads of cancer already apparent when the program was filmed over a month before. As all who knew her would expect, she faced her imminent death forthrightly, and attempted to sum up her thoughts and feelings in a poem which she read at the end of the interview.

Mr. President, I ask unanimous consent that this poem and the remarks made at the memorial service for Ann Scott be printed in the RECORD.

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

SALVADOR DIAZ MIRON: MISTICA

(Translated by Ann Scott)

If, in your garden, when I die,
when I die, a flower appears;
if in a cloud-rumpled sky you see a star,
you see a star no one has ever seen;
and a bird comes close and murmurs to you,
murmurs to you with a sweet sound,
opening his beak along your lips
saying the things I have said to you;
that broken sky, and that bird,
and that star, and that flower—
they will be my life: changed,
all changed, according to God's law,

They will be my substance under another face—
wing and corolla, coal and mist;
they will be my thoughts transformed—
odor and air, song and sun.
I am a body—when will they bury me?
I am a traveler—when do I go?
I am a larva, transmuting itself—
when will God's law come to pass
and O my white girl I become
sky and bird, flower and star?

Ann is a sister I shall forever remember as will thousands of others. Ann demonstrated courage, commitment and creativity. May she know her life made a difference in establishing the basic rights of so many to be and to become. I am grieved by her death but celebrate her life. It had meaning for us all. Our love lives on.—Wilma Scott Heide, Chairone, NOW Advisory Board.

While I never had the privilege of knowing Ann well, I saw the fruits of her work everywhere. Ann Scott believed that every human being is created equal and has the right to realize her or his potential to the fullest. That is also the principle which should guide the trade union movement. On behalf of the United Mine Workers of America, I express condolences to her family and to her sisters and brothers in the National Organization for Women. She will be sorely missed.—Arnold Miller, President, United Mine Workers of America.

Those who complain that the Women's Movement is humorless obviously never knew Ann. All of us will miss her bright humor and her witty comments.—Mary Jean Tully, President, NOW LDEF.

We met, really, in the days of her dying, the long last year. While I knew her with the shadow of death hanging over her, I don't remember her that way. She gave short shrift to commiseration and sympathy. I remember her as someone caught up in this very large life, a remarkably courageous woman who wanted to change bad things, and who did. She asked few favors and granted many. She worked against the odds and usually won. She could accept loss but not defeat. At no time could she accept defeat. Not even in death.—Dr. Dyckman W. Vermilye, Executive Director, AAHE.

A valiant woman, a loving wife and mother, a founder of the ERA Ratification Council. In her brief life she displayed courage, integrity and wisdom that will serve as a beacon to this who love her.—Mary Condon Gereau, Chairone, ERARC.

She combined an unmatched sense of political strategy and vision for the movement with an extraordinary sensitivity and generosity of spirit. It was the essence of her feminism.—Lucy Komisar, Author.

Ann was a brave woman and courageous fighter for legislative reform. Her contributions to Ms. were warmly received by readers everywhere. She will be sadly missed.—Staff and Editors, Ms. Magazine.

Each of us is diminished in some way by Ann's death. What she left is her years of work on the ERA. American women for generations to come will have Ann Scott to thank for Constitutional equality.—Karen DeCrow, President, NOW.

Ann Scott was a courageous person who gave much of herself not only in the struggle for equal rights for women but for equal and human rights for all people.—Peter Brennan, Secretary of Labor.

Ann's dedication to the cause of women's rights was extraordinary. Her untimely death deprives us not only of the talents of a committed feminist, but those of a poet, writer and educator as well. She will be sorely missed by all of us who shared her concerns and knew her as a friend and colleague.—Bella S. Abzug, Member of Congress.

In any struggle for the equality of humanity, there stand those individuals whose lives are examples of total commitment to the cause. Ann was such a person, constantly on the front line of battle for the espousal of equalitarian principles. We all are richer because Ann Scott lived among us.—Shirley Chisholm, Member of Congress.

When the histories are written to tell about the women who were most important to the human rights struggle of the 1970's, they will count Ann among them. Her political strategy for feminism was founded on a profound faith in the power of women when they are organized and an abiding belief that the freedom of women is indivisible from economic and social freedom for all people.—Pat Schroeder, Member of Congress.

We will remember Ann. She was a woman of spirit, full of life and unafraid. She cared; she fought zestfully for the things she cared about. She lit up our lives, and we shall miss her.—John W. Gardner, Common Cause.

There are many ongoing memorials to Ann—ERA and the NOW Legislative Office will be remembered prominently. But the collective strength women have acquired working for these goals is also an enduring testimonial to her life, her work and her leadership in NOW. Those of us who worked with her and loved her will go onward stronger because she touched us.—Judith Lightfoot, Chairone, NOW Board.

Even when Ann knew she had no more choices to make about her own life, she used the last measure of her strength to work for women's right to choose and to control our own lives and bodies. All of us, especially those women whose lives might otherwise have been marked by despair, are grateful for her devotion.—Sarah Weddington, Member, Texas House of Representatives.

At a time when the defenders of human rights needed to work together, Ann was a welcome and valuable addition to the Leadership Conference. She served with skill and understanding. We could depend on her to complete the tasks that she agreed to perform. We shall miss her as a friend—her passing leaves a vacant place among those who act with high purpose and success.—Clarence Mitchell, Legislative Chairone, Leadership Conference on Civil Rights.

Ann's life is cause for celebration and her death is cause for renewed vigor and determination. For as we learned from her, we each became a little more like her. Ann showed us courage, imagination and tenacity in the struggle for women's rights.—Sissy Farenthold, Chairone, NWPC.

Ann was that beautiful militant soul who tempered irrepressible and unyielding devotion to the principle of human equality with graciousness and generosity. She saw so clearly that equality for all is a necessary predicate of equality for any, and she sacrificed her health to secure these rights. Her monument will not be in stone but in the hearts and minds of those she taught so much and, hopefully, one day soon in the ERA which Ann had so hoped to see the law of the land before she left us.—Joseph L. Rauh, Jr.

Those of us who worked with Ann in the Leadership Conference came to admire and respect her for her deep commitment, not to women's rights alone, but to the rights of all minorities. It is a tragic loss for all of us.—Marvin Caplan, Director, Leadership Conference on Civil Rights.

Ann was a scholar and an activist; poet and politician. Her concerns were the concerns of us all. She taught us and she prodded us. Whatever we may accomplish, part of it will belong to Ann.—Bill and Bobbie Greene Kilberg.

STAMPING OUT HUNGER

Mr. ABOUREZK. Mr. President, Mr. Richard J. Margolis has for many years devoted his reportorial and writing skills to problems of the poor and disenfranchised, especially on problems affecting the rural poor, their food, their housing, their health services, and transportation facilities. He has also spent a lot of time on the problems of Indians. In the March 3, 1975, issue on the New Leader, Mr. Margolis reviews the inadequacies of our present programs to feed the poor. I ask unanimous consent that his article "Stamping Out Hunger," be printed in the RECORD.

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

STATES OF THE UNION—"STAMPING" OUT HUNGER

(By Richard J. Margolis)

THE SONG OF THE SHIRT

(By Thomas Hood)

O God! that bread should be so dear,
And flesh and blood so cheap.

The Ford Administration, all heart as usual, has been trying to render bread more dear by raising the price of food stamps, those precious coupons that each day, in millions of homes, fend off starvation. Under the present rules, a poor person can buy about $46 worth of food stamps for $33, though this varies with size of income and family; under Ford's plan, the price would have jumped to $45. Some bargain.

The government's logic is flawless, provided one overlooks such minor miseries as malnutrition and hunger: Federal expenditures on food stamps are inflationary; *ergo*, they should be curtailed. "If the price of food stamps rises," an Administration spokesman happily explained to members of the House Agriculture Committee last month, "people will drop out of the program and the government will save as much as $645 million." In other words, "Whip Inflation Now" (WIN) turns out to mean "Starve More Americans Cheerfully" (SMAC).

The congressmen on the committee were not impressed. By a vote of 32–2 they approved a bill designed to prevent Ford from inflating the price of food stamps; the full House supported the committee recommendation, 374–38, and the Senate went along by a margin of 76–8. Apparently there isn't much political capital to be gained from baiting the poor; they have grown too numerous. According to the U.S. Department of Agriculture, the agency that administers the program, 17 million Americans are now buying their groceries with stamps. Only six months ago the figure was 13.6 million—a dismal difference of 26 per cent.

Many out-of-work Americans, maybe for the first time in their lives, are facing the possibility of going without food. They haven't yet organized any hunger marches, as workers did during the Great Depression, but if unemployment persists, parades will surely follow. "An empty stomach," warned Albert Einstein in a speech on the rise of Fascism, "is not a good political adviser." And 17 million empty stomachs, all rumbling, can cause quite a ruckus.

Actually, that number is misleading; it is much too low. Many citizens who are eligible for food stamps never receive any. Some have no way of getting to where the stamps are; others would rather make do than go through the humiliation of handing "poverty stamps" to the local grocer; still others have not heard of a program that in many a miserly county is treated as a top-security secret. The upshot is that about 23 million eligible persons have been deprived of stamps and this in turn may mean that about one-sixth of the entire population goes to bed hungry each night and wakes up hungry each morning. Some country.

It is hard to believe that this anemic program, which the White House had hoped to bleed some more, represents the total na-

tional response to those electrifying anti-hungry crusades of the '60s. One recalls that there was a time when we believed nobody starved in America. Even Michael Harrington, who had to reinvent poverty to get us to see it, barely included hunger in his picture of *The Other America*. As recently as 1964, so shrewd and humane an economist as Herman P. Miller could write, "The term 'poverty' connotes hunger; but this is not what is meant in discussions about poverty in America."

In those days Galbraith and others were still prescribing soothing economic lenses; we spoke only of pockets of poverty in a sea of affluence. Then, in the spring of 1967, Senators Robert Kennedy (D.-N.Y.) and Joseph Clark (D.-Pa.) took their Subcommittee on Manpower, Employment and Poverty to Mississippi—and the myths collapsed. As Nick Kotz describes it in his excellent book, *Let Them Eat Promises*, the senators "discovered . . . raw hunger imbedded in the worst poverty the black South had known since the Depression. . . . Driving along muddy, forgotten roads, the two senators and their aides stopped at shack after shack to see with their own eyes hungry, diseased children; to hear with their own ears the poor describe their struggle for survival."

Partly because Robert Kennedy himself was news, hunger in America became newsworthy. CBS delivered a blockbuster documentary on the subject. Reporters, reformers, politicians, and new investigative committees roamed the ghettoes and the countryside, finding hunger and malnutrition wherever they looked. Suddenly it seemed that FDR's gloomy, 1937 vision of America—"I see one-third of a nation ill-housed, ill-clad, ill-nourished"—was still applicable. Little had changed in 30 years.

In 1968 a special citizens' Board of Inquiry, financed by foundations and made up mostly of physicians, issued a report that classified 256 U.S. counties as "hunger counties"—i.e. where the incidence of poverty and of infant mortality was unusually high, while the level of participation in government food programs was unusually low. The report recommended massive emergency aid.

Few reformers doubted that the government would act. After all, *children were starving*. As Senator McGovern (D.-S.D.) has written, "Somehow, we Americans are able to look past the slum housing, the polluted air and water, the bad schools, the excessive population growth, and the chronic unemployment of our poor. But the knowledge that human beings, especially little children, are suffering from hunger profoundly disturbs the American conscience."

As matters turned out, the American conscience had a short attention span. Congress did appropriate more money for food stamps and for other measures such as the Commodity Distribution program; and for a while more Americans in more counties ate better and more often. But after the fireworks died and the committees of inquiry went home, people forgot. Hunger began to resemble all those other problems McGovern had mentioned; it had become a taken-for-granted blemish on the U.S. landscape, something else we were "able to look past." It turned into a rhetorical device. "We will put an end to hunger in America for all time," intoned Richard Nixon in 1969, three years before he attempted to impound food stamp funds.

It is not that we are an especially cruel people, only a cruelly ingenuous one. We hire foxes to guard chickens. Since New Deal days the Department of Agriculture has been administering programs to feed the hungry, yet its prime constituency has not been the poor consumer but the comparatively rich producer. Thus, the entire system—the food stamps, the Commodity Distribution, Special Milk and School Lunch programs—has been geared to support farm prices, to dump surpluses, and to keep the market green for growers.

The poor have always been incidental. "We are most sympathetic to the plight of the needy persons," Agriculture Secretary Ezra Taft Benson assured congressmen in 1959. "We must, however, not lose sight of the fact that primary responsibility of the Department is to carry out the farm programs that benefit farmers."

The Food Stamp Act of 1964 opens with a list of purposes: First, "to strengthen the agricultural economy"; next, "to help achieve a fuller and more effective use of food abundances"; and finally, rather as an afterthought, "to provide for improved levels of nutrition among low-income households. . . ."

In the long run, as Jan Kernodle has noted in an eye-opening paper on Federal food plans, "efforts to protect the nutritional welfare of the poor have become a mere adjunct of agricultural price support mechanisms." That seems to have been a pattern of the '60s: In pleading the cause of the poor, liberals continually hitched their star programs to the wrong institutional wagons. How can the Department of Agriculture, with its traditional priorities of the marketplace, be expected to feed the poor?

On the other hand, how can any government agency—even one free of contradictions—be counted on to administer so many disparate and badly designed philanthropies? Oh what a tangled web Congress has woven! Besides the programs already mentioned, there are the Supplemental Feeding Program, the Summer Feeding Program, the Day Care Feeding Program, and the Women, Infants and Children (WIC) Feeding Program. Each of these features its own set of eligibility standards, its own rules of procedure and its own raison d'être. And each is so administered as to deprive many eligible persons of its benefit.

Now President Ford, in his latest budget message, says he wants to abolish these, and give funds instead to the states. But wouldn't it be simpler, and maybe even cheaper, to let the poor have that money, either through a generous reverse income tax or some other minimum-income plan? The White House ought to stop tinkering with nickel-and-dime food programs. Stamps and grants won't cure America of hunger; money will.

SUPPORT FOR S. 666—HIGHER EDUCATION LEGISLATION

Mr. DOMENICI. Mr. President, the 94th Congress will be giving serious consideration to higher education legislation. All of the major Office of Education programs authorized by the Higher Education Act and higher education programs of the 1972 Education Amendments will expire in this Congress. The student aid programs will be of particular interest because they have the greatest impact on access to postsecondary education and equality of opportunity.

I would like to bring to the attention of my colleagues a bill which I am pleased to cosponsor which could be an important supplement to other higher education legislation emerging from this Congress. S. 666 would allow an income tax credit for a portion of a taxpayer's savings for the payment of his own or his dependent's postsecondary educational expenses. I believe it would be particularly attractive to those millions of middle-income Americans who bear the brunt of the tax burden but who seem to receive so little of the services.

S. 666 would provide a modest reward to those families who have the "misfortune" to be of moderate incomes but who are willing to set aside from their own revenues savings toward the future education of their children. These are the people whose taxes really pay for the greatest portion of Federal expenditures but whose children are not needy enough to qualify for most Federal student aid programs. I believe that people in the middle-income range are caught in an inflationary vise of increasing costs and decreasing purchasing power. S. 666, by giving a small tax credit might create an incentive to save for postsecondary education.

Mr. President, I am sure that my colleagues are aware of the skyrocketing costs of postsecondary education. The National Center for Educational Statistics has estimated that annual tuition, room and board charges for public and private universities has nearly doubled over the past decade from $2,202 at a private university in 1964 to nearly $4,000 in 1974 and from $1,051 at a public university to close to $2,000 in 1974. The College Scholarship Service—CSS—looks at postsecondary expenses in perhaps more realistic terms including estimates for books, transportation, and personal expenses as well as tuition, room and board. Their figures from "Student Expenses at Postsecondary Institutions 1974–5" estimate the average expenditures for resident students at public 4-year institutions to be $2,400 a year; at 4-year private institutions, $3,039; at proprietary institutions, $3,817; at 2-year private schools, $3,617; and at 2-year public schools, $2,153.

The commuting student is not in a much better position either. There was a time when we thought that the student who lived at home and attended school nearby was actually saving his or her parents a considerable amount. College Scholarship Service—CSS—figures show that they do save some money, but on the average only about $400 per year. CSS reports that commuting students must also eat and today's rising food costs involve increased expenditures. Besides, the student must still get to school, whether by public transportation or private vehicle. That, too, costs more.

The Federal student aid programs under the Higher Education Act focus primarily on the needy student and that is probably as it should be. The major program available to middle income families is the guaranteed student loan program. This program has had its problems, not the least of which has been a tight money market. I believe that we should try to encourage those people who plan ahead—those who save for their own or their children's education. S. 666 would do so and at the same time help to provide a stable source of private funds for home mortgages and construction loans, another area hard hit by the present economic crisis. The savings plan on which a tax credit would be allowed in S. 666 would have to be at savings and loan associations, mutual savings banks, and other federally insured financial institutions which invest at least 50 percent of their assets in residential realty mortgages and residential construction loans.

As we examine the provisions of the Higher Education Act, especially those programs which are intended to increase access, I believe the need for S. 666 is clear. Escalating education costs have put postsecondary education and training beyond the reach of many low-income and lower middle-income families. Now middle-income families have been caught in the price squeeze. If our title IV student aid programs are to concentrate on students from low-income families, then a tax credit plan like S. 666 becomes all the more imperative. Students from middle-income families have become the new needy, and with the exception of student loans, there is little student aid available to them.

We must also look to the institutions of higher education. They have also been caught in the inflationary spiral and have had little choice but to pass many of their cost increases on to the students. When Congress enacted the Higher Education Act in 1965, the Federal commitment was to institutions as well as to students—to improve quality as well as opportunity. This past month I have had the opportunity to meet with representatives of the postsecondary educational community in New Mexico and have heard their concerns about their ability to maintain quality programs in their institutions. I have talked with financial aid officers, college presidents, deans, and others. I believe that we must look at title IV and the other titles of the Higher Education Act. I have some ideas, developed in part from my discussions with New Mexico educators, which I intend to incorporate in legislative proposals. Until I do so, I would like to recommend S. 666 to my colleagues for their serious consideration.

THOMAS G. MASARYK

Mr. PERCY. Mr. President, on the anniversary of the birth of Thomas G. Masaryk, we note this occasion with expressions of pride in the man who symbolized the unity of his people and their quest for freedom, democracy and peace.

In 1918, Masaryk was elected President-Liberator of Czechoslovakia and he established a strong democratic state. As a foe of social injustice and discrimination, often compared with Abraham Lincoln, he was a leader who embodied the qualities of both a statesman and philosopher. His memory is honored in Czechoslovakia and throughout the civilized world. In Illinois where he once taught at the University of Chicago, he is especially remembered.

SENATOR KENNEDY'S PROPOSED EIGHT-POINT ENERGY PROGRAM

Mr. CRANSTON. Mr. President, on January 31, our colleague, the distinguished Senator from Massachusetts, delivered a major address to the Commonwealth Club of California proposing a major eight-point energy program.

Emphasizing the need for a more gradual approach to our energy problem, Senator KENNEDY criticized President Ford's proposed tariff program as threatening serious economic pressures on our already weakened economy.

Senator KENNEDY's energy program, while I do not necessarily agree with all of its particulars, is right on target in its overall recommendation of a more gradual, long-term approach. In particular, he reminds us that we must keep our energy problems, as serious as they are, in their proper perspective:

> Energy is only one of the triple problems facing the American economy—and today it is least of the three. As serious as we must take our energy problems, we must not let them distract us from the broader and deeper problems of recession and inflation.

Mr. President, these are wise words to keep in mind as the Congress attempts to develop an energy program for the Nation that is consistent with our overall goal of swift economic recovery. I recommend his statement to my colleagues and I ask unanimous consent that it be printed in the RECORD.

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

ADDRESS BY SENATOR EDWARD M. KENNEDY

It is a great pleasure for me to meet with you here in San Francisco. For more than seven decades the Commonwealth Club of California has set a high standard for interest and concern about issues critical to our nation and the world. What you are doing here—through your meetings, your studies of major issues, and the efforts of your 14,000 members—inspires thoughtful people throughout the United States.

Today, your role in helping to map the foreign policy of the United States is more critical than ever. For it is now clear that the directions to be taken by our country in the outside world cannot be decided in Washington alone. Foreign policy is no longer dominated in the same way by issues of diplomacy, by levels of arms, or by the strategy of nuclear deterrence.

As each month passes, foreign policy is increasingly dominated by economic issues—by energy, trade, food, fertilizer, raw materials, the uses of the seas' resources. And in each of these areas, there is a direct and immediate impact on the lives of the American people. Here in California, as across the nation, the price of gasoline and food has gone up; jobs are affected by patterns of foreign trade; and above all else, worldwide recession and inflation are robbing you of your salaries, your savings, your jobs.

So what happens in the outside world does not just interest those of us who work in Washington. These events are no longer isolated from the cities and towns of America. The United States and our people are now firmly and finally involved in the outside world. And that means each individual American now has a great interest in U.S. foreign policy—going beyond issues of war and peace. And each of us has a direct responsibility for making U.S. foreign policy work.

Today, therefore, I urge you to renew your concern here at the Commonwealth Club to be involved, to bring your ideas to bear, to follow the standard you have so ably set for so many years.

What are the great economic challenges facing the United States in the outside world?

For the past year or so, the word "energy" has sprung to everyone's lips. Yet why is this so?

Throughout our growth and development as a nation, we were self-sufficient in the energy we used to fuel the astounding growth of our economy. It was cheap, it was plentiful, it was secure.

Only in the last few years, have we had to import major amounts of oil, as U.S. production peaked out. Then in late 1973, we found that foreign sources might not always be secure; and we saw the world price of oil suddenly go up by more than four times.

This has produced a worldwide crisis in energy, principally because the jump in oil prices intensified inflation and recession throughout the industrial world. And for countries in the fourth world, rising energy costs have been added to a long list of almost hopeless problems.

Clearly, the United States must act. Clearly, the United States must exercise real leadership among the consuming nations of the world. For several years, we hoped that rising prosperity in Europe and Japan would enable them to share with us a large measure of the burdens of leadership in the West. But with even more severe economic crises elsewhere, we have again been singled-out for thought and action. Again, we bear a special responsibility for responding to a fundamental threat to the very fabric of economic relations among the world's states and peoples.

But what should we do?

We must first recognize what is being done to relieve the worldwide energy crisis. It is not over. But as Winston Churchill said: this may not be the beginning of the end; but it is the end of the beginning. During the past year, the recycling of oil revenues began to take hold. The purchase of goods by oil states, use of the private banking and capital markets, and official recycling efforts—all these efforts did work better than almost anyone had hoped.

Despite these hopeful developments, we in the United States must continue to take the energy crisis seriously, both for ourselves and for our friends and Allies abroad—both rich and poor.

Yet at the same time, we must not panic. We must not take actions that will make it even harder to achieve our long-run objectives, and produce new problems in their wake.

I am particularly disturbed by reports that the United States might in some circumstances use force to secure oil supplies from the Middle East.

I am firmly opposed to any such action, and even to its active consideration.

The use of force in the Middle East to secure oil would be wrong. It would defy the lessons we learned over a tortured decade in Vietnam. It would destroy *detente* with the Russians.

It would damage our Alliance with Europe and Japan. And it would end our hopes to help resolve the Arab-Israeli conflict, and build constructive relations with any Arab state. I could not countenance sending American soldiers to the Middle East, to die for oil.

Even the implied threat of force works against our interests. In the next few years, there is no alternative to trying to work with the oil-producing states: to ensure stable sources of supply, and to increase incentives for oil production at reasonable prices. Threatening the use of force only undermines those constructive steps we should be taking;

We must help stimulate spending by the oil-producing states on goods and services to build their economies. And last year, they spent nearly $50 billion—half of their oil revenues—in this way. This was far more than anyone had predicted;

We must encourage the oil producers to make more of their petrodollars available to the poorest countries in the world. And last

year, more than $9 billion was pledged for this purpose;

We must help provide investment opportunities abroad for oil-producing states. And last year, both liquid and long-term investments abroad by the oil-producers were nearly $50 billion—though most of these were short-term;

We must get on with the work of building new means to recycle petrodollars to those countries that most need them. If we can do that, and it is not a massive job, we can begin to make the energy crisis a relative short-term and manageable problem; and

Lastly, we must draw the oil-producing states more fully into the world economy, recognizing their new power and impressing upon them their new responsibilities to the world economy. This cooperation may produce results to our liking; and in the short-term, the economic facts of energy make confrontation an act of folly.

Yet the United States has been slow to act. We lost time and confused our friends abroad by acting as though we could talk down the world price of oil. We sought to put pressure on the oil producers by withholding our cooperation on recycling oil revenues. We thus greatly increased the risk of a breakdown in the international economic system—which could have produced incalculable economic and political harm to ourselves and others.

Now at long last, we have agreed to a means of recycling money through the IMF; and agreement has been reached on a $25 billion Solidarity Fund among the rich countries. There is also an agreement—so far untested—for some sharing of rich-country oil resources in the event of an embargo. And at long last we have acceded to proposals for a joint producer-consumer conference on energy that would face the realities of supply and demand in the world today: fourteen months after I first proposed such a conference.

At home, meanwhile, we must make a long-term and deliberate effort to reduce consumption, increase domestic production, and find alternative resources.

Two weeks ago, President Ford presented his own energy program, based on a different assumption: that drastic steps must be taken now. I welcome his leadership. We in the Congress are prepared—and even anxious—to work with him. But in so doing, we in Congress have our own responsibilities to the people of the United States. We are charged with using our best judgment to secure the interests of the nation.

I believe that President Ford's energy plan is seriously flawed. It seeks to cut energy consumption too fast, at the risk of excessive and immediate costs in unemployment and inflation. It does too little to move us toward a lower energy-consumption rate over the long-term. It sets a price floor on energy, which would rob the nation of flexibility and the consumer of his paycheck, if world prices do come down. It raises the price of all oil used in the United States, instead of focusing on the real culprit: our excessive use of gasoline for private cars. We should make greater use of the scalpel and less of the meat axe, in crafting a realistic energy program for the next decade.

The President's program will also fail to demonstrate U.S. commitment to cooperation with other consumer states, if at the same time it weakens the overall U.S. economy. No one abroad will thank us for reducing our energy imports, when the result is the export of more recession and more inflation.

Imposing a new and drastic tariff on U.S. oil imports is wrong. It over-states the importance of the short-term energy problem for the United States, and it threatens serious damage to the American economy. There is no sense in trying to fight inflation by raising prices; there is no sense in fighting recession by taking purchasing power away from the people, and by making it more difficult for industry to sell its products.

Tomorrow morning, the oil-tariff will begin sucking tens of billions of dollars out of the U.S. economy and out of the pockets of our people. Yet returning that money would at best be weeks away; and it can never make up for the added hardships that are now being artificially imposed.

What then should we do to meet our responsibilities in the field of energy—responsibilities to our people and to the world?

The basic principles are clear:

We must not take drastic steps that overstate the short-term problem, while causing severe dislocations, disarray, and injustice in other parts of our economy; and

Instead, we must adopt a series of firm measures that will take us to our goal in a reasonable period of time. We do not have to get there overnight, as the President has proposed.

To achieve these goals, I propose an energy program of eight steps:

One: we must begin now to build cars that will use less gasoline—through greater efficiency and smaller size. This is the single most important step we can take to reduce U.S. energy consumption during the next several years. Without it, artificial means to depress oil consumption will have little long-term benefit. With it, in the next few years, we can substantially reduce our consumption of oil. With a 20 mile-per-gallon average for cars we could ultimately cut consumption by two to four million barrels a day. I therefore propose mandatory fuel consumption standards for automobiles, plus progressively higher taxes on wasteful, gasguzzling automobiles that are built beginning in 1976; and I propose generous tax rebates to consumers who buy new, more efficient automobiles.

Two: we must begin providing positive incentives and legislative requirements for energy conservation in other areas; better home insulation; a major commitment to mass transit; higher standards for building and office construction; more efficient appliances; and more rational use of competing fuels by industry. These provisions were part of bills passed by Congress and vetoed by President Nixon. They would have a more sustainable, lasting and fair impact on energy consumption than artificial price rises or tariffs on imports, and they should be started now.

Three: I propose the introduction, on a gradual, deliberate basis, of a mandatory allocation program for gasoline, with paralled quotas on gasoline and crude imports. But this must not be a sudden and drastic program that will twist our economy out of shape, drive up the oil price, and bring back long lines at the gas station. A 2½ percent decrease in gasoline in each of the next four quarters will save us 670,000 barrels a day. And we shall review this modest allocation program every six months to see its effect on consumption and the overall economy. This program can begin to cut consumption, now, and give us a rational plan for the future.

Four: I propose the creation of a stand-by white-market rationing program, fairly-organized, that could be put into effect if a serious shortage should develop—for example, a further oil embargo.

A sensible energy program demands neither rationing nor drastically higher prices. What it does demand is a coherent plan to reach our goal that does not cripple the economy in the short-term or exacerbate our immediate problems of recession and inflation as a hedge against a new oil embargo.

Five: I propose that production of energy from known federal reserves—such as Elk Hills—be undertaken by a new non-profit federal entity, an Energy TVA, to be primarily directed into a national strategic reserve. This entity would also be responsible for exploring offshore reserves, putting information directly in the hands of the government and the people rather than relying on the private oil companies. Production from prime lots also would be directed into the strategic reserve.

Six: I propose a continuing, vigorous effort to find and produce more energy here in the United States: through an end to foreign tax credits for oil companies and divestment of competing energy resources; through more aggressive development of our coal resources; through a modest program of price increases—not total deregulation—for new production of natural gas committed to the interstate system; and through stepped-up efforts in coal gasification and liquifaction, solar energy, and fusion power.

Seven: I propose that the federal government take sole responsibility for bidding on oil imports from abroad. A unified, secret system of bidding on these imports would give us far more leverage in world markets than does today's buying by several private oil companies.

Eight: I propose that the United States finally abandon its efforts to confront the oil-producing states, but rather try to cooperate with them in ways I have already suggested.

Combined with further recycling efforts, this can help provide for a relatively-smooth financial transition to the future. Then, reduced consumption and expanding supplies will bring back greater free play and security to the energy markets of the world.

These eight steps I believe will meet the U.S. national interest in a strong but gradual program; a fair program; a credible program. It will build for the long-haul without panic and unnecessary hardship. It will permit our economy to adjust to higher energy prices without serious disruption and inequities. And it will permit us to meet our responsibilities to other consuming countries, and to the world economy as a whole.

Most important, we must bear in mind the following fact:

Energy is only one of the triple problems facing the American economy—and today, it is least of the three. As serious as we must take our energy problems, we must not let them distract us from the broader and deeper problems of recession and inflation. We must put our economic house in order: and in doing so, we must keep our priorities straight.

Two generations ago, measures we took to cope with our own Great Depression helped export that depression around the globe. This depression brought misery everywhere, leading to the Second World War. In the past few years, our inflation has been matched in country after country, as the international economy has followed-the-leader in rising prices. And now the American recession—the worst since the 1930s—is spreading around the globe.

When the cost of our goods goes up, it increases the inflationary pressures in all of our trading partners. When the vigor of the United States' economy goes down, it damages markets other countries must have to sustain their own economic growth. Round and round the cycle goes, contracting world trade, reducing production, and spreading greater uncertainty about the future of Western cooperation.

The most important thing we can do today for our friends and Allies abroad is to get a firm grip on our own economy, and take those decisive steps we need to get back on

the road to a growing economy with stable prices.

Yet what we do within our own economy is still not enough. We have learned in the past several months that there are major, enduring problems with the system of international economic life, itself. Institutions set up twenty-five years ago are no longer able to cope with an economic world that is many times larger, contains many more countries, and is infinitely more interdependent and complex.

Yet this is no reason for despair. Quite the reverse. Today's economic crisis provides the incentive for a major restructuring of international economic relations. In this time of crisis creative energies can be liberated, and the minds of men and women more clearly focussed on the future.

During the late 1940s, in the turmoil following mankind's most destructive war, people on both sides of the Atlantic built new attitudes, institutions and patterns of economic relations. Until recently, these gave the world its most impressive and sustained period of prosperity in history.

Today can also be a time of opportunity in crisis—a New Age of Creativity. It can wrench people and governments free from old habits and attitudes in global economics. It can lead them to rebuild a world economic system that will work for us all, both today and tomorrow. As Thomas Jefferson said of constitutions, we now say of global economic arrangements: each generation should create its own, appropriate to its times. And like the U.S. Constitution, which has indeed evolved with each passing generation, there is no need to tear down the old economic structure. There is no need to replace it with one that is entirely new. But major changes must be made.

No nation is isolated; none can meet today's twin threats of inflation and recession on its own. It is only by recognizing that we are truly interdependent that we can begin to create the will and determination to build new attitudes of international life, and new economic institutions to serve us all.

We need a trading system that can ensure not only access to markets, but also access to food, fuel and raw materials;

We need a monetary system that can promote the growth of trade despite inflation and the shocks caused by massive flows of oil money from country to country;

We need a means of waging together the fight against inflation, that will reduce the likelihood that each nation will try to solve its problems at the expense of others;

And we need to broaden the basis of cooperation, even beyond the traditional grouping of Western industrial States. We must work with nations that have new-found wealth and power; aid those developing nations left out of the world's prosperity; and in time reach out towards nations of the Socialist world, as well.

The means of achieving these tasks are important; but even more so is the will to do so—and the knowledge that only a new burst of thought and action by us all will fulfill our duties to our people and to the future of the world.

Today I have sketched only a small part of the worldwide change in economic relations. Deep currents are flowing through the economies of the world, touching the lives of people everywhere, and spreading doubt and uncertainty in their wake. Not since the Great Depression have our assumptions about economic life been so fundamentally-tested.

As we search for a new course—as we analyze each new idea, and test the most likely theories—we must be aware of the historic proportions of our task. For what we do now—here in San Francisco, in Washington, in Massachusetts, and throughout our nation—will shape America's role in the outside world for years to come. It will lead us beyond the post-war era, with its legacy of unsettled issues, to a time as challenging to us as any our ancestors have known.

This is a time in which two broad oceans will no longer shelter us from the outside world;

A time in which the magnitude of our national might will be no substitute for its wise and judicious use;

A time in which democracy comes to foreign policy, as We the People are called upon together to shape our destiny in a changing world.

We can and must be equal to this task.

SAMIZDAT—A VOICE OF FREEDOM

Mr. BUCKLEY. Mr. President, during a recent visit to the Soviet Union, I had a chance to talk with many of the courageous and inspiring dissidents who are trying to bring freedom of information, thought, and religion to that country. John Lofton, nationally syndicated columnist, recently wrote of one of the most effective means these dissidents have to spread the truth—the "samizdat." This is a Russian word meaning, literally, "self-publishing," and, as Lofton points out,

It is the only free press in the Soviet Union.

Uncensored material is circulated privately throughout the Soviet Union, usually in manuscript form, and in this way Soviet citizens learn facts about the outside world—and about their own nature—that Soviet rulers try to suppress.

In his piece about the "Samizdat Bulletin," published in our country on a nonprofit basis, Lofton tells of the difficulties faced by the husband and wife who have been making samizdat documents available to historians, journalists, and teachers in this country.

Mr. President, I ask unanimous consent that Mr. Lofton's article be printed in the RECORD.

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

A VOICE OF FREEDOM NEEDS YOUR HELP

(By John D. Lofton, Jr.)

WASHINGTON.—Coincident with reports that the Soviet government appears to be lowering a new iron curtain—cutting off the overseas mail service of dissidents and stopping virtually all of their phone calls to the West—comes distressing news that one of this country's links to the Russian freedom fighters is in great financial difficulty.

In a letter, Olga Stacevich, editor of the Samizdat Bulletin, tells me she and her husband would appreciate it if I would tell my readers of their plight. She says she would be most grateful if I would help them make their publication better known.

Because I can think of no better use to which a newspaper column could be put, I am happy to do so.

The word "samizdat" means self-publishers, and it is the only truly free press in the Soviet Union. It is a term coined by post-Stalinist dissidents for the old Russian revolutionary practice, from the days of the Tzarist censorship, of circulating uncensored material privately, usually in manuscript form—nonconformist poetry and fiction, memoirs, historical documents, protest statements, trial records, and the like.

Samizdat is designed to circumvent the Soviet censorship system, which editor Martin Dewhirst tells us in his recent book, "The Soviet Censorship," is now "much more extensive, demanding, thorough and efficient than its predecessor in Tsarist Russia."

The importance of samizdat in the struggle for human rights in the U.S.S.R. is summarized by editor George Saunders in his new book, "Samizdat: The Voices of the Soviet Opposition":

"The struggle for socialist democracy in the Soviet Union in recent years has been centered around samizdat to a great extent. Most of the trials have been aimed at intimidating dissidents involved in producing or circulating uncensored literature. The most prominent figures among the oppositionists have relied on the samizdat network in their battle for free speech, freedom of the press, and basic democratic rights."

Since May of 1973, Olga Stacevich and her husband—on a nonprofit, completely volunteer basis—have published 21 bulletins featuring the voices of free thought in the Soviet Union. In recent months, their publication has carried such items as:

An open letter to Sen. Henry Jackson from well-known scientist V. P. Turchin, titled "The Soviet System is in Dire Need of Evolution." This letter praises Jackson's amendment to the trade bill as "a commendable example of beneficial and constructive pressure from without which tends to foster progressive evolution. . . ."

The conclusion of a diary of a month-long strike in the Perm Region concentration camp for political prisoners.

An appeal from Christian youth in Byelorussia detailing the repression of religion in that area, which has included the shooting of a 17-year-old by a captain in the Russian militia.

A plea to the world from political prisoners about how, since 1972, they are being transported further and further north in the Soviet Union, to traditional Stalinist areas with a severe climate. This moving letter tells how prisoners are deprived of warm clothing, kept on meager rations, and—quite officially—denied vitamins.

Also, meetings with relatives are canceled, correspondence is forbidden and appeals to official government organs are strictly controlled and censured by the Soviet secret police, the KGB, and the camp administration.

"A totalitarian regime," the letter says, "is a misfortune of not just one country, but of all humanity. It depends upon us and you whether Stalinism with all its terror will be resurrected. Inactivity and nonchalance before an overhanging threat is a crime."

Indeed it is. And this is what the Samizdat Bulletin is all about. Like a microwave booster station which picks up a faint signal, amplifies it and broadcasts it to the next station, Olga Stacevich and her husband are but two of many megaphones in this country rebroadcasting the message of human freedom which comes from inside the Soviet Union. The voice of the Samizdat Bulletin must not be allowed to die.

If you would like to subscribe, or just send a contribution, you can do so by writing: Box 6128, San Mateo, Calif. 94403. You'll never give your money to a more worthy cause.

SENATOR ABOUREZK ON AID TO SOUTH VIETNAM

Mr. McGOVERN. Mr. President, there has already been a great deal of discussion on the issue of providing additional arms to Cambodia and South Vietnam through the President's supplemental request. A great deal has been said about the amount of aid requested and its impact on the present regimes in power, but we simply cannot underscore enough

the necessity of keeping sight of the two most important elements of this issue—recognition of our own national interest and adherence to the Paris peace accords.

My colleague from South Dakota (Mr. ABOUREZK) has addressed these questions in an excellent article in the Washington Post. I would encourage each of my colleagues in the Senate to carefully consider the points raised by Senator ABOUREZK as we near a final decision on the supplemental request.

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

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

AID TO VIETNAM: PROLONGING OUR SHAME

(By James G. Abourezk)

Richard Nixon and Henry Kissinger agreed to the 1973 Vietnam peace accords for one basic reason—an overwhelming majority of people in the United States wanted out of the Vietnamese conflict, believing it was time for the Vietnamese to settle their own controversy. In recognition of the fact that conformity to the peace agreement means an end to his personal political power, President Thieu has acted to defy the agreement. He has done so by crushing democratic freedoms, by keeping political prisoners detained, and by preventing formation of the National Reconciliation Council. The combination of his political obstruction and military initiative has resulted in Provisional Revolutionary Government and North Vietnamese abandonment of their political strategy in favor of military counterforce. President Ford and his spokesmen are now, with great hypocrisy, denouncing the use of force by "the other side" in an effort to maintain Thieu in power.

Because the 1973 Paris accords were in the form of an executive agreement, rather than a treaty subject to ratification by the Senate, the administration can easily undo them. Instead of more money for armaments, the Congress can perform a far better function by adopting a resolution affirming its belief both in the letter and in the spirit of the peace agreements.

We are being asked again this time to vote more military aid to the Saigon government for a variety of reasons—to keep our word, to retain our ability to be a stabilizing influence in world affairs, to maintain the principle of Vietnamese self-determination, and finally, to prevent a blood bath of innocent people.

More military aid will accomplish none of these objectives. A return to the Paris agreements will accomplish all of them.

Another of the administration's stated reasons for intervention in Vietnam has been defined in terms of a vague national interest, without explanation of what that interest really is. It is useful to explore here what is not in our national interest.

It is against our national interest to continue to pour taxpayers' money into a bottomless pit.

It is against our national interest to deprive our suffering economy and our people of that badly needed money.

It is against our national interest to promise the public a nonexistent light at the end of the tunnel.

It is against our national interest to be identified as a world power consistently opposed to internal political changes in third-world countries.

It is against our national interest to fund a long-term blood bath under the pretense that we are preventing one.

If a decision on continued funding is too difficult in terms of "national interest," then we should consider our moral interests.

I have difficulty discussing American intervention in Vietnam without seeing in my mind the burning flesh of Vietnamese children. If napalm is an instrument of high level U.S. foreign policy, then the Vietnamese have become, to me, both its symbol and its object. The most persuasive argument in favor of further American intervention in Vietnam pales alongside the outrage perpetrated against the people of that country, both North and South. This cost in money terms can be measured with some degree of accuracy. But how do we compute the value of human bodies that have been maimed and destroyed to protect personal and bureaucratic investments both in Washington and Saigon?

Those who favor more aid to South Vietnam assign to our collective conscience what they say will be bloody results of our failure to provide that aid. Where is their conscience in respect to what our policy has done there? I can conceive of no future action that can cause me more shame than the slaughter and destruction for which we have been, and are still, responsible. Rarely has truth been an option to be considered by our Vietnam policymakers. I am now unable, on their word, to erase from my mind the images of Vietnamese peasants suffering and dying by our firepower and by our defoliating toxins.

And again, we are being asked to keep our word. To whom did we give our word? Who gave it, and on whose authority was it given? Our initial large scale entry into Vietnam was based on a mysterious attack in the Gulf of Tonkin, which either never occurred or, if it did, was provoked by our own forces. Whatever promises were made were grounded on the boldest lies ever told by any government.

Finally we are urged to continue the slaughter to save our credibility in a world built on alliances and their fulfillment. But what credibility attaches to the world's greatest power acting through a surrogate to systematically destroy a small nation only a fraction of our size? Once the French departed, our allies in Western Europe, including the French, refused to take part in what was clearly a civil war. Our adversaries have happily watched our economy and our social fabric disintegrate because of our intervention in Vietnam.

As our Vietnam policy has made us into the "bully of the world," our credibility in military, moral and economic terms has become more and more obscure. Our only chance to restore it is to admit officially our tragic error before it goes farther.

Clearly the American public long ago stopped buying the various justifications for prolonging Vietnam's agony. What counts now is whether or not the Congress can be sold once more on an unreal argument of national interest to continue military aid. I hope not.

THE HONORABLE STROM THURMOND, MOST DESERVING RECIPIENT OF THE AMERICAN LEGION DISTINGUISHED SERVICE AWARD

Mr. HANSEN. Mr. President, there is no higher tribute to a man's patriotism than to receive outstanding recognition from one of our Nation's organizations whose membership is composed solely of patriots, and whose cause is patriotism.

At the American Legion midwinter conference and banquet in this city Wednesday, the distinguished senior Senator from South Carolina (Mr. THURMOND) received the American Legion Distinguished Public Service Award.

Along with the Legion, it is most fitting that those of us in the Senate recognize the dedication of Senator THURMOND to our Nation—as a soldier and as an outstanding citizen. The Senator, in his acceptance of the award Wednesday outlined some of his philosophy of life, of government, and of national defense. In order that we may share his wisdom, I ask unanimous consent that his remarks be printed in the RECORD.

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

ADDRESS BY SENATOR STROM THURMOND

National Commander Jim Wagonseller, National Adjutant Bill Hauck, National President of the Auxiliary Mrs. Maurice Kubby, my colleagues of the Congress, distinguished guests, and my fellow Legionnaires:

It is an honor, a privilege, and a pleasure to accept the Distinguished Public Service Award of The American Legion.

When I consider the eminence of past recipients—President Ford, Speaker John McCormick, Everett Dirksen, Carl Vinson, Les Arends, "Tiger" Teague, and George Mahon—I am keenly aware of the faith the Legion has shown in me by choosing me for the 1975 Award. I shall always strive to remain true to the trust you have reposed in me.

The first organization I joined after World War II was the American Legion, and my association with you has been a source of great satisfaction to me ever since. It has given me many friendships which I cherish. It has taught me lessons of citizenship which I value highly. It has shown me the example of Americanism which I strive to follow in both personal and public life.

My membership in The Legion has also been the source of great pride. Your principles are high, and you put them into action with worthwhile and productive programs in Americanism, Youth Activities and Veterans Affairs.

The Americanism program teaches all the basic tenets of citizenship—loyalty to our Nation, willingness to serve our country and to defend our flag, and respect for our constitution.

In your program for young people, you recognize that the youth of today are the leaders of tomorrow. Your youth activities have taught generations of young people the basic values of our Nation.

Finally, as a result of your strong leadership in Veterans Affairs, Congress has passed vital programs to assure veterans an easier transition from military service to civilian life.

It is the highest obligation of citizenship to defend the Republic in time of need, and this obligation creates an equal responsibility on the part of the Republic to care for the men who wore the uniform, their widows, and orphans.

Generally, veterans programs fared well in 1974. The Congress passed such important measures as a comprehensive education bill, compensation increases for the service-connected disabled, pension relief for the non-service connected disabled, and a broad housing program.

In the coming year, however, there are three areas which the Legion should watch closely—VA medical care, unemployment, and the development of a National Cemetery policy for veterans. Briefly, I want to alert you to some of the problems which concern me in these three areas.

First, I fear that some of the plans for the so-called National Health Insurance may endanger the independence of the VA hospital system. I cannot and will not support any National Health Insurance program which subordinates the VA system to HEW. If National Health Insurance is enacted, safeguards to protect the integrity of VA

hospitals should be written into the law. The VA hospital system should continue to provide health care services exclusively for veterans.

In this connection, I recognize that the VA hospital system has its problems. The Chase Report has documented them, and I pledge my best efforts to work for their alleviation.

A second problem area involves the tragic unemployment situation. I am appalled at the high rate of unemployment among young veterans, currently hovering at 20 percent for veterans between ages 20 and 24.

Part of the problem lies in ineffective implementation of the employment laws which have been designed to provide veterans with counseling and job preference.

In order to combat this problem more effectively, I have introduced a bill to upgrade the position of Director, Veterans Employment Service, to Assistant Secretary of Labor for Veterans Employment. The Director of Veterans Employment, the Manpower Administration, is located at such a low level in the organizational structure of the Department of Labor that it is presently impossible for him to carry out effectively the Congressional mandates for veterans employment.

The institutional rank of this position should be commensurate with the great responsibility with which the office is charged. I call on The Legion for active support of this measure.

Third, 1975 is the year to move legislation out of Committee to implement a National Cemetery policy for veterans.

One Regional Cemetery in each Federal Region is not sufficient. Rather, I believe every man who has served his Nation honorably should have the opportunity to be buried in a National Cemetery in his home state or other nearby location.

I am hopeful that the Senate can hold hearings by summer and can reach agreement on providing a cost-sharing arrangement for National Cemeteries in each State. The Congress will listen attentively to The Legion's recommendations on a National Cemetery policy.

I now turn to a subject in which I know you all have a great interest—national security. Over the years, the Legion has consistently advocated that our country maintain a defense posture second to none. This has been my position, too. I have always agreed with you that America is the leading force for peace and order in the world, and that any weakness on our part would only invite disaster for ourselves and other free nations.

Tragically, many Americans now feel either that we no longer need a strong defense or that we no longer can afford it. Many of our leaders feel similarly. These people have fallen prey to a host of misconceptions that have been circulating about our Nation's security. These misconceptions must be corrected immediately or they will have disastrous consequences. As Proverbs tells us, "Where there is no vision, the people perish."

First, some people are saying that with détente, we no longer need to build new weapons. This notion is completely impractical. Even if we could entirely eliminate nuclear weapons—and at present this objective is little more than a dream—we would still face the threat of conventional warfare. For years the Soviet Union has been expanding and modernizing every branch of its armed services. Their army is much larger than ours and equipped with every modern weapon. They have 69 more fighting ships in their navy. If we did not have our nuclear shield, these superb conventional forces would have all of Europe and Asia at their mercy. We must try to keep pace in armaments, or détente will not increase our security but destroy it.

For this same reason, people who speak of unilateral reduction in manpower are equally misguided. The Soviets are not reducing *their* manpower. Peace is not won by goodwill alone; we need manpower as well. As the Chairman of the Joint Chiefs, General Brown, recently reminded us, Pope Pius XII made a noble effort to control Stalin, but he was shrugged off with the question, "How many divisions does the Pope have?"

A third mistake that many people make is to call for America to withdraw from the rest of the world. Some commentators have named this attitude the New Isolationism. At this point in history, isolationism makes no sense at all. The world has changed completely since World War I. Bombers and missiles can circle the globe with lightning speed. No corner of the earth is invulnerable to attack. In addition, we have lost our former economic independence. We need the raw materials—particularly energy-making ones—of other countries, and we need commerce with other countries to give our manufacturers new markets. Accordingly, it is impossible for America to turn her back on the rest of the world. In our own economic and strategic interest, we must continue to exercise the same leadership in foreign affairs that we assumed at the end of the last war.

With regard to the New Isolationism, Secretary of Defense James R. Schlesinger recently said, "It is more prudent to shape the future by our own actions than to let others do it for us." It is also more honorable. For America suddenly to abandon her defense of the other free nations of the world would be little less than an act of stupidity. Succeeding generations would never forget. As George Kennan, diplomat and historian, points out, "History does not forgive us our national mistakes in terms of our domestic politics."

A final misconception I want to discuss is the idea that defense spending is bankrupting the country. In my opinion, the country is indeed near bankruptcy. However, the cause of this sad development is not defense spending but spending for purposes other than defense.

In 1968, 43 percent of the Federal Budget went for defense. The corresponding figure now is 26 percent. The percentage of GNP spent on defense has fallen during this period from nine percent to five percent. It is true, as some critics point out, that defense spending has increased by 68 percent in the last decade. However, inflation has accounted for almost all of the increase, and non-defense spending has risen an astounding 224 percent at the same time.

Here, in non-defense spending, is where major budget cuts are in order. When we pay for defense, we are paying for the preservation of our lives and our freedom. When we pay for other purposes, we are paying all too often for wasteful and inefficient social programs which, according to the Constitution, ought to be administered by the States anyway. Let the budget-cutters who want to dismantle our armed forces begin instead with the army of bureaucrats, now about three million strong and consuming $36 billion annually in salaries and wages alone.

Another consideration that those who oppose defense spending seem to forget is the relatively low cost of preparedness when compared to the cost of war. Seen in this perspective, defense is a bargain. It cost us 90 percent of our budget to fight World War II, 60 percent to fight the Korean War, and 42 percent to fight the War in Vietnam. We are now paying only 26 percent to avoid a new war, and that figure drops to 17 percent when we take into account all public spending.

I do not want to leave the impression that I oppose detente. With both the Soviet Union and ourselves possessing enough nuclear weapons to destroy mankind, a policy of negotiating our differences is both practical and humane. However, as President Ford has pointed out, "Strength makes detente attainable. Weakness invites war."

Furthermore, detent should be a two-way street. So far it is hard to see the benefits we have received in return for those we have given. At least 1,300 of our service-men are still missing in action in Southeast Asia. The Soviet Union has given us no assistance whatsoever in our efforts to account for them. Neither has the People's Republic of China. In addition, the Russians and Chinese are shipping tons of ammunition and supplies to the North Vietnamese invaders in South Vietnam.

Clearly we must have military might to back up our attempts at negotiation. It is the Soviets' belief that we do not have the *will* to defend our interests that makes them so uncooperative. Anyone who favors a real detente must also favor a strong defense. We should always remember the words of Winston Churchill, "No foreign policy can have validity if there is no adequate force behind it and no national readiness do make the necessary sacrifices to produce that fact."

For those who think there is no longer any need for sacrifices, the Secretary of Defense recently released some terrifying figures. The Soviet Union is now outspending us in almost every significant defense category—by 20 percent in Research and Development and General Purpose Forces, by 25 percent in Procurement, and by an almost unbelievable 60 percent in Strategic Nuclear Offensive Forces. The military threat from the Soviet Union is not only still alive, it is growing.

Over and above these general misconceptions, a new threat to our national security has developed since the opening of this Congress. This is the current attitude of hostility and scorn towards our foreign and domestic intelligence-gathering agencies, the CIA and the FBI. The President, the House, and the Senate have all launched investigations into alleged mistakes and shortcomings in the workings of these agencies. Whatever irregularities the investigations uncover should be promptly punished, and measures should be taken to see that they do not occur again. However, the CIA and FBI play a vital role in preserving the freedom and tranquility of this nation. In general, their work has been superb, and we must not let the present outcry against them lead us into undermining their ability to function. Whatever a few individuals have done, the work of these agencies deserves our support.

Still another threat comes from another direction. For more than ten years, the State Department has been trying to turn the Panama Canal back to the Republic of Panama. We bought and paid for this property and own it by perpetual treaty. It is ours. We now have an investment in it of over $6 billion, including security. Furthermore, the Panama Canal is vital to our national security.

It requires an act of Congress to give United States property away. If a shortcut is attempted by means of a treaty, the Senate should reject it. We must retain control of this strategic waterway.

I am obliged to say a few words about the disgraceful situation in Southeast Asia. I know that many good and thoughtful people are opposed to further aid to South Vietnam. However, the South Vietnamese are still our friends, and they are still the victims of naked aggression by foreign troops bent on conquest. I feel that we are bound by honor as well as our commitments to help them to help themselves remain free.

The South Vietnamese do not lack the will to fight, as some allege. All they lack is the arms. Sir Robert Thompson, a British military expert who advised President Nixon on

Vietnam, recently visited Vietnam and declared that the South Vietnamese troops, properly equipped, would be the equals of any in the world. I feel very strongly that we should do what we can to equip them. At the same time, we should let the Russians know in no uncertain terms that their continuing support of the aggressors in this conflict is completely inconsistent with improving Soviet-American relations.

The current tragedy in Vietnam could have been avoided. If we had acted boldly and decisively when we first became involved in the war, South Vietnam would be free and secure today. However, we cannot rewrite history. The best thing we can do now is to give the South Vietnamese the arms and ammunition they need to survive.

As for the future, South Vietnam should be a lasting lesson to us. Never again should we fight a war unless we are determined to win it. It is not fair to the people of this country, particularly our fighting men, to ask them to make sacrifices for nothing. It is equally unfair to our allies to walk out on them in the midst of their peril. If we will only take this lesson to heart, we can still salvage something of good from our bitter experience in Southeast Asia.

I want to leave you with one final thought. This year we begin the celebration of our 200th anniversary of the Declaration of Independence, the most precise definition of representative government and individual liberty ever drawn from the minds and hearts of men.

This document stated, "All men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness."

For these nearly 200 years in the life of America we have been the beneficiaries of these great words. However, our forefathers went on to declare, "We mutually pledge to each other our Lives, our Fortunes, and our sacred Honor."

The meaning of this pledge is fully understood by the members of the American Legion and their loved ones. Each of you realizes that with the rights and privileges of a free society come *responsibilities*.

The eternal vigilance represented in this pledge needs to be repeated today. This nation was born under a resolution which called for liberty or death. It will survive only under the resolution of a people willing to sacrifice everything necessary to preserve their freedom.

Because of the heroism personified by this organization, I am singularly honored to receive your Distinguished Service Award. I cannot thank you enough, but I want to thank you all I can. My heart overflows with gratitude, for to be honored by the heroes of America is the honor of all honors.

GEORGE MEANY AWARDED NATIONAL BROTHERHOOD CITATION

Mr. WILLIAMS. Mr. President, the working men and women of America were greatly honored last Tuesday night when one of their most distinguished leaders received a high tribute in the cause of human rights.

George Meany, president of the AFL-CIO, was awarded the National Brotherhood Citation of the National Conference of Christians and Jews. The award was presented by Vice President NELSON ROCKEFELLER at a dinner in Washington on the evening of March 4.

I want to join with Mr. Meany's many admirers to extend him congratulations on receiving the brotherhood citation.

He accepted it not for himself, but for the organization he heads and for the entire American labor movement which has been in the forefront of this Nation's pursuit of civil rights and human dignity.

For a man who speaks out so forcefully and whose actions bear out his words, George Meany, ironically, is often misunderstood. His adversaries search for hidden meaning and ulterior motives in his words, never satisfied that what he has said is what he meant and what he meant to say.

Mr. President, I have rarely found it difficult to understand George Meany. To my ear, he speaks clearly and eloquently for his point of view, as he did once more in accepting the National Brotherhood Citation.

So that my colleagues may have the benefit of reading Mr. Meany's statement of appreciation for the award, I ask unanimous consent that it be printed in the RECORD.

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

SPEECH BY AFL-CIO PRESIDENT GEORGE MEANY

I am delighted to be here and, of course, deeply honored to receive the annual Brotherhood Award of the National Conference of Christians and Jews.

I'm particularly honored to be introduced and presented here tonight by the Vice President of the United States, who I have known for many, many years. I have been reading about him lately. I see where he is trying to bring the United States Senate into the 20th Century. And I would say, if he was scarred a a little bit in the attempt, not to worry about it. They are very honorable scars.

I take this Award—not for myself—but in behalf of the organization I have the honor to head, the AFL-CIO—in behalf, really of the American labor movement which, I believe, perhaps immodestly, is the most effective human rights movement in this country.

You know—in the final analysis—human rights rest on human dignity—on a common recognition of the worth of the human personality.

If we lose that sense of self-worth—of dignity, we become careless of the rights of others and we fail to claim our own rights as well. Before we know it, we have passively acquiesced in our own enslavement.

It is not surprising, therefore, that totalitarian governments must rob their citizens of dignity.

The business of dictatorship is to dictate—to control all the way—including the thought processes of its victims. In carrying on its business, it destroys the dignity of all those under its control by telling them that they are not whole human beings in themselves—that they are fulfilled as persons only through service to the State—or only through subservience to an ideology or doctrine. Their own humanity is not sufficient—they need Big Brother—be he named Adolph, Josef or Leonid.

But dictatorship is not the only enemy of human dignity. Poverty, hunger, disease, unemployment—these are also things that demean the human personality. These are also the things that make people feel less than whole.

That is why a man who is out of work—a man who cannot properly feed or clothe or shelter his family does not feel like a whole man—and the same goes for women who bear like responsibilities.

And, I believe, the labor movement has done more than any other single force in American life to enhance the economic security of the great mass of America's working people. I also believe it has done more than any other segment of our society to build the broad base of dignity that supports the human rights we often take for granted.

In this sense, the labor movement is a human rights movement—no less than the National Conference of Christians and Jews or the NAACP.

And yet, much of what we do in the field of human rights does not carry a human rights label. It is a natural by-product of our day-to-day role in the world of work.

For example, we do not recruit to the ranks of organized labor on the basis of race, creed, sex or ethnic background. We do not have quotas in the labor movement.

We don't ask a man where he comes from or what his political views are before he joins a union. All we want to know is—does he work here and what kind of work does he do and—if he works for a living, we feel he belongs in the union.

And, despite all of the anti-union propaganda that has been beamed into the black community, the latest studies show that black workers are more prone to join a union than are white workers.

And, no wonder—the earnings of unionized black workers are, on the average, substantially higher than among their non-union counterparts.

I contend that when you substantially raise a man's earnings—especially if he is a poor man—you don't just put more meat on his table—you help him hold his head a little higher.

And that is what the labor movement is in the business of doing—helping people hold their heads a little higher. Helping people become more human in the highest sense—and therefore more conscious of their human rights.

But, these days—we must admit—our job is getting more difficult each day—and you all know the reason.

It is not because we have stopped trying. It is because the policies of the Administration that has been in power in Washington since January, 1969 have thrown this nation into an economic crisis worse than anything we have known since the Great Depression of the 1930s.

Unemployment is feeding on unemployment. 8.2 percent of our workforce is jobless—according to the official figures, which very much understate the problem.

But, while the official overall rate is 8.2 percent, it was 13.4 percent for blacks in mid-January. It was 14.3 for the unskilled and 13.1 for the semi-skilled. It was 20.8 for teenagers and 41.1 for black teenagers.

Now, I submit—contrary to what Arthur Burns may think—that these are not just statistics. This is a human tragedy. Millions of disadvantaged Americans who began to make real progress in the 1960s are now being thrust back to where they were ten or fifteen years ago.

I believe that we are sitting on social dynamite. As the recession deepens—and all signs point in that direction—racial and social tensions are bound to rise, posing a threat to the real accomplishments of organizations like the National Conference of Christians and Jews and so many others that have labored so hard to eradicate bigotry and prejudice from the land.

I did not come here to present the AFL-CIO's program to deal with the economic crisis—although I do want you to be aware that we have one. We think it is a better one than the President has offered—and, certainly, it is more comprehensive than what the Democrats have offered.

The point I want to make is that all of us who are deeply concerned about human rights and human relations must turn our attention to the economy—because if it continues to go downhill—it can become the

breeding ground of ugly social impulses and emotions—among them the ancient curse of anti-Semitism.

I am not an alarmist but I do read history—and we know from history, that anti-Semitism seems to intensify in times of severe economic and social stress.

Today, we have an additional danger. Not only does our deteriorating domestic economy provide an all-too-rich soil for scapegoating and demagoguery but, we are faced—on the international scene—with powerful waves of anti-Semitism emanating from the Middle East.

And, make no mistake about it—the Arab fanatics are not just anti-Israel or anti-Zionist. They are anti-Jewish. They are plain, old-fashioned anti-Semites in the spirit of Adolph Hitler.

But, the most outrageous thing is that the venom with which they have poisoned their own societies they seek to inject into our society.

I think President Ford is to be commended for speaking out so clearly against the Arab blacklist. The idea that any foreign investors would discriminate against Americans who are Jewish or who do business with Israel is a monstrous abomination.

But, what is worse is the fact that there are American Governmental agencies that cooperate in this despicable practice.

Imagine! The Army Corps of Engineers admits that it goes along with the demands of the Arab States that no Jews be sent into their countries.

And, then we learn that our Department of Agriculture—you know Earl Butz' Department of Agriculture—you know Earl Butz—holds a 6.5 percent interest in the Intra Investment Company of Beirut, Lebanon—a company that boycotts banks that give economic assistance to the Israelis.

I think we have to go farther than the President's statement. I think we have to let the whole world know that in the United States of America, that in our country, human rights still take priority over the dollar.

I think we should tell the Arabs that any would-be investors from any country who subscribes to the blacklist are henceforth barred from doing business in the United States.

There is some business we don't need.

Throughout the world today there is great confusion about what the United States of America stands for—or whether we stand for anything at all.

In the American Congress, a very strange discussion is taking place. It has to do with whether we should give South Vietnam the remaining $300 million of the $1 billion originally authorized for military assistance. In other words, should we keep our commitment. According to many experts, the survival of the country may be at stake.

Many voices are raised against further aid. The Thieu regime is too repressive, they say. It is also too corrupt. It is intolerent of press criticism. It manhandles demonstrators. It even somettimes arrests union leaders and Buddhists. Its elections are not nearly as democratic as ours.

I can understand these criticisms—although I don't agree with the conclusions some people come to. But, what I can't understand is how the same people who want to cut off aid to South Vietnam because its government is too repressive—turn around and argue for 6 percent U.S. credits for the Soviet Union—where there are no demonstrations, no unions, no elections—and the most degrading form of corruption—the complete monopoly of all power—political, economic and military—by a single ruling clique over the lives of every single person within the Soviet Union.

Incidentally, on the issue of governmental corruption in high places, we here in the United States should guard against any feeling of excessive self-righteousness.

We should give some thought and contemplation to our own recent experience with corruption at the very highest level.

If the stupid Watergate break-in had not accidently come to light—how far would the Facist mentality that prevailed in the White House have carried us down the road to repression of individual human rights—to harassment and control of the press—to the manhandling of demonstrators and all the rest of those evils of dictatorial regimes which we so readily deplore?

How much of a step would it have been from the promulgation of an enemies list to the complete monopoly of power over the social, economic and political life of our nation?

The air has been filled with talk of detente. That's a lovely word. I couldn't find it in the American dictionary, but, it's in the French dictionary. Detente not only with the Soviet Union and China but with the East European puppet regimes. Trade with these countries from the United States is aid to them. Yet, which of these governments comes anywhere near being as democratic as South Vietnam?

So, as you look at our policies in Southeast Asia—where the first bitter fruits of a false detente can be tasted—and as you look at our policies toward the Soviet Union—where our guiding moral principle—and "moral" has to be in quotes—is "no interference in their internal affairs", not even in defense of human rights—and then as you look at our policies in the Middle East—where we are supplying various Arab governments with fancy aircraft, nuclear reactors—and God knows what else—what other goodies Henry hands out—at the same time those Governments remain pledged to destroy Israel, the only democratic state in the Middle East—as you look over all these policies, is it any wonder that nobody knows anymore what this country believes in—or what it stands for?

It used to be thought that we had a clear commitment—a vested interest—in the growth and expansion of democratic societies throughout the world. It used to be thought that this commitment was not just a matter of sentimental idealism but was based on a recognition that totalitarianism—whether of the left or the right—posed an ever-present threat to our own way of life.

One doesn't hear much of this kind of talk any more. It is buried under mountains of propaganda about detente and peaceful coexistence. And, in this climate, talk about democracy and human rights becomes an embarrassment. It makes people feel uncomfortable. It makes them feel awkward.

Frankly, I think that this is a terrible thing. We have come to a sorry pass in the history of this great experiment in democratic self-government whose 200th anniversary we shall soon celebrate.

There is no doubt in my mind but that this world-wide confusion about the credibility, the commitment and the cardinal purposes of the United States in world affairs today is a major factor contributing to the financial and political instability that has shaken so much of the Western world and threatens to alter the international balance of power with frightful consequences.

But, while the immediate future looks glum, in the long run, I am not a pessimist. Increasingly, thoughtful Americans are beginning to realize that the pendulum has swung too far in the direction of wistful delusion.

A new realism is bound to set in—and with it—a new set of policies. The greatest enemies of genuine detente will prove to be—not the so-called Cold Warriors like George Meany, but the inability of the Soviet Union—given the system by which it is governed—to renounce its fundamental ambitions and values.

Those ambitions and values may be temporarily accommodated by some of our businessmen who are at home wherever there is a buck to be made—whether in Texas or Siberia—but, we, in the labor movement, can not make that cozy accommodation.

We can not survive as a trade union movement except where there is democracy. Human rights are the very lifeblood of our movement.

Take away the freedom to speak, the freedom to associate, the freedom to assemble, the freedom to criticize the government, if you please, the freedom to strike—take these away and you can perhaps still run a corporation but you can't run an institution such as a trade union dedicated to the welfare of the ordinary citizen who works for wages—No Way! Come to think of it, when and where workers lose these freedoms, somehow all the other segments of society are likewise adversely affected.

This is why—no matter what Administration is in power, or who the Secretary of State may be—the Trade Union movement has—and must have—a continuing and consistent commitment to human rights and democratic values.

Ten years ago on the 7th of this month, an event took place in Selma, Alabama, which will not soon be forgotten.

On that "Bloody Sunday", hundreds of people who were peacefully demonstrating for voting rights were set upon by Alabama Highway patrolmen and brutally beaten.

That was a horrible day in our history. But, six months later—on August 6, 1965, President Lyndon Johnson signed the Voting Rights Act into law.

Many people sacrificed life, limb and security on behalf of the cause of civil rights in the 1960s. But the point is, their sacrifice was not in vain. They actually WON. And, because of their victory, Selma seems far off today—a long, long time away.

The American labor movement was part of that struggle—as you would expect. Not enough people know, however, that labor's influence on Capitol Hill was probably the most important single factor in winning the passage of that 1965 Voting Rights Act.

So, when you hear people talking about "powerful big labor"—yes, we have power—but we like to think that we use our "labor power" on behalf of human rights.

And, we say—Flat Out: What we want for ourselves as American workers, we want for all the people of this world—the entire human family.

All peoples—not just Americans—should have the rights that were won in Selma, Alabama—ten years ago—the rights we are still fighting to protect and expand.

All people should have these rights—and, if saying that is interfering in the internal affairs of other countries, then I would take my stand with Aleksandr Solzhenitsyn, who said:

". . . All Internal Affairs have ceased to exist on our crowded Earth! The salvation of mankind lies only in making everything the concern of all."

In this spirit of brotherhood, I thank you again for your annual award, which I am proud to accept on behalf of the AFL-CIO.

GROVER COBB

Mr. BAKER. Mr. President, I am grieved to learn of the untimely and sudden death this morning of Mr. Grover Cobb, the executive vice president of the National Association of Broadcasters.

Those of us who have worked in the

Senate on broadcast matters over the years, remember with affection this man who so ably represented his association before Congress. He at all times reflected the highest integrity, the fullest cooperation, and a warm sensitivity to the problems under discussion. The broadcast industry is more stable because of his work and the quality of the programing over the airways is much superior because of his efforts.

He was born in Arkansas but spent most of his life in Great Bend, Kans., where he was general manager of KVGB. He was one of the State's most outstanding citizens, winning many awards for his civic accomplishments, including the Most Outstanding Citizen Award in 1968.

In 1969, he joined the Gannet Corp. in Rochester, N.Y., as vice president of their broadcasting properties, including two television and six radio stations and their cable TV operations.

He came to Washington with the National Association of Broadcasters in 1971, where he became an energetic worker in developing a stronger relationship between the broadcasters and their representatives in Congress. These accomplishments of Grover Cobb will be remembered as a benchmark for his association, but the presence of the articulate and immensely kind spokesman for free broadcasting will be greatly missed.

"THE POOR: INFLATION IS INFLICTING SUFFERING AND SHAME"

Mr. McGOVERN. Mr. President, I just returned from Miami where, as chairman of the Senate Select Committee on Nutrition and Human Needs, I held hearings on the problems of the people participating in the food stamp program there. While I am not a stranger to the grim pictures painted at such hearings, I am nevertheless shocked and moved every time I hear the stories of suffering and sacrifice, humiliation and heartache that so many Americans must bear under the strains of poverty.

These stories are not pleasant to listen to, but frankly, Mr. President, we must listen to them because they will make us more aware of the dreadful situation, and perhaps shock us into doing something about it.

The worsening economic state of the Nation as a whole is clearly the major contributor to the lack of food on American tables. Inflation is a key factor in the situation—it is literally starving Americans.

The majority of the public may be worrying about the rising cost of food, but they do not have to worry about whether there will be any food at all for tonight's meal. But thousands of people do, and James Wooten, in an article which appeared in the February 16 issue of the Minneapolis Tribune, has written about some of these Americans who know hunger and poverty firsthand. It is a sensitive article about the frightening consequences of inflation. I ask unanimous consent that this article entitled "The Poor: Inflation Is Inflicting Suffering and Shame" be printed in the RECORD.

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

[From the Minneapolis Tribune, Feb. 16, 1975]

THE POOR: INFLATION IS INFLICTING SUFFERING, SHAME

(By James T. Wooten)

ST. PETERSBURG, FLA.—When Mrs. Elsie DeFratus could no longer afford the cost of living, she died.

She was nearly 80, and she had survived somehow for a long, long time on her meager widow's pension, frugally measuring it against the rising prices, scrimping and scraping and skipping meals, making do with less and less each day until finally, on a recent morning at an ancient hotel in St. Petersburg, she crumpled quietly to the floor of her dark and tiny apartment.

She weighed 76 pounds. An autopsy found no trace of food in her shrunken stomach. "Malnutrition," the coroner concluded.

"Surrender," sighed an elderly friend. "She just stopped believing tomorrow would be better."

Both may have been right, but in any case the small, emaciated woman had become the ultimate victim of inflation.

For millions of other Americans, inflation's effect has been not as extreme, but it is hurting deeply, nonetheless.

From one end of the country to the other, in rural hollows and small-town slums, in prairie reservations and mountain enclaves and city ghettos, it attacks the poor, the elderly, those on fixed incomes. Sometimes it leaves them, like Mrs. DeFratus, both hungry and hopeless.

President Ford, in his first few months in office, concentrated his economic policy on reducing inflation. And even though prices rose by 12.2 percent last year—the most in 28 years—some progress was being made.

Last month, however, Mr. Ford decided that the time had come to shift the power of government from primarily fighting inflation to fighting a deepening recession, which has pushed his jobless rolls to 8.2 percent of the work force.

For the unemployed, this shift in administration policy may mean more jobs, and hope. But for those hurt by inflation, it may mean the opposite. Many economists believe that some of the measures used to fight the recession may stem the decline in inflation, or even reverse it.

If that occurs, it seems certain to provide new dimensions to the nation's poverty problems. There are already some signs that economic difficulties are putting a fresh edge on traditional class, ethnic and racial antipathies.

At the airport in El Paso, Texas, a middle-aged aircraft executive who declines to give his name, tells a fellow traveler his views on the poor.

"They just suck at the Great American Teat," he says. "That is their sole function, to milk the country."

Robert Davis sat at his kitchen table in the tiny dinette of his housing-project apartment in Little Rock, Ark., recently, talking with his wife and some visitors about the way he believes other people see him.

"I don't think they think much of me," he said, staring at his mud-caked, high-top shoes. "I mean, they don't think I've amounted to much as a man. Used to be, I didn't much care what they thought, but nowadays—well, I don't know. Maybe they're right."

Davis is a 40-year-old black who works more than 40 hours almost every week on a construction crew and earns slightly more than $2 an hour. Occasionally he takes odd jobs on Saturdays to supplement his earnings.

"It wasn't hardly ever enough," he said. "Not with nine kids at home. But there was a time there not too far back when things were sort of looking up. Now, I don't see nothing but down."

As he talked, his wife, 38, quietly prepared dinner, a meal consisting of chicken soup and crackers, with milk for the younger children and coffee for the older ones.

She cannot remember a moment in all of her life, she said, when she was not lacking something she needed.

Her husband said: "I know people look at us and laugh and say how come we got so many kids, and I say it's because we always wanted a bunch of them and because I never did know we was going to be poor."

Davis went on: "I always thought that with the way I could work—I'm a right strong man—that we'd make it some way. Now, tell the truth, I don't think we can."

In the last few months, their utility bills have gone from $8 to $21 a month, the result of a rate increase by the local power company. The cost of their groceries has risen from about $60 a week to more than $100, even when Mrs. Davis buys less than she believes they need.

A few weeks ago, with several auto-loan installments overdue, they chose to pay for their food, water, lights and shelter, and the finance company repossessed their second-hand car.

They pay $33 each month for their cramped, dark quarters, and, they say, should Mrs. Davis take a job, the rent would increase proportionately and make the added income almost inconsequential.

High atop a new St. Petersburg hotel, only blocks from the one where Mrs. Defratus died, a bartender talks about the problems of poverty.

"There are no such things," he says. "There are only those who will not work, and I say to hell with them. I work hard. Everybody I know works hard. Why can't they work hard?"

In Seattle there is an old, beige, Victorian house at the corner of East Olive St. and 14th Av. where every Tuesday morning hundreds of men and women—young and old, black and white—form a long line that snakes down the block toward the towering space needle.

It is a "food bank," a pick-up point for absolutely free, no-strings-attached groceries distributed by Neighbors in Need, a nonprofit group supported partly by the federal government and partly by public contributions.

It was formed after the layoffs by the Boeing Co. in 1971, when thousands of middle-class workers found themselves unemployed.

"We tried to fill that space between the government benefits and the needs of the people," said Milton Kemp, a 28-year-old employee of the group. "But we're not really doing it any more. Inflation is killing us. All we're doing is just throwing a few groceries into the gap."

The group's purchasing power in the last few months has dropped a point at which pork and beans was listed recently as a "meat" item. "And there wasn't any pork in those beans, either," Kemp said.

Each week, thousands of Seattle residents shuffle through one of the group's several "banks" and each week the number of its clients increases.

"People who were once using us as a supplement—our original function—are now solely dependent on us," Kemp said.

The people who pick up the food are a

varied collection. On one Tuesday morning not long ago, a young black man and a middle-aged white woman stood next to each other in the line. He was unemployed, and his wife's job brought the couple less than $100 each week. They have two children.

"Can't make it without these—these, well, these gifts," he said, slightly embarrassed.

"Why, if you weren't black your face would turn red," the matronly woman chided. "Shame on you. When you need help, you need help. When your babies need food, they need food, and there's nothing about that to be embarrassed about."

The young black man stared at the sidewalk. "Yes, ma'am," he said. "There is."

Reggie, a black Vietnam veteran in his late 20s, leans against the wall of an abandoned store-front in Columbus, Ohio, and offers his views on inflation.

"It means just one thing to me," he says. "America. The white middle class sort of rearranges its life style, you know, sort of moans a little about how much hamburger is costing these days, but the black people—you know, man, the poor people—they got no life styles to rearrange. They're just getting destroyed, you know. I mean, getting killed. And that's America to me. I never knew it to be any other way."

Mrs. Peggy Maze, director of Seattle's neighbors in need, was embarrassed, too. "Not for me," she said in her office at an old warehouse near the Puget Sound waterfront. "I'm embarrassed for Seattle."

In 1971, public donations topped $250,000. This year, there will be less than $100,000. The Office of Economic Opportunity gave the program $750,000 in 1972, $650,000 in 1973 and $500,000 this year.

"When we need more, we get less," Mrs. Maze said.

"You see the grand logic here. "As the number of poor increases because of inflation, the need for services such as our group's grows. Correspondingly, the interest and the funding of the public and the government decreases. It makes such great sense."

As the line lengthened throughout the morning at the food bank, the wind from Puget Sound increased sharply and several of the people pulled their old coats close around them. "A few months ago," Mrs. Maze said, "many of these people wouldn't have been here. They wouldn't even have thought of being here. Now, they come. They can't buy what they need any more, and they've got to eat somehow."

A young white man, a young black man, both Southern immigrants to Detroit, stand outside a food wagon at a small plant and talk about charity.

Not me, brother," the black man says. "No give-aways for me. I'd steal to feed my family before that, wouldn't you?"

The white man hesitates for a moment and then nods an affirmative response. "I know a lot of people who are going to steal before they'll stand in line for food,'" the black man says.

In New York, Detroit, Miami and Chicago, there have been arrests of elderly citizens—some of them extremely feeble—for stealing groceries.

"But Elsie never would have done that," said Steven Haddock, manager of the hotel where Mrs. DeFratus lived on the sunshine coast of Florida. "She just wouldn't have stolen anything."

Instead she chose to attempt to manage on her Social Security checks of less than $100 a month, and with the cost of her room, $15 a week and her transportation to and from the post office to pick up her check, her food allowance was down to less than 65 cents a day.

Frequently, when her funds were nearly depleted toward the end of the month, she would settle for a single ice cream cone each morning, and somehow it had always been enough.

But on Oct. 3, after carefully arranging her clothes on her bed, she collapsed and died. Her Social Security check arrived the same day.

HEW SHOULD END FISHING EXPEDITION

Mr. BEALL. Mr. President, during consideration of the supplemental appropriations bill last year, I called to the Senate's attention HEW's harrassment of Anne Arundel County, Md. This particular problem began when HEW in May of 1973 undertook an investigation of alleged discrimination of minority students in disciplinary action.

While I certainly believe that discipline should be handled in an objective, nondisciplinary manner, my examination of the complaints and of the information demanded by HEW and discussions with county officials convinced me that HEW was simply on a fishing expedition, which was diverting the school system's attention, without any real evidence of discrimination, from the business of educating the youth of the county. Anne Arundel County estimated that to comply with HEW's request, it would take six administrators working full-time for 6 months.

During the 1974 floor debate, I engaged in a colloquy with Senators JAVITS, BROOKE, and MAGNUSON and they concurred that it was not the intent of the Congress that HEW should harass local school districts.

Senator JAVITS and Senator MAGNUSON assured me that the Labor and Public Welfare Committee, or the Labor-HEW Subcommittee of the Appropriations Committee would hold hearings on the matter.

In November of last year Governor Mandel named a task force to investigate the dispute between HEW and Anne Arundel County. This task force has now completed its investigation and their unanimous verdict was that Anne Arundel County was not guilty of bias in their discipline policies or practices. With respect to the specific cases they investigated, they found no evidence of discrimination and although they found some statistical differences in the county's suspension policies, the task force concluded that:

The data did not appear to warrant a more stringent investigation at this time.

Furthermore, as indicative of the weak case that HEW has, Federal District Judge Northrop in effect ordered HEW to settle out of court with the county. This suit was brought after the county had enough and simply refused to supply any additional information to HEW, feeling that they had provided them with sufficient information to render a decision.

In view of the State's findings, I say it is time that HEW end their 2-year investigation and to allow the county to turn its full attention to the education problems of Anne Arundel County.

Furthermore, I have today written to Senator PELL, the chairman of the Education Subcommittee, requesting that hearings be held so that Congress may examine this matter and hopefully prevent the delay and prolonged controversy which occurred in Anne Arundel County from being repeated elsewhere in the Nation.

I ask unanimous consent that the full text of the "Task Force Report of Charges of Discrimination in Student Disciplinary Practices in the Anne Arundel County School System" be printed in the RECORD, along with a Baltimore Sun article of March 1, 1975, by Mike Bowler on the task force report, and statements I made on the floor in connection with last year's supplemental appropriations bill, be printed in the RECORD.

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

[Submitted to the state board of education, Feb. 28, 1975]

TASK FORCE REPORT OF CHARGES OF DISCRIMINATION IN STUDENT DISCIPLINARY PRACTICES IN THE ANNE ARUNDEL COUNTY SCHOOL SYSTEM

(Compiled by Task Force Members: Howard C. Alison, Chairman; Joseph H Morton, Vice-Chairman; and Frank DeCosta, Esquire.)

The Maryland State Board of Education, at its regularly scheduled meeting on November 27, 1974, appointed a task force to investigate charges that student discipline was being administered in a manner that discriminated against Black students in the public schools of Anne Arundel County. This action was taken after a careful review of the interaction between the Anne Arundel County School System and the U.S. Department of Health, Education, and Welfare, Office of Civil Rights, regarding the matter. It had become evident that those two agencies had come to impasse; therefore, the State Board of Education following consultation with the Governor initiated this investigation in an attempt to cause the issue to be resolved.

SCOPE OF THE INVESTIGATION

The Task Force members, after reviewing voluminous correspondence which had been exchanged between the Anne Arundel County School System and the Office of Civil Rights, and conferring with the Anne Arundel County Superintendent of Schools, determined that the scope of the investigation would be:

I. Exploration of the specific complaints of parents alleging discriminatory practices in student discipline in the Anne Arundel County School System;

II. Investigation of referral of students to the Anne Arundel Learning Center;

III. Examination of student withdrawals to determine if there is racial differentiation;

IV. Investigation of the broader topic of differential disciplinary practices between races in the Anne Arundel County School System (as might be related to institutional discrimination); and

V. Development of recommendations for human relations programming and/or educational programming to alleviate real or perceived problems.

In addition to establishing the scope of the investigation, the Task Force members established the following guidelines for the conduct of the investigation:

1. Individual pupil records would be examined by the two Task Force members who were staff members of the Maryland State Department of Education;

2. Parental consent would be obtained when individual pupil records were examined;

3. The Deputy Superintendent would be

requested to coordinate all contacts with the school personnel;

4. All persons interviewed would be advised that they may have present anyone they wished during the interview; and

5. Individuals interviewed would have an opportunity to review a copy of the notes taken during the interview so that it could be determined whether the statements contained therein were accurate.

I. SPECIFIC COMPLAINTS

Two specific complaints were filed by Black parents with the Philadelphia Regional Office of the U.S. Department of Health, Education, and Welfare during the spring and summer of 1974. In each case, the complainant alleged that a Black student had been unfairly disciplined because of his race.

Case 1. The first specific complaint was registered on May 1, 1974 by a mother in behalf of her son. The mother, in her letter of complaint alleged that her son had been discriminated against in being suspended from school on several occasions.

The complainant was interviewed by two Task Force members at her home with her mother and aunt present during the interview. During the interview, the complainant recounted her son's school experiences from elementary school to the present. She cited several incidents in which her son had gotten into trouble in school for fighting; however, she defended his actions by saying that he was retaliating against others who antagonized him by calling him dumb and retarded.

The complainant related that her son continued to be involved in fighting incidents in junior high school. She indicated that he had been transferred from one junior high school to another as a result of misconduct and that he had twice been entered in the Anne Arundel Learning Center as a result of being put out of the regular school as a serious behavior problem.

The complainant stated that the last time her son was suspended prior to entering the Learning Center he was charged with being involved in an incident in which several Black students attacked a white student. She said that none of the other students were suspended.

The complainant expressed negative feelings toward several administrators whom she felt had not been understanding of her son's problems, and who had treated him harshly. She was especially critical of the special assistant to the superintendent who investigated cases of serious overt behavior problems. In contrast to the negative feelings she expressed toward most administrators, the mother was quite supportive and complimentary in speaking of the principal of the Learning Center and the program conducted at the Learning Center.

The Task Force members examined the school records of the son and confirmed that the youngster had a long history of behavior problems dating back to the elementary school years. Many of the incidents involved rather violent behavior and fighting with other students, both Black and white. The documentation of the behavior exhibited in each instance appeared to provide very adequate justification for the disciplinary action taken.

The record makes it evident that the school system did indeed expend considerable effort in attempting to provide assistance to the student in overcoming his problems. It is impressive to note the extent to which psychiatric, psychological, and pupil personnel resources were provided to the student.

It was apparent that the complainant was unaware of the fact that other students involved in incidents with her son were disciplined when the facts justified such action. For example, although the complainant said that none of the other boys involved in the assault on a white student were suspended, the fact is that all but one student, who was determined not to be directly involved, were suspended. Also, the Task Force members discovered that at the time of the assault the son was under suspension and was thus illegally on school grounds.

Additional information was collected through interviewing staff members of Bates Junior High School, Annapolis Junior High School, and the Anne Arundel Learning Center. The data thus collected corroborated the written record.

The Task Force concludes that there is no evidence to support the claim of discriminatory treatment in this case.

Case 2. The second specific complaint was filed June 13, 1974 by a Black father in behalf of his son. The father first made his complaint during a telephone conversation with a staff member in the Philadelphia Regional Office of the U.S. Department of Health, Education, and Welfare. The complainant charged that his son was suspended from school for reasons that he considered to be trivial and that he felt that his son had been unjustly suspended because of his race.

The complainant was interviewed by two Task Force members on December 9, 1974 at the Annapolis Hilton Hotel. He stated that he felt that at least two of his son's teachers had discriminated against him resulting in his suspension for minor infractions. He said he had visited the school to visit his son's classes and that he felt that the two teachers did treat his son differently than they treated other students. He complained that his son was suspended without adequate warning and that the school had not informed the home that the child had been having behavior problems prior to the suspension. He expressed dissatisfaction with the conference which was conducted prior to his son's reinstatement to school and felt that some of the staff were possibly expressing racist attitudes toward him.

The complainant went on to describe a more recent incident in which his son was suspended for fighting with a white student. During the fight his son kicked the white student in the face; therefore, the case was referred to the special assistant to the superintendent for investigation. The complainant expressed dissatisfaction with the manner in which the school conducted the preliminary investigation of the incident. He alleged that only white students were interviewed and that statements were not taken from two Black students who were present because they would be unreliable. He stated further that he felt that the action of referring the matter to Juvenile Services was too drastic.

The complainant related that his son had been harassed by another student who was a friend of the white student involved in the incident described above and that his son had been reprimanded but the boy harrassing his son had not been reprimanded.

The Task Force members examined the records of the complainant's son and found that six letters indicating unacceptable behavior had been sent to the home prior to the student's first suspension. Interviews with staff revealed that the complainant's wife had admitted that she had received the warning letters but had not told her husband about them.

Examination of the report of the investigation related to the more recent suspension for alleged assault revealed that the special assistant to the superintendent interviewed six student witnesses, four Black and two white. This refutes the complainant's assertion that only white witnesses were interviewed. The statements taken from the six students clearly establish the fact that the complainant's son was the aggressor in the incident and that he did indeed kick the white student in the face.

The Task Force members reviewed the record of the white student identified by the complainant as having harassed his son. In the case of the specific incident described by the complainant it was found that both students received exactly the same treatment and that identical letters concerning the incident were sent to both sets of parents. In addition, the Task Force members discovered that the white student had been suspended following six letters to the home indicating unacceptable behavior, thus establishing a parallel with the action taken toward the complainant's son.

The Task Force concludes that there is no evidence to support the claim of discrimination in this case.

II. ANNE ARUNDEL LEARNING CENTER

The Task Force decided to examine the referral of students to the Learning Center as a result of concerns expressed during discussion with staff members of the Office of Civil Rights. The notion that referral to the Learning Center might be being used as a discriminatory measure to remove minority children from regular school programs seemed to be implicit in comments made during a meeting held in the Office of Civil Rights.

Two Task Force members visited the Learning Center to observe the program and discuss its objectives with the principal. The Learning Center program relies heavily on behavior modification to bring about change in students with the ultimate aim of making it possible for the student to adjust to a regular school setting. Available information, though not as precise as might be desirable, appears to indicate a success rate of about sixty percent in attaining this objective. This is a remarkable achievement when one considers that students are enrolled in the Learning Center only if they have manifested behavior so severe that they must be excluded from participation in a regular school program.

It is the opinion of the Task Force that the Learning Center and the conceptual framework on which it is based is certainly one of the most commendable programs being operated within the Anne Arundel County School System. The Task Force members are not aware of any program of this nature, designed to give a "second chance" to students with severe behavior problems, which enjoys such a high rate of success.

The fact that a higher proportion of Black than of white students as compared to total school system population, is referred to the Learning Center is not a matter of dispute. This cannot be viewed on its face as evidence of discrimination. To the contrary, it should be viewed as evidence of the school systems' desire to provide this important rehabilitative service to those students who exhibit serious behavior problems without regard to race.

The Task Force concludes that any implication that referral to the Learning Center is used in a discriminatory manner is without merit.

It should be noted that the student involved in Case 1 of the specific complaints was enrolled in the Learning Center. He has since been reinstated to a regular school program and is making satisfactory progress in terms of both his academic and behavioral adjustment.

III. PUSH OUT THEORY

Racial discrimination in withdrawals

It has been hypothesized in some quarters that Black students are being "pushed out" of school. That is, Black students are being suspended unfairly, and as a result are opting

to withdraw from school, rather than continue to be enrolled in the public schools.

The Task Force examined data related to withdrawal of minority students who had experienced multiple suspensions in the Anne Arundel County School System. It was determined that within all multiple suspensions, 254 Black students were suspended two or more times for a total of 686 suspensions, and 407 white students were suspended two or more times for a total of 1,033 suspensions. A comparison was made of students who were suspended two or more times to every student who withdrew from Anne Arundel County School System during 1973–74. The results revealed that fifteen Black students who were suspended on two or more occasions withdrew, while 34 white students who were suspended on two or more occasions withdrew. On the basis of the Dallas Court Case and upon the advise of an independent statistical expert, a chi square test of independence as run. The results of the chi square thus obtained was 1.3657 and the critical value was 3.84; thus, the hypothesis that there was a statistically significant difference in the frequency of rates of withdrawal was rejected. Therefore, the Task Force concludes that the "push out" theory seems to be without basis in the data.

IV. INSTITUTIONAL DISCRIMINATION

A general complaint was lodged with the U.S. Department of Health, Education, and Welfare, Philadelphia Regional Office, which appeared to imply institutional discrimination directed toward minority students in the Anne Arundel County School System. The complaint was contained in an undated letter which was stamped received in the Philadelphia Office on May 21, 1973.

The Task Force examined the correspondence between the school system and the Philadelphia Regional Office and found that the general nature of the complaint had made it difficult to generate definitive responses since the complaint was lacking in specificity. Due to the fact that some nineteen months had elapsed since the initiation of the general complaint, the Task Force felt that attempting to seek specifics so far after the fact could only result in an exercise in futility. Therefore, the Task Force placed rather heavy reliance on secondary data sources.

This decision was based on the Task Force findings with regard to the specific complaints which had been investigated through examination of primary data sources and analysis of student suspension data.

Examination of the raw data on student suspensions for the school year 1973–74 in the Anne Arundel County School System revealed that there was a statistically significant higher frequency of Black students than white students suspended; however, it is well recognized that statistical significance of this nature does not in and of itself prove discrimination. The statistical analysis of the suspension data produced by the school system and reviewed and verified by an independent statistical expert may be interpreted as demonstrating only a weak trend in the data. The inferences drawn from such analysis are inconclusive.

The Task Force, while unable to offer firm conclusions with regard to the issue of institutional discrimination, does not feel that the expenditure of massive staff resources applied to any further investigation of primary data sources would prove to be much more productive or conclusive. Moreover, the data do not appear to warrant a more stringent investigation at this time.

It appears to the Task Force that regardless of the strength or weakness of the findings of any study of this matter, there would remain the perception on the part of many people in Anne Arundel County that discrimination did exist in various facets of the school system's operation. With regard to the specific issue of student discipline for example, the Task Force became aware of the fact that many white parents were of the opinion that Black students could "get away with" behavior for which white students would be severely disciplined, while many Black parents felt that Black students were always treated much more harshly than white students involved in similar incidents of misconduct.

It does appear that there is a general lack of trust between a significant number of Black parents and the school officials. A part of this arises from the fact that many Black parents simply are not aware of school policies. They tend to accept school actions, but do not understand them. School officials, for the most part, do not seem to be as aware of this problem as one might hope. It seems to the Task Force that school officials are too reliant on the fact that school policies are printed, thus it is felt that all parents know and understand them.

The Task Force learned that some Black parents are hesitant to visit the schools because they feel that school administrators have a tendency to talk down to them. It was reported that when Black parents do go to the school for a conference concerning their children they often feel overwhelmed because of their difficulty in communication and because they are frequently outnumbered by school staff in the conference.

The school system has encouraged the development of community participation in schools through the formation of community advisory committees. However, the feeling is expressed by school personnel and community members alike that the success of these committees varies widely from school to school, and is often quite limited. The same sort of perception is reported when the advisory body for ESA is discussed. In fact, some board members state in rather strong terms that the advisory group has been ineffective in bringing about change directly addressing the human relations concerns which should be a part of an ESA program.

In summary, the Task Force became keenly aware that many Black parents perceive the school system as being insensitive to their feelings and unaware of the needs of their children; moreover, the Task Force is of the opinion that school officials do not seem to be as aware of these perceptions as they should be.

V. OBSERVATIONS AND RECOMMENDATIONS

School based human relations program

The Anne Arundel County School System is making a serious effort to develop programs designed to provide improved educational opportunities to all students, and to bring about improved human relations in the schools. The Task Force reviewed evidence of human relations workshops which have been conducted for administrators and teachers. Additional workshops are being planned for the summer of 1975. Since each school has a human relations committee, it is recommended that each workshop give attention to developing a plan for ensuring that the workshop participants feed into their respective school's human relations committee the program ideas gained through participating in the workshop.

It is further recommended that an evaluative design be developed to enable the school system to determine the effectiveness of the programs which are conducted.

Community based human relations program

Some schools in the system have had outstanding success in developing strong community relations programs. Tyler Heights Elementary School provides one example of how an effective dialogue can be developed between the school and the community. Another model of an excellent community based program is to be found at Brooklyn Park Elementary School. While the effective programs differ somewhat in format, they do seem to possess one common element—a dedicated principal who believes in and respects people. It is recommended that each school principal be charged with the responsibility of developing and implementing plans for getting into the community to talk with parents and make them feel wanted. As one principal told the Task Force, "You have to make a person feel wanted and needed to get parent participation."

Also, it is recommended that the school system review the objectives of the several ESA projects being conducted within the system. It may be that the current projects tend to focus too specifically on academic objectives and not enough on human relations objectives.

Educational program activity

Some schools in the system have started to utilize behavior modification techniques in the instructional program. One result of this is the placing of greater emphasis on positive student behaviors. The schools, as part of the reward system associated with the technique, are increasing contacts with parents to tell them about their children's success. It is recommended that consideration be given to encouraging this practice as a means of developing more positive relationships with parents.

The school system is giving considerable attention to the development of alternative educational programs for students with behavior problems and unmet educational needs. The most outstanding example of such a program is the one conducted at the Learning Center; however, work is proceeding on additional programs to be conducted in the regular school setting. The Task Force encourages the continuation of these efforts.

Policy and Organizational Considerations

The school officials are studying the use made of suspensions with the intent of reducing suspensions. Since the purpose of a suspension is not punitive, but rather to change behavior, the school officials are attempting to find ways of ensuring that the parent and the student are aware of what behavior is desired. It is recommended that this study be continued and that suspensions for tardiness and truancy be eliminated since they would seem merely to reinforce undesired behavior.

The school system does have several very capable Black administrators. The Task Force recommends that the school system continue to recruit and promote Blacks for administrative positions. Also, it is recommended that the school system make more effective utilization of Black staff members in communicating with the Black community—this does *not* mean nor should it be interpreted to imply that only Blacks can talk to other Blacks.

Several administrators in the school system expressed the opinion that existing statute or bylaw prohibited a parent from being accompanied by anyone other than legal counsel when attending a disciplinary conference. At the same time, some parents reported that they were uncomfortable in participating in such conferences alone. The Task Force review of existing statute and bylaw did not uncover any basis for the prohibition which the school administrators felt existed; therefore, it is recommended that parents be made aware of the fact that they may bring with them to disciplinary conferences whomever they wish in order that they may be made to feel more comfortable in the situation.

The school system has had an office of community affairs for the past six years. The Task Force is of the opinion that the functions of this office may be defined too narrowly. It is recommended that the school system review the functions of the office of community affairs and give consideration to providing that it have a stronger role in the

overall human relations effort of the school system.

In conclusion, the Task Force wishes to reiterate the view that the school system should place an increased emphasis on effective person-to-person contacts emanating from the school building level in an effort to alter imperfect perceptions held by parents regarding the schools. It is unlikely that parents can really be made aware of school policies and procedures, educational program objectives, and the school system's efforts to work positively on behavior problems unless school building personnel go directly into the communities being served to establish a continuing dialogue with the patrons of the school.

[From the Baltimore Sun, March 1, 1975]

STATE FINDS NO ARUNDEL SUSPENSION BIAS

(By Mike Bowler)

A three-member task force of the state Board of Education yesterday gave the Anne Arundel school system a generally clean bill of health on charges that its school suspension policies are racially discriminatory.

Howard C. Allison, an assistant state superintendent who headed the three-month investigation, said the panel could find "no evidence" of discrimination in two specific cases it probed.

As for the county's overall suspension policies, Dr. Allison said, "There was only a weak trend in the data" showing proportionately more black students are suspended. "The data do not appear to warrant a more stringent investigation at this time," he said.

The task force was created last November after Governor Mandel, in late October, entered the 18-month-old dispute between the county system and the federal Department of Health, Education, and Welfare and ordered the state board to investigate.

In a 14-page report issued yesterday, the task force made several recommendations for improving human relations in the county schools. Generally, the panel complimented specific programs and urged their expansion.

For example, in urging community relations programs that reach beyond school walls, the task force praised the principals of two elementary schools, Brooklyn Park and Tyler Heights.

While the task force had found a weak case to support charges of discrimination, Dr. Allison said, "We are keenly aware of the fact that some members of the community perceive that discrimination did occur."

In fact, he said, the committee found that white parents believed black students were "treated with kid gloves" in suspension practices, while black parents believed favored treatment went to white students. About 13 per cent of the system's 78,000 pupils are black.

The task force was not directly related to the long standing feud between county school officials and HEW, which had taken the county to federal court after being denied access to student suspension records. "We did obtain written permission from parents before looking at individual records, and we will, of course, send copies of our report to OCR [HEW's Office of Civil Rights]," Dr. Allison said.

A week ago, Edward S. Northrop, chief judge of the federal court in Baltimore, virtually ordered HEW and the county to settle their differences out of court.

[From the CONGRESSIONAL RECORD, Dec. 14, 1974]

Mr. BEALL. Mr. President, this debate presents many of us with a dilemma. On the one hand, it is agreed that the adoption of the Holt amendment would repeal the civil rights acts. The vast majority of our citizens support the civil rights acts and are proud of the progress that this Nation has made to remove discrimination from our society.

On the other hand, many of us believe, and the majority of our citizens oppose certain actions on the part of HEW—and the courts—such as forced busing, and the kind of abuse and harassment that Anne Arundel County has been subject to.

Now, this Congress, we are told, is on the brink of repealing the civil rights laws and obliterating a decade of progress in civil rights.

I believe the Holt amendment goes too far; but I also believe that HEW has been going too far.

If, as it is claimed that the Holt amendment would repeal the Civil Rights Act, it would indicate that one House has voted just that. This should be a warning to the proponents of civil rights that reason and reasonable approaches must be fashioned.

While some believe that the opposition to busing stems from racial prejudices, I do not accept that view.

While obviously some who oppose busing harbor racial prejudices, I believe this is not the case for the vast majority of our citizens.

To illustrate this point, it is my understanding that in Montgomery County, Md., public hearings were recently held regarding a proposal that would bus students from the upper part of the county to the lower county rather than construct new schools in the upper county. The testimony was overwhelmingly opposed to busing students to the lower county and for neighborhood schools near their community.

Mr. President, poll after poll has revealed strong public opposition to busing. This opposition to busing has remained in Gallup's words "surprisingly constant." The latest Gallup poll showed that 72 percent oppose busing to achieve racial integration and only 18 percent favoring such busing. Of course, other surveys show the public favors integration.

Similarly, a poll taken of the merit scholars, the Nation's outstanding high school students, indicated they share the adult community's opposition to busing. In response to the question: "Would you move into an integrated neighborhood?", 90 percent said "yes"; only 7 percent replied in the negative.

Then, in response to the question, "Do you favor busing of children to achieve integrated school system?", 68 percent said "no"; 26 percent replied in the affirmative.

Polls have also revealed that the black community is also very divided on this issue, although busing is narrowly favored in the black community.

It could be that the public, as is often the case, is ahead of the Congress on this issue. Yet, one can understand, the frustrations and feelings of the public on the busing issue.

Most oppose and yet they cannot get a reversal of busing decisions. Even the proponents of busing seem to recognize busing as not a very satisfactory solution, but believe there is no alternative.

One can also understand the feelings of minority citizens who naturally want the best possible education for their children and knowing that in many cases they are not receiving now.

Congress must do what to date has not been done; namely, find the alternative and alternatives which is sound educationally and which will be supported by the public.

On Monday the Education Subcommittee held hearing on a bill introduced by Senator CHILES, E. 503, Neighborhood School Act.

I commend Senator CHILES for his initiative and I am hopeful that the dialog begun will be a high priority matter in the next Congress. It is amazing to this Senator that on education bills and appropriation, funding our education programs we spend all the time debating busing issues.

I believe this issue has so inflamed and divided our country and diverted our attention from improving education that we should consider establishing a national commission to examine the busing issue and alternatives that might focus and unite our country in a concerted effort to remove educational deficiencies and improve education for all of our children.

[From the CONGRESSIONAL RECORD, Nov. 19, 1974]

Mr. BEALL. Mr. President, while it is my expectation, I say to the Senator from Washington, that, we would not use the whole time allotted, at this time I would be hesitant to enter into a time agreement that would be less than already specified. I hope we can end this by 3:30.

Mr. President, I yield myself 10 minutes.

The amendment which was just read is very uncomplicated in that it says that none of the funds in this appropriation bill shall be used to require any school district, as a condition for receiving grants, as a condition for receiving grants or other benefits, to participate in a pilot investigation of the problems of discrimination in disciplinary action.

We have just completed debate on a very broad amendment. I think probably that amendment lost because of the fact the Senate felt that it was too broad in its application.

Mr. STENNIS. Mr. President, may we have order in the Chamber?

The PRESIDING OFFICER. The Senator from Maryland is entitled to order in the Chamber.

Mr. BEALL. The amendment that I have offered this afternoon narrows the issue to deal with a particular case that arose in a school district in the State of Maryland where I think the question was not at all a question of the integration of the school or the success that this county or our State has had in integrating the schools; it is a matter of continued harassment by officials of the Department of Health, Education, and Welfare, which places an undue and uncalled for burden upon the administrators of the school system.

In May of 1973 the Department of Health, Education, and Welfare commenced an investigation of alleged discriminatory treatment of minority students in disciplinary actions taken by the school system in Anne Arundel County, Md.

The amendment, then, deals with two difficult subjects: One is discrimination, and the other is discipline.

It is interesting to note, Mr. President, that the 6th annual Gallup poll on public attitudes toward public education indicated that our citizens regarded lack of discipline as the number one school problem. Indeed, school discipline has been rated the number one problem in 5 of the last 6 years.

It is interesting that in the Gallup special survey of high school juniors and seniors a higher percentage of students than the adults, named discipline as the leading problem facing local schools.

The second ranking problem, according to Gallup's citizens survey, was integration-segregation problems. So this is an extremely important issue before the Senate today.

I believe that this Nation cannot tolerate nor condone discriminatory treatment of students.

Disciplinary action should be applied in a fair and evenhanded manner.

However, I do not believe that a statistical difference alone indicates discrimination. In this case, HEW received general complaints—and I mean they were general—from a group of parents in May of 1973.

I ask unanimous consent that the complaint, and the school system's response, be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. BEALL. Mr. President, I did not become deeply involved in this matter until February of 1974. At that time I wrote Secretary Wein-

berger strongly protesting the massive information demands of the HEW regional office in Philadelphia.

Specifically, HEW was now asking the Anne Arundel County school system, as a result of these very general complaints, for a record of the disciplinary action by race of their 25,000 students, a 13-year history of the coaches of the faculty in the total school system, and a listing of racially isolated classrooms, I ask unanimous consent that a copy of my letter to the Secretary, the Secretary's response thereto, and the county's response to the Secretary's letter be printed at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. BEALL. Mr. President, it should be pointed out that the county answered the questions raised regarding the coaches and racially isolated classrooms.

Since the Secretary in his response did not provide, as requested, copies of the complaints HEW had received, information on investigations undertaken and results thereof, I again wrote HEW asking for such information. I ask unanimous consent that this letter, and the Secretary's reply, be printed at the conclusion of my remarks.

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

(See exhibit 3.)

Mr. BEALL. Mr. President, the Secretary took the position that HEW could not complete the investigation until they received additional information. The information sought resulted from information provided by the county which showed statistical differences in disciplinary action regarding minority students. A numerical difference, I repeat, is not equivalent to discrimination. HEW seems to equate the two, although they denied this. In any event, they seem to be saying that where a statistical difference exists, the burden of providing that discrimination does not exist, shifts to the county. Whether intended or not, it may be that the county, if they do not want to undergo the harassment and paperwork generated by HEW, will be forced to have a quota system for discipline. This certainly flies in the face of the serious discipline problems facing some of our schools and in the sentiments of the American citizens as indicated by the Gallup poll to which I earlier referred.

My suggestion to HEW was relatively simple—namely, investigate the validity of the individual complaints. If these complaints proved valid, then investigate the school involved. Then, if the individual and school complaints seemed valid, and there was statistical evidence suggesting possible discrimination county-wide, at this point it would seem reasonable to require a county to spend the inordinate amount of time and energies that Anne Arundel County has been required to devote as a result of HEW's actions.

I might say, parenthetically, that it was estimated at the time the information was requested by the superintendent of schools of Anne Arundel County that in order to fulfill the request from HEW, it would take six full-time administrators 6 months to provide the information requested.

It is interesting to note that the school from which the original complaints were received had a black principal. While it was possible that a black principal would discriminate or permit discrimination against minority children, commensense would argue against such discrimination and further supports the wisdom of a procedure I have suggested. However, commonsense has not been a characteristic that has been noted to abound at the Office of Civil Rights. In fact, some times it would appear they relish in the continuation of the conflict rather than its resolution.

The most recent twist in this case finds HEW now signaling out Anne Arundel County as the first pilot testing program for what HEW labels second generation discrimination, or discrimination in disciplinary action against minority students. The Senate should be aware that HEW has still not resolved its investigation filed in May of 1973 which prompted this controversy. Moreover, Senators should be alerted that while Anne Arundel County is the initial school system selected for this pilot testing program, HEW plans more of the same.

Mr. President, I do not pretend to know everything about this case; but based on my talks and communications with the county, I believe the county has attempted to cooperate. Voluminous information has been furnished to HEW, and endless meetings held and indeed at times it appeared that the matter was going to be resolved. But HEW keeps adding to their demands and continues its fishing. I say it is time for HEW to fish or cut bait.

The educational and disciplinary problems are too important in Anne Arundel County and elsewhere to allow the continued diversification of energies and resources to resolve complaints which should have been investigated and a determination of their validity made long ago.

Therefore, I urge the adoption of this amendment which will deal with what I feel is HEW abuse in Anne Arundel County, Md., and also will prevent similar pilot testing programs elsewhere. I urge the adoption of the amendment.

FINANCING THE DEATH OF 30,000 CAMBODIANS

Mr. CRANSTON. Mr. President, Congress may be condemning more than 30,000 Cambodians to death if it approves the $222 million in emergency military aid requested by President Ford.

That many will die on both sides, and another 90,000 will be wounded, if current casualty rates continue for the next 11 months.

President Ford said yesterday that he hopes the extra military supplies will enable the Lon Nol government to continue fighting until the end of the dry season at the end of June.

I will not join in financing a virtually certain bloodbath of 120,000 Cambodian casualties. The killing will not stop until the fighting stops. And the fighting will not stop until we stop financing it.

The "bloodbath" that some people fear after the fighting stops if the insurgents take over is only conjecture.

But if those fears are well founded, we should be using our airlift right now to fly people out of Phnom Penh instead of flying ammunition in.

EVEN THE FUTURE IS NOT WHAT IT USED TO BE

Mr. BARTLETT. Mr. President, knowing that all of my colleagues are interested in American freedoms, I believe my colleagues will find interesting a speech entitled "Even the Future Is Not What It Used To Be," by Walter B. Wriston, given before the Commercial Club of Boston, on November 12, 1974.

I ask unanimous consent to have the speech printed in the RECORD.

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

EVEN THE FUTURE IS NOT WHAT IT USED TO BE

(Remarks by Walter B. Wriston, chairman, Citicorp)

Much has been written and said about the mood of our country today. We are told that the traditional American sense of optimism has been replaced by doubt and gloom and that our expectations are now best summed up by Paul Valery when he said: "Even the future is not what it used to be."

I am not suggesting that we do not have troubles. We do. But we have had troubles before without wallowing in cynicism and pessimism. Why is the future, in our eyes, not what it used to be?

One reason is the omnipresence of the media. Any dispassionate assessment would have to conclude that in many ways our journalists are better than they have ever been. Often they offer a better product than putable fact stares us in the face: the profession as a whole lacks a sense of history which is essential to balance, to perspective and to optimism. This perhaps is what Katherine Graham intended when she wrote recently about the press: "How we perform, how much wisdom and energy and professionalism we display, will have a bearing on the nation's capacity to cope with some very serious matters." Without that wisdom and professionalism, fundamentals are often overlooked.

The current inflation, for example, was not produced yesterday. It is the result of years of wrong monetary and fiscal policy. The causes reach back through the Johnson years. The bad effects are now exacerbated by extraordinary climactic disasters, and the development of an oil cartel for political rather than economic utility.

This lack of a sense of history reveals itself as one of the most fundamental causes of pessimism. It ought to be evident that a machine which has rusted over the years cannot be repaired overnight by some dramatic thing like wage, price and profit controls—the economic equivalent of tying down the safety valve. Because the curbing of money supply by the Federal Reserve Board is not dramatic and is done "in secret," it is not perceived as having any real effect. Again and again the media succumbs to the ancient philosophical absurdity: if you cannot kick it, it does not exist. That is why fiscal and monetary restraint is "nothing," while controls, which are "something," seem better than "nothing." They can see it happen; therefore, it is real. If Jack Anderson has not alerted us, nothing has happened. But the significant realities are still invisible: they are the distortions and long-range disasters that cannot be instantly observed—and so are neglected.

There is another consequence of a deficient sense of history. The media peer into the future insistently. The present is not exciting enough, so they must see around corners and tell us what comes next. Their poor record as prophets rests upon the simplest engineering experience—a short baseline is fatal to useful extrapolation.

Journalistic prophecies are by no means all political. Before the recent fight between Foreman and Ali, reams were written upon the assumption that Foreman would defeat Ali. He had youth, some advantage in weight, packed a heavy punch—and on and on. More was written in prophecy than about the action itself.

The same game is played by the media with a presidential press conference. Why is he holding it now—rather than last week or next? What topics will he discuss? Is it possible to have "made available" to The New York Times his briefing books? They printed a preliminary draft of a Kissinger speech to be made a few days later in Rome. How the public interest was served by printing something not yet said, and perhaps

never to be uttered is incomprehensible. If they could find "available" the President's briefing books for his press conference, how wonderful that would be! When the press conference is complete, instant analysis pours out of the TV tube to tell us at great length that the conference produced no surprises. He said nothing new; no new bold plan of action emerged. Clearly the press conference was a failure. Where in this incident is the "wisdom" that Katherine Graham urges?

Prophecy is not sound journalism because by this process, everything can be made to seem a failure. If the President goes to Kansas City, for example, we are told he failed to draw as large a crowd as was hoped for. If Jim Plunkett completes seven out of eleven passes, we are told that his performance was a failure; his average should be nine out of eleven.

Make the list of illustrations as long as you like. The technique can be used to prove that we never succeed—that cynicism and pessimism are justified. The process is corrosive.

I do not want you to think the media are alone in their lack of historical perspective. It was neither the media nor academia that gave us, years ago, the National Recovery Act—the famous blue eagle, supported wholeheartedly by business. That sally into an adaptation of Mussolini's corporate state would have been utterly destructive to our free enterprise system. We were saved from ultimate disaster by those famous "nine old men" who used the chicken case to bring our economy back toward sanity.

In like manner, businessmen who should have known better, approved the experiment with wage and price controls during the Nixon Administration. In that instance they were joined by academia and the media in a return to thinking that reached its zenith in the Seventeenth Century under Colbert in France. The central government then decided everything—even the size of a handkerchief. Yet here we are living in the last quarter of the Twentieth Century, putting Seventeenth Century shackles on a system which has developed the highest standard of living in the world.

There are only a very small number of people who truly want our form of society to fail, and fewer still want the First Amendment altered. On the other hand, there are many articulate people who would unwittingly destroy our freedom by promoting the demise of a market economy. The attack on the market system which has provided more people with the highest standard of living in the history of the world is unrelenting. The cry is that the economy must be planned and directed minutely by Washington.

The continuous assertion that the free marketplace will fail to provide goods and services at a fair price is not applied to the intellectual arena. Here in Boston, a bastion of academic freedom, it is taken for granted that Oliver Wendell Holmes was wise when he asserted that "the best test of truth is the power of the thought to get itself accepted in the competition of the market." The people who clutch this truism to their bosoms, at the same time do not apply the same standard to the vendor of goods. Somehow they reason that ideas are not injurious to your health, since the man on the street is perfectly able to sort out the stupid from the brilliant concept. The same man, however, is totally unable to be left to decide whether or not to buckle his seat belt.

Freedom to innovate is as necessary for the doer as for the thinker. Those innovations all the way from the cotton gin to the computer and the millions of novel techniques in between have had, in many cases, more beneficial social consequences than any legislation passed by Congress and administrated by bureaucrats. It is an historical accident, but a happy one, that the Declaration of Independence and Adam Smith's Wealth of Nations were both published in 1776. Both were dedicated to the freedom of the individual to think his own thoughts, choose his own occupation and follow where thought led—to speech, to deed, to invention. Freedom is indivisible.

One of the reasons that intellectual freedom has survived all of these years is not only that it is an older concept than market freedom, but also because the faculties of thousands of colleges and universities are articulate defenders for their own cause. It is a popular cause, as well it should be. When it comes under attack, however, the intellectual community doesn't act much differently from any other sector of society. When the late Senator McCarthy was at the height of his vituperative powers and was seeing a communist on every campus, there were depressingly few academics like Nathan Pusey who stood up to do battle with him. In the end it was a tough lawyer from Boston who finally brought him down. The lawyer had the silent cheers, but not much articulate support from the academic community, many of whom feared retribution from McCarthy's acid tongue.

The businessman has had no such guild to defend his right to free speech and free enterprise. Unlike the intellectual community, the businessmen of the world perceive that they are always under the threat of retaliation. Whether rightly or wrongly, they believe that this retaliation would be aided and abetted by those who do not trust the free markets in goods, but only promote one in ideas. A railroad executive who publicly attacks the corrosive bureaucracy of the Interstate Commerce Commission, which has been so largely responsible in regulating our railroads into bankruptcy, fears that his next plea for a rate increase will be prejudged. A merchandiser who dares challenge some arbitrary rule, promulgated by the Federal Trade Commission, fears that bureaucracy will live to fight him another day. A banker who suggests that the current regulatory attitudes on interest rate ceilings are designed to rip off the consumer fears that retribution will be visited upon him by the regulators in Washington. Many ardent defenders of freedom of speech argue that advertising copy for products and services is a fit subject for government regulation, let the dumb citizen be bilked of his money by buying an inferior product. If inferior, doubtful or even false opinions and ideas are put between the covers of a book, published in the newspapers or flashed on television the citizen no longer needs the protection of government regulation. It is an interesting piece of intellectual hair-splitting based in part on our view of our own importance.

One thing that keeps us all going is that we view our own means of earning our daily bread as in some way making an important contribution to our world. Without bankers the economy would not function. Without bakers the world would starve. Without teachers there would be ignorance. Without politicians there would be anarchy. Make the list as long as you like and fill in the blanks with any known occupation. Raymond Aron put it this way: "A superficial explanation for their preference for free speech among intellectuals runs in terms of vertical interests . . . intellectuals are engaged in the pursuit of truth, while others are merely engaged in earning a livelihood. One follows a profession, usually a learned one, while the other follows a trade or a business." On the other side of the fence, some businessmen speak scornfully of intellectuals "who have never met a payroll."

The fact that I argue today for a free market in goods and services, and that such a market would benefit my company, does not make my argument unsound. Self-interest and public policy can and often do coincide. No one attacks a newsman demanding freedom of the press just because the pursuit of that objective is what puts money in his pocket and dinner on his table. No one attacks a professor arguing for academic freedom, although its absence might cause the scholar to lose his job.

It is anachronistic that many who champion everyone's right to dissent and to demonstrate without any government restraint whatsoever are often the most outspoken advocates of eliminating freedom in other markets.

Almost daily, The New York Times calls for economic controls over every sector of the society except itself. Its editors seem never to read the Amendments to the Constitution beyond the First. There is nothing in the record which would indicate that the business of publishing or of broadcasting for profit serves the public interest in any more honest or scrupulous a fashion than do other businesses. The reality is that any business of any kind which is not prudently managed or does not meet public demand will fail over time.

Those who would substitute the judgment of the bureaucrat for the judgment of the consumer inevitably forget that liberty is indivisible. The free market for goods and the free market for ideas stem from the same root—freedom. They are inseparable. It was no accident that intellectual freedom disappeared under the Nazis and did not reappear until the free market system was established in West Germany after the war. Russia and other communist countries that control their economies control their press and their professors. The road to serfdom is paved with demands for governments to take over more and more economic activity.

Why the attitude is so persistent that business should not share freedom is somewhat of a mystery. The late Chet Huntley, who was one of the most respected newscasters, wrote after his retirement: "One general characteristic of the American press which seems inexplicable is the basic antipathy toward business and industry which I believe exists in our journalism." Huntley suggested that a possible reason for this perceived antipathy is the assumption by the press that business is more concerned with making money than providing the people what they want. They forget that without money people cannot buy and if people do not buy, there is no business or products or jobs or tax revenues. The tendency to deplore profits stems from the medieval idea that all business is a zero sum game. That is, one person's profit is another person's loss. There is no question that there are shoddy practices in every profession and that our economy produces goods which are often vulgar or poorly made. The beauty of the system is that if the consumer doesn't want to buy them, the businesses that produce them will either shift to new products or they will fail.

The critics of the business and industrial community labor under the illusion that they can draft a law to protect every right, defend every privilege, and anticipate every threat. When regulation fails, as it inevitably does, they do not repeal the laws but amend them into infinite complexity until the purpose of the original law is lost. The use of the regulatory reflex merely feeds an insatiable appetite for power on the part of an expanding government bureaucracy. We have now reached the point where one-sixth of the American labor force works for the government, and government expenditures are approaching 40 percent of the gross national product. Even some of the regulators are denouncing other regulators as barriers to better productivity.

The hand of government touches every aspect of human productivity. It is not only wasteful, but serves to destroy incentive and to discourage ingenuity. The great Boston Justice of the Supreme Court, Louis Bran-

deis, wrote: "The greatest dangers to liberty lurk in the insidious encroachment by men of zeal, well-meaning but without understanding."

It is ironic that a society which looks to industry for the solution of many of its most pressing problems inhibits the ability of industry to respond. While present technology does not permit us to have surgically clean air and plentiful electricity at less cost at the same time, there is no reason to believe that future technology will not provide those benefits. The essential ingredient is freedom to act and an understanding that individual liberty is not only precious, but efficient.

The time has come for businessmen to do two things—restudy the philosophy of free enterprise and recognize that we have the same rights under the First Amendment as any other group in our society. The businessman, like the professor and commentator, has the right under the First Amendment to express his views to the public and to his elected representative. He is not a second-class citizen. Running a successful business enterprise calls for ethical men with the wisdom and patience to make prudent and responsible decisions in a highly competitive and fast changing market.

There are overwhelming reasons for kinship, instead of hostility, between the free market for intellectual life and the free market for economic life. There is an identity of interests, since both call for voluntary effort. Neither fraud nor coercion is within the ethics of the market system, since the competition of rivals provides alternatives to every buyer and seller. So, too, free thought in our society is preserved by open competition among scholars. Just as thought control is the great enemy of the freedom of inquiry in both the press and academia, economic controls are the great enemy of the entrepreneurial spirit.

Rediscovering the indivisibility of political and economic freedom will take time in a society which has become so accustomed to overreliance on government. The intellectual bias against the market is strongly entrenched, and there are some who always find a platform to continue to feed this bias out of hostility or a complete misunderstanding of the market function.

One cannot erode freedom in one sector of society without adversely affecting all others. All history argues that the media and academia have as great a stake in preserving a free market for goods and services as do businessmen in defending the free market for ideas. We need to have both or we may find ourselves with neither.

MASSIVE TAX CUTS?—A DISASTER

Mr. HATHAWAY. Mr. President, a number of times, both here on the Senate floor and elsewhere, I have made clear my misgivings about the soundness of the economic thinking underlying our present efforts for a massive tax cut. I now seem to have found at least one economist who shares my views. Prof. Geoffrey J. Lanning, of Wayne State University Law School, in his statement before the House Ways and Means Committee earlier this year, made the point that the long-term effects of any permanent cutback in our Federal income tax amounts to nothing more than one more blow to the nearest thing we have to an equitable revenue-raising system in this country. I share this view and feel that, while the Internal Revenue Code is far, far from perfect, it is a lot better than almost any other revenue-raising mechanism now extant. Therefore, I feel that what we need is not to cut that system back, but to reform that system to make it more equitable and more rational in its effect on our economy.

I ask unanimous consent to have Professor Lanning's statement printed in the RECORD.

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

TAXATION WITH REPRESENTATION,
A PUBLIC INTEREST TAX LOBBY,
Arlington, Va.

STATEMENT OF GEOFFREY J. LANNING

MASSIVE TAX CUTS?—A DISASTER

Summary of statement

The issue is not how much of a massive tax cut, favoring whom, we should have. Rather, is there any justification for any tax cut at all? Its practical effect will be a quick boost in inflation, recapturing much of the multi-billion dollar cash release, while permanently depriving the federal government of federal revenues urgently needed to deal with such major social ills as the decay of the cities, the problems of the poor and of education. None of these can feasibly be financed from federal funds, given the limitations and inequities of state and local financing. Even energy solutions require answers to the transportation and urban sprawl difficulties of the cities, and that too means federal funds.

It is easy to lower tax rates, but politically almost impossible to raise rates to recapture these public revenues. The tax reforms often offered to offset tax cuts have always proved illustory and regressive. To release the proposed $10 to $14 billions of revenues will force the cities and the poor, who are desperate for funds, to turn to such inadequate, inequitable and inefficient sources of funds as property taxes and other state and local revenues.

We have never had, but badly need, effective tax reform to maintain faith in our voluntary system and to reduce the growing American concentration of wealth, well illustrated by Watergate and by the growing gap between rich and poor that is always harmful to democracy. Unfortunately, there is no sign that we are about to get the kind of tax reform that not merely provides a few conspicuous substantive reforms, but reforms the tax decision process itself. Only that can protect reforms from being immediately eroded by special pressures on the legislature, misplaced sympathy for tax evaders in the courts, and the bureaucratic tendency of the Treasury and the IRS to favor the powerful while pressing the public and the little man.

In brief, do not cut taxes. Increase them via a thoughtful tax reform that will open up the tax decision process itself, while also tackling basic abuses. Apply the funds from such a reform to the difficult issues of poverty, the cities, education, and the environment.

If you had deliberately chosen to strike a blow at the poor and the disadvantaged, and at the fair solution of the nation's most critical ills, you could hardly pick a better route than to give up $10–$14 billion a year of federal tax revenues you will never recover.

MASSIVE TAX CUTS?—A DISASTER FOR THE CITIES, FOR THE POOR, FOR EDUCATION AND THE MORE DEMOCRATIC SOCIETY PROMISED BY THE NEW CONGRESS:

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: I wish to thank the Committee for this opportunity to present testimony regarding the proposed large scale tax cuts.

Introduction

The real issue is not how much of a gigantic tax cut, favoring whom, we should have, but rather is there any justification for any tax cut at all, given our current national problems?

The proposed multi-billion dollar tax cuts are billed as a reform designed to stimulate the economy and pull us out of the spreading depression. In fact, such an approach may mean the permanent, non-recoverable loss of the only equitable source of public funding. We shall lose forever federal tax sources that are critically needed to deal with the problems of the cities, the poor, education, mass transit and other social problems whose relief was promised by members of the new Congress during the recent election campaign.

This is not merely the choice of a quick shot in the arm to the economy, designed to relieve unemployment and its related ills, at the cost of some temporary increase in our galloping inflation. Instead, we are releasing billions of dollars in cash, much of which will never serve its proclaimed goal of stimulating the economy, but will merely stimulate the demand side of the inflation. More important still, it includes a permanent reduction in the ability of the federal government to assist with most of the social ills, many of which, including monopoly concentratons of economic power and the decay of the cities, are central to our present problems. For example, one of the approaches to our energy problems must include better solutions of the transportation and the urban sprawl problems that are one facet of the crisis of the cities—and a necessary major ingredient in their solution is federal funds.

Furthermore, much of the proposal will not only be inflationary, but will still further accentuate the inequitable distribution of income and wealth that is a significant factor in many of these national problems and contradicts the claims that our tax system is progressive. Even though the cuts in individual tax are so calculated as to go primarily to lower income groups, any such net effect will be more than offset by the increase in business subsidies through an increased investment credit and other provisions, ignoring the fact that much of the current inflation-depression has been produced by businesses who have provided their own investment cushion by raising prices to an intolerable windfall level.

It is unbelievable, even incredible, that a Congress, supposedly elected on a "reform" platform would so hurriedly jam through a program, many of whose most lasting effects will be to cripple the very social programs whose destruction was a major goal of the supposedly discredited Nixon administration.

Explanation

It is very easy to lower tax rates, but politically almost impossible to raise taxes and recapture public revenues once abandoned. The history of the federal income tax system reveals a steady lowering of rates, particularly those applicable at the top of the progressive scale. At the same time, it has usually been claimed that the increased inequity resulting from this regression in rates would be offset through tax reform and the closing of loopholes to regain the lost public revenues. But it has never worked out that way in fact. The promised tax reforms usually have turned out to be nominal of illusory, with an occasional headline-grabbing change such as the reforms re tax exempt organizations or the drop in percentage depletion, but rarely going to the heart of the fundamental abuses and loopholes in the system. Even the 1969 Revenue Act, the only effort ever made to include any significant elements of general tax reform, included such illusory reforms as the minimum tax, and in total effect was regressive, despite its bold claims.

The critical significance of this is that, for all its defects, the federal income tax system is the largest and most equitable source of the immense public funding needed to deal with such problems as the cities, mass transit, unemployment, education and other

major social ills. The $10 to $14 billions of revenue now proposed to be yielded, in at least significant part to corporations and perhaps high income taxpayers, will never be recovered. Since the cities and the poor are desperate for the funds to solve their problems, they will have to turn to such clearly inadequate, inequitable and poorly administered sources of funds as property taxes and other state and local revenue measures. But we have almost reached the tolerable limits of these revenue sources, whose long range prospects are uncertain in any event in view of the increasing judicial recognition of their limitations.

Furthermore, even the few token dollars of tax refund given the less advantaged income groups will be quickly swallowed by the additional inflation spawned by such an approach. From an over-all viewpoint, they would have been far more likely to benefit by the reasoned diversion of these federal income tax revenues to dealing with these critical social problems, together with a real loophole closing program, one that would put some effective limits on inflation by significantly moving the effective rates of taxation towards the progressive rates that are the unenforced myth of our taxing system.

If you had deliberately chosen to strike a blow at the poor and the disadvantaged and at the fair solution of many of the Nation's most critical problems, you could hardly have picked a better route than to give up $10–$14 billion a year of federal tax revenues that you will never recover. The Ford administration, old time religion and all, clearly understands this. Why can not the Congress?

Can the proposed tax reforms justify this broad tax cut?

In theory, some of these objections to an across-the-board tax cut woud be met if an effective tax reform bill were ever passed. Unfortunately, history clearly documents the obstacles to the kind of tax reform we clearly need 1) to preserve trust in our voluntary assessment system, 2) to reverse the increasing concentration of wealth and economic power in this country, which is not only a major factor in our current crises, but offers the type of barrier to the maintenance of democracy well illustrated by the many world dictatorships spawned by the kind of intolerable gap between the rich and the poor that destroys the community consensus behind democracy.

Furthermore, even if this Congress should enact a few substantive tax reforms, there is no sign either that these will be as basic as is required—for example, the revamping of our largely ineffectual system of taxation of the transmission of wealth between generations (estate and gift taxation), or that they will even touch upon or consider the most fundamental source of tax abuse, and factor that has always eroded mere substantive tax reform. That factor, as I pointed out in testimony before this Committee in 1959, is the closed character of the tax decision making system—its ready accessiblity to representatives of powerful special interests and its indifference to representatives of broader public interests. This, of course, refers to all 3 tax arenas, 1) legislative, where the special lobbyist has special entree and dominance, 2) judicial, where most courts are sympathetic to the plight of the individual taxpayer and the "hardship" of his having to pay his full share of taxes, rather than considering the inequity to the public of erosion by judicial decisions, and 3) administrative, where the bureaucratic proclivity of the Treasury and the IRS to favor and make special exceptions of powerful special interests while coming down hard on the public and the little man can be documented *ad nauseam*.

No tax reform effort that does not pay serious attention to the openness of the tax decision process itself can ever be more than ephemeral, and there is little indication that current tax reform proposals are guided by that level of perception. In short, "tax reform" is hardly a justification for abandoning billions in revenues, that in practical political terms can never be recouped, for what avails substantive reform if the whole tax decision process continues to abet and accelerate the erosion of a taxing system that is progressive in myth, but not in reality?

Recommendation

Do not cut taxes. Increase them. But do so via a thoughtful tax reform bill that would open up the taxing process itself as well as reduce some of the more basic substantive abuses. 2) Instead of spreading a few dollars apiece among lower income groups, dollars that the increased inflation of such a technique will quickly swallow up, apply the funds from a meaningful tax reform to a sincere effort to assist the cities and to provide workable approaches to the complex problems of poverty, unemployment, education and the environment. The cities, the poor, the uneducated, the disadvantaged of every sort are literally shriveling for the lack of even a fraction of the public revenues you are preparing to ladle out in the face of more basic, and obvious, priorities.

Do not wonder why the citizenry have so little regard for the Congress when even its self-proclaimed reformers are meekly following the tax cut line of big business, the Chambers of Commerce and their Republican administration. Such few and shrinking dollars as the lowly of income will get from the proposed legislation, are as nothing to the public benefits which these funds could provide to shore up the cities, employment, the environment and education—the real priorities of our time.

READING PROBLEM AT COLLEGES—WRONG APPROACH

Mr. BEALL. Mr. President, I recently came across an article which appeared in the Wall Street Journal, by Mr. Vermont Royster.

As one of the authors of the national reading improvement program, which was enacted last year, I find most disturbing that book publishers have to reduce the reading levels of college textbooks because so many college students are having reading difficulties.

The national reading improvement program is designed to deal with the reading problems, which I have labeled the "Achilles' heel" of American education. It is framed to assure that something is being done to accelerate our efforts in the reading area. Mr. Royster's column underscores the need for Congress to fund this program, which is essentially preventive in nature, so that we will not have massive numbers of students who cannot read at the necessary levels.

Apparently, in Mr. Royster's words, book publishers are not optimistic with respect to a change in the reading performance of future freshmen. He writes as follows:

And since the publishers see no hope the educational system is going to raise the young people's reading ability, the publishers are going to lower the level of what the students read. More, they're even simplifying the English in the guidebook on how to read textbooks. The previous editions of this guide, published by the Association of American Publishers, were written at the 12th grade reading level. Now it has been re-written to fit a ninth-grade reading level. And this for college freshmen.

Concluding his article, Mr. Royster states:

The plain truth is that without language we can neither learn nor think. And those to whom written language is a mystery find, like some primitive people, that the world itself is a mystery. The garage mechanic who cannot read cannot understand the engine manual, any more than a legislator a tax bill—or a journalist that reports upon the energy crisis. That's what makes it all so discouraging. It's discouraging to see what we do to ourselves when we cheat our young of the tools of thought.

I ask unanimous consent that the entire text of this article be printed in the RECORD.

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

THINKING THINGS OVER—THE TOOLS OF THOUGHT

(By Vermont Royster)

"Publishers, responding to a changing market in college texts, are increasingly resorting to simplified language in their books to adjust to a new element in higher education—the college student who cannot read at traditional college levels."

Thus a report in The New York Times. The article goes on to explain that word has filtered back to the text-book publishers from the nation's college campuses that large numbers of students simply cannot read the English language well enough to understand textbooks previously used and understood by generations of students.

And since the publishers see no hope the educational system is going to raise the young people's reading ability, the publishers are going to lower the level of what the students read.

More, they're even simplifying the English in the guidebook on how to read textbooks. The previous editions of this guide, published by the Association of American Publishers, were written at the 12th grade reading level. Now it has been rewritten to fit a ninth-grade reading level. And this for college freshmen.

This is, sad to say, only one bit of evidence of what has been happening to the teaching of that most fundamental of intellectual tools, the handling of one's native language.

Item: At the University of Wisconsin in Madison more than one-third of the applicants to its journalism school cannot meet the minimum requirements in spelling, grammar, word-usage and punctuation.

Item: At the University of North Carolina at Chapel Hill the journalism school has been forced to require all students to pass a simple, high-school level spelling and usage test in order to graduate. Of those entering the school this year, and taking the test for the first time, 47% failed—and the student can misspell 30% of the words and still "pass."

As the school approaches the end of the fall semester, and with many of the students having taken the test several times, there are still 39% who have not passed. These students, for the most part, are at the junior level in the University.

And these, mind you, are students who are planning to enter a craft in which the ability to put one little word after another is as important as the plumber's ability to handle a wrench.

Item: At Eastern Michigan University the number of students in all departments having to take remedial English has doubled in the past five years. Item: At the Univer-

sity of California 45% of the total student body have needed remedial English.

There are two things worth noting at once amid these grim statistics. First, of course, there are many students from the better high schools and some prep schools who are well prepared; they begin with an immense advantage. Secondly, that the others are not morons. There is no necessary correlation between an inability to read and write well and a student's basic intelligence.

Indeed, anyone who teaches at the university level encounters students with language difficulties who are nonetheless bright, eager, hard-working and thoughtful. These are the heart-breaking ones, for the reach of their mental capacities exceeds their grasp.

It is truly painful to watch such students struggle with reading and flounder as they try to express their thoughts. The pain is in knowing that an intelligent young person has been cheated of what ought to be his educational birthright, an understanding of his own language.

It's fashionable, I know, to blame all this on television. The argument here is that young people raised on TV cannot be expected to read as well as prior generations. There are even some who say it doesn't matter, because reading will not be as important as it used to be for either the educated person or for a generally well-informed citizenry.

Both propositions are dubious. Many years ago one of my daughters, then in high school, came home with a new assignment, Dickens' "David Copperfield." In an idle moment I picked it up and it didn't ring quite right. Unearthing my own dusty copy I found—lo and behold—that her school copy wasn't Dickens at all. It had been "simplified." All of Dickens' language, with all its color of time and place, had been removed.

It may seem a trivial example, but it was both insulting and fraudulent. Insulting because it said that a teen-age girl was incapable of understanding anything more than basic English. Fraudulent not only because it pretended to give the students Dickens when it didn't but because it robbed the students of the chance to learn the marvelous richness of their language.

No, the fault lies not with TV but with ourselves. We, and most especially our educational system, have accepted an anti-language culture. The young do not learn their language simply because they are not taught. Dr. Robert McGee of the Denton, Texas, school system puts it well: Too many teachers and administrators, he says, are convinced "that reading and written expression are outmoded, that logical thought is pretentious, and that one can acquire all of the data one really needs through visual means."

But what of the argument that it doesn't matter anyway? The answer to that will occur to anyone who has ever struggled to converse in high-school French or Spanish. The most learned of men are reduced to the level of children when they are deprived of commonly understood words and sentence structure; they can communicate only the simplest of ideas, and even those in uncertain fashion.

The plain truth is that without language we can neither learn nor think. And those to whom written language is a mystery find, like some primitive people, that the world itself is a mystery. The garage mechanic who cannot read cannot understand the engine manual, any more than a legislator a tax bill—or a journalist that reports upon the energy crisis.

That's what makes it all so discouraging. It's discouraging to see what we do to ourselves when we cheat our young of the tools of thought.

FATHER WEGNER AND BOYS TOWN

Mr. HUMPHREY. Mr. President, today I would like to join my distinguished colleague, the Senator from Nebraska (Mr. CURTIS), in recognizing the accomplishments of Msgr. Nicholas Wegner on this, the golden jubilee celebration of his ordination into the priesthood.

The activities of Father Wegner in the direction and development of Boys Town are generally known; but on this occassion I feel that it is apropos that we highlighted the devoted career of Monsignor Wegner ,and that we laud his contributions to the well being and education of our Nation's youth.

Born in the town of Humphrey, Nebr., Father Wegner has led a life of constant devotion and service to the Catholic Church, and continual concern for the problems of youth. His educational accomplishments are indeed prestigious, having attended and received degrees from such distinguished theological institutions as the St. Paul Seminary, in St. Paul, Minn.; Gregorian University, in Rome; and the Catholic University, here in Washington, D.C.

Since his ordination into the priesthood, Monsignor Wegner has held numerous positions of authority within the Catholic Church. The list of his attainments include the post of administrator of the Archdiocese of Omaha, as well as the position of vicar general of the Archdiocese, which he assumed in January of 1960.

Throughout his rise within the ranks of the Church, Father Wegner has maintained his concern and interest in the problems of youth. This can be illustrated by his activities during his tenure as director of St. James Orphanage, as well as his accomplishments during his time of service to Boys Town. Upon his attainment of the directorship of Boys Town in September of 1948, Father Wegner remained true to the goals and beliefs of Father Flanagan the founder of Boys Town; and strove to further these goals throughout his 25 years of service to Boys Town.

As one scans the projects started at Boys Town under Father Wegner's direction one can see his continual striving to maintain and improve the services of this institution for our homeless and disadvantaged boys, and also his effort to expand the scope of its activities so as to include both boys and girls, and to move outward beyond the borders of the United States.

Several projects are particularly noteworthy. The Boys Town Institute for Communication Disorders, which was created in June of 1972, will include diagnostic and rehabilitative services for handicapped boys and girls. Another major project started during Father Wegner's tenure is the Boys Town Center for the Study of Youth Development. As I understand its purpose, this new Center will perform important research into the areas of learning disabilities, and such youth problems as parental rejection, drug addiction, and a host of other very noteworthy and significant areas of youth development.

Msgr. Wegner has not limited his concern for youth just to the young people of the United States. He has traveled extensively throughout the world, counseling on youth problems. Through his travels he has aided in the establishment of a Boys Home in Monterrey, Mexico, and a Boys Town in the Philippines.

As can be seen from this short review of only a small portion of the accomplishments of Msgr. Wegner, his life has been one of constant and unselfish service, both nationally and internationally, in the interest of our greatest asset, our youth.

I would like to join with the alumni of Boys Town, and all other people who have had their lives touched by Father Wegner, in congratulating him as he approaches the golden jubilee anniversary of his ordination.

JERRY PETTIS

Mr. FANNIN. Mr. President, many Arizonans and other admirers of Jerry L. Pettis are saddened by the death of this outstanding leader.

Although he served in the Congress from California, Representative Pettis was a native Arizonan. He spent his early years in the State, his family still resides in Arizona, and he has countless friends in our State.

In short, we in Arizona think of him as not only a friend and good neighbor but as one of our own.

His life was one of service to his fellow man with outstanding success and achievement as a Christian disciple, an educator, a commercial pilot and leader in the aviation world, an inventor of prominence, and an extremely gifted legislator. With all of his prestigious accomplishments he remained a humble man.

It was my good fortune to be with him as an observer at the Organization for Economic Cooperation and Development Conference last year. I witnessed his great ability as a counselor on international affairs advising our trade representative.

Mr. President, Jerry Pettis was not only an outstanding public servant, he also was a devoted family man. I join my colleagues in the Senate and the people of Arizona in extending condolences to Mrs. Pettis and the children.

TAX INCENTIVES FOR RESIDENTIAL INSULATION

Mr. MOSS. Mr. President, at the request of Johns-Manville Sales Corp., Chase Econometrics has analyzed the impact of several tax incentives for residential energy conservation improvements on three critical economic statistics: Federal Government deficits, net exports, and manufacturing employment.

I want to share with my colleagues the results of the Chase analysis of a 25-percent tax credit of the kind proposed by my bill, S. 28, assuming an average ex-

penditure of $600 per single family house and 2.5 million houses improved in each of 2 years. Under such circumstances, the revenue cost to the Treasury would be $375 million per year. However, as the following figures show, the loss of tax revenues attributable to the incentive of a tax deduction are more than made up by the revenue flowing from the jobs created by such a proposal.

Standard forecast data is shown in parentheses.

	Fiscal year—	
	1976	1977
Federal Government deficit	—$55,900,000,000 (—$56,400,000,000)	—$32,200,000,000 (—$33,000,000,000).
Improvement	$500,000,000 or 0.9 percent	$800,000,000 or 2.4 percent.
Net exports (balance of trade)	+$1,830,000,000 (+$1,550,000,000)	—$1,180,000,000 (—$1,550,000,000).
Improvement	$280,000,000 or 18.1 percent	$370,000,000 or 23.9 percent.
Manufacturing employment	$18,610,000 ($18,530,000)	$19,830,000 ($19,720,000).
Improvement	$80,000 or 0.4 percent	$110,000 or 0.6 percent.

I hope that more of my colleagues will join me in cosponsoring S. 28.

I encourage any Senator who wants to help stimulate economic recovery and reduce energy waste to join me in cosponsoring S. 28.

LEGISLATIVE REVIEW SUBCOMMITTEES

Mr. BEALL. Mr. President, I am again pleased to cosponsor with Senator HUMPHREY Senate Resolution 55, a resolution to improve legislative oversight.

During March of last year when the budget bill was before the Senate, Senator HUMPHREY and I merged two separate amendments which we had introduced and offered such amendment to the budget reform bill. Following assurances by Senator ROBERT C. BYRD that the Rules Committee would conduct hearings on this matter, we agreed to withdraw the amendment.

The 1970 Reorganization Act contemplated additional legislative review of programs which we enacted. While some improvements have been made, I do not believe that the results under the Legislative Reorganization Act have been satisfactory insofar as the legislative oversight function is concerned.

Senate Resolution 55 contains many of the provisions of my original proposal which was included in S. 758, the Congressional Budget Control and Oversight Improvement Act, which I introduced February 5, 1973.

Specifically, the resolution provides that each standing committee in the Senate will establish a Legislative Review Subcommittee. When a committee already has a subcommittee, with the responsibility to a subject matter, that subcommittee, assisted by the Legislative Review Subcommittee, is required to evaluate all programs under its jurisdiction every 3 years. However, if the subcommittee having jurisdiction fails to evaluate such programs during this period, the Subcommittee on Legislative Review would then be mandated to undertake the evaluation.

To make it absolutely certain that a review would be forthcoming once every 5 years, the General Accounting Office would be required to make a study and to report to the appropriate committee if the review had not been done either by the appropriate subcommittee or the new Legislative Review Subcommittee by the end of the fourth year. Thus, this resolution would guarantee that the vital oversight function of the Congress would be accomplished.

Now, Mr. President, this is not a criticism of the present work of the various standing committees. It recognizes, however, that most of these committees are overwhelmed with their present legislative workload and program evaluation must necessarily take second place to the business of enacting legislation.

Furthermore, in most cases the existing committee staffs are already overworked and spread too thinly. Also, I believe that there is a difference between oversight hearings and the type of evaluation that is contemplated under this resolution.

Mr. President, in a column by Mr. Walter Pincus, which appeared in the Washington Post, December 23 of last year, he argued compellingly for the need for improvement in the oversight functions of the Congress as follows:

> The truth is that little serious thought has been given by legislators on all committees to how any Federal agency or program ought to be monitored.
>
> Within the executive branch there are eleven departments headed by cabinet members and 55 independent agencies. Who knows or cares what they are doing? Surely there ought to be some way by which committees and subcommittees of the House and Senate can at least spot-check key operations—perhaps on a rotating basis—of these numerous bureaucracies.
>
> In addition there also are the hundreds of laws passed each year, each with a stated legislative purpose. Again there is no organized congressional oversight to determine if the enacted laws are implemented to fulfill the purposes for which they were originally designed. All that happens these days is that individual legislators or subcommittee chairmen may or may not keep track of how their own pet legislation is faring.

Mr. Pincus then goes on to ask the important question: "What will the incoming Congress do about the abysmal state of congressional oversight?" We can do a great deal by enacting the Humphrey-Beall measure which would greatly strengthen the role of Congress and better enable us to carry out our legislative responsibilities.

Mr. President, I ask unanimous consent that text of this resolution be printed in the RECORD.

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

S. RES. 55

Resolution to establish Legislative Review Subcommittees in the standing committees of the Senate

Whereas there is imposed upon the standing committees of the Senate the duty to conduct analysis, appraisal, and evaluation of the programs, policies, and procedures of the United States Government, in carrying out the laws enacted by Congress; and

Whereas that duty has been fulfilled unevenly and sporadically and there are many programs that have been too long neglected as the object of congressional oversight proceedings in the Senate: Now, therefore, be it

Resolved, That the Standing Rules of the Senate are amended by adding at the end thereof the following new rule.

"RULE XLV

"LEGISLATIVE REVIEW SUBCOMMITTEES

"1. Each standing committee shall establish a Subcommittee on Legislative Review. The purpose and duty of such subcommittees shall be to assist the Senate in—

"(a) its analysis, appraisal, and evaluation of the application, administration, and execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of the committee of each such subcommittee, and in particular, in its analysis, appraisal, and evaluation of any order, regulation, rule, certificate, code of fair competition, license, notice, or similar instrument, issued, prescribed, or promulgated in the administration and execution of such laws or parts of laws, and

"(b) its formulation, consideration, and enactment of such modifications of or changes in those laws, and of such additional legislation, as may be necessary or appropriate.

"2. In the case of a committee having one or more subcommittees to which the committee has given responsibility for considering and making recommendations with respect to subject matters within the subject jurisdiction of the committee, the Subcommittee on Legislative Review of that committee shall assist that subcommittee in reviewing and studying the application, administration, and execution of those laws, or parts of laws, which are within such responsibility. Any such subcommittee shall make a report on the results of its review and study at least once every three years. In the event the subcommittee has not made a report within a three-year period, the Subcommittee on Legislative Review of the committee shall make such review and study, and submit a report thereon to the committee, not later than one year after the subcommittee having such responsibility was to have made such report. In the case of any subject matter not within the responsibility of any particular subcommittee of the committee, the Subcommittee on Legislative Review of that committee shall make such review and study with respect to such subject matter and submit a report thereon to the committee not less than once every third year.

"5. Nothing in this rule shall be construed as precluding any Legislative Review Subcommittee of the Senate from conducting hearings and engaging in other deliberations jointly with such committees or subcommittees of the House of Representatives which the House may designate to conduct the analyses, appraisals, and reviews required under this rule."

"3. In any case in which the Subcommittee on Legislative Review has not submitted a report to be prepared by it under paragraph (2) of this rule within the period of time provided in that paragraph, the Comptroller General shall, within one year after the last day on which the subcommittee report was to have been submitted, make such study and report the subcommittee was to have made, and submit a report thereon to the committee.

"4. The provisions of this rule do not apply to the Committee on Appropriations of the Senate.

SETTING ENVIRONMENTAL STANDARDS

Mr. MUSKIE. Mr. President, two recent decisions of the U.S. courts of appeals have serious ramifications for the establishment of standards to protect the public health from environmental pollutants currently regulated.

The first decision overturned a court order shutting down the Reserve Mining Co. The second decision set aside a health-based regulation which required phase out of lead in gasoline. Both rulings were based on the absence of proof of a specific cause-effect relationship between a particular pollutant and a precise human health result.

This reversal of the burden of proof requirement in environmental law fails to recognize the unique characteristics of environmental health hazards. It is the total body exposure to environmental insult, not the single pollutant level which ultimately determines the extent of adverse public health impacts.

Is it possible, or even desirable to establish definitive proof of casual relationships between single pollutant levels and increased death and illness as the recent appeals court decisions would require?

Gershon Fishbein, publisher of the Environmental Health Letter has written a thoughtful analysis of the burden of proof dilemma presented by the recent court decisions. He poses the questions we must all consider, if our environmental regulations are to remain protective of public health. I ask unanimous consent that his article be printed in the RECORD.

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

[From the Washington Post, Feb. 23, 1975]

SETTING ENVIRONMENTAL STANDARDS

(By Gershon Fishbein)

Two recent appeals court decisions have restricted the authority of the Environmental Protection Agency to establish standards to protect the public health from environmental contaminants under present laws.

The first ruling overturned a lower court order closing down Reserve Mining Co. in Silver Bay, Minn., because of the alleged presence of asbestos in the drinking water, which some scientists said could lead to cancer. More recently, the court in Washington set aside EPA's regulations phasing out the lead content of gasoline.

in each case, the court based its ruling on the same premise: that EPA had not furnished definite proof that the asbestos or the lead had caused demonstrable illness in a substantial part of the population. And in each case, the court cited the absence of a cause-and-effect relationship between statistics on deaths and illnesses and exposure to the environmental contaminants.

To EPA administrator Russell Train and his subordinates, it was clear that the combined effect of the two decisions was to impose a near-impossible burden on the agency's ability to enforce the Clean Air Act, in which the primary standards are based solely on protection of public health, and the water pollution laws related to health.

Train's concern, shared by many authorities and researchers, is based on the widely held view that the health hazards of environmental exposures cannot be pinned down in the same way that communicable diseases in one individual can be traced to one virus or bacteria. Yet that is the sort of proof which the courts appear to want before they uphold EPA's health regulations and, presumably, the standards of other agencies as well.

The concept of "one germ, one disease," or Koch's Postulate (named for Robert Koch, the 19th Century German bacteriologist who discovered the cause of tuberculosis) is one of clinical medicine's most cherished maxims. It holds that a single organism causes a single disease.

This principle holds especially true in communicable diseases such as tuberculosis or common cold when an infected individual can threaten the community. In environmental health, however, the cycle of disease transmission is reversed. It is the community which threatens man—through air pollution from many sources, or radiation, or pesticides. Thus, multiple causation is one distinctive characteristic of environmental health.

Another is the long period—sometimes 20 years or more—between exposure to a contaminant and the clinical evidence of cancer or other disease. This is in contrast to viral diseases, when symptoms frequently appear in 24 to 48 hours.

Still another characteristic is the accumulation of cellular and other damages in the body from many sources over a long period of time, adding up to what is referred to by environmental physiologists as "total body burden."

MAJOR OBSTACLES

Train and his deputy, John R. Quarles, Jr., believe that the courts ignored all of these distinctive characteristics of environmental disease in insisting on specific cause-and-effect proof—body counts, as Train put it. Such proof is, of course, available in clinical medicine but almost never in environmental medicine; there is, however, a fairly strong consensus among researchers that air pollution will, as a minimum, aggravate the condition of those with heart disease and asthma as we'l as the very old and very young (collectively, a substantial percentage of the population).

Faced with such scientific uncertainties, regulatory agencies charged with establishing standards of public health protection from environmental sources run headlong into major obstacles in trying to be as specific as possible in selecting standards. Dr. John F. Finklea, director of the National Environmental Research Center in North Carolina—the principal EPA health laboratory—and his colleagues ticked off some of the problems in a recent paper which sought to predict the health benefits and risks of equipping automobiles with catalysts:

There is usually insufficient information regarding the magnitude and frequency of exposure to environmental agents because health-related environmental monitoring has been an "underdeveloped activity" and because of wide variations in human reaction to the same agent.

The links between exposure and disease are complex. For example, the effects of infrequent short-term peak exposures may well differ markedly from the effects of long-term exposures or frequently repeated short-term exposures over a long time. Furthermore, a single environmental agent may contribute to a number of different disorders and a single disorder may result from a combination of agents.

Environmental health studies are limited by deficiencies in vital records and imperfections in assessment of deaths and illnesses.

A research data base which draws on the results of studies in occupational as well as clinical settings is usually lacking.

But that sort of information might not be available for years. Meanwhile, the air and water pollution laws demand numerical standards and deadlines. So the environmental scientists dig in with animal investigations, develop computerized models, plot weather characteristics, study hospital admissions during air pollution episodes and measure them against national illness and health data—and generally come up with a series of projections, inferences and presumptions.

It is possible to determine from death certificates how many people in a community with excessive air pollution levels died of lung conditions. But death certificates don't indicate whether the victims were smokers or where they lived in relation to a polluting factory, for example.

LOOKING AT OPTIONS

Health standards based on presumptions usually give the public a greater margin of safety than otherwise. But is it fair to expect industry to spend the money necessary to comply with health standards based on little more than presumptions? Perhaps more relevant to the current dilemma, is it legal?

In the leaded gasoline and asbestos cases, EPA relied on what it believed to be the preponderance of scientific data suggesting adverse health effects in establishing standards or taking other corrective action. But the affected industries produced their own scientific studies to indicate the opposite. The court agreed with the industries.

This pattern, projected into the future, illustrates why EPA cannot rely entirely on the preponderance of scientific opinion indefinitely in trying to find a way to develop health standards which not only satisfy the research community but also survive the sterner tests imposed by the courts.

If not, what options are open to EPA in attempting to cope with the problem?

As a short-term step, EPA may consider asking Congress to amend the Clean Air Act to give the administrator greater discretionary authority in determining what constitutes "endangerment to public health." The objective would be to avoid any requirement of proving cause-and-effect relationships. EPA has made no decision on this, but the problem seems certain to surface when the Senate Public Works Committee begins consideration of Clean Air Act amendments March 19.

Other legislation includes the omnibus toxic substances control bill, which would require companies to put their chemical products through detailed and extensive tests for health effects and other environmental safeguards before being put on the market. EPA might push for precise review of health data here.

Then there is the bill by Sens. Philip Hart (D-Mich.) and Gaylord Nelson (D-Wis.) which would shift the burden of proof from government to industry in environmental suits. The bill, introduced just before adjournment in the last Congress and scheduled for reintroduction shortly, would require that industrial defendants prove the absence of environmental and human health damage in lawsuits rather than require the government to prove the existence of the hazard.

Alan G. Kirk II, who recently resigned as assistant EPA administrator for enforcement and general counsel to become general counsel of Pepco, had testified that the agency supported the general purpose of the legislation, which was introduced in the wake of the Reserve Mining case decision. Sen. Hart explained the objective this way:

"It would provide that once a 'reasonable risk' of a threat to public health was estab-

lished by parties requesting relief, the burden would then be on the defendant to prove that the relief requested was not justified. Thus, in situations where crucial evidence as to the extent of an acknowledged public health risk was lacking, defendants would be required to come forward and demonstrate the need for its activity outweighed the risks inherent in allowing the activity to continue. Most significantly, plaintiff's failure to prove actual harm would not, in and of itself, amount to a bar to relief."

EPA is also in the process of establishing standards of safety and purity in public drinking water supplies as a result of legislation passed in the final days of the 93d Congress. It seems certain that, forewarned by the lead and asbestos decisions, it will try to make such health standards court-proof.

High officials of EPA express their view privately that the two judges who wrote the majority opinion in the leaded gasoline ruling took into consideration the energy and economic crisis in coming to their conclusions on health effects. Their view supports the dissent of Judge J. Skelly Wright, who contended:

"I suspect that the rigor of the majority's review and hostility to these regulations are related to the energy crisis and a reluctance to 'waste' a single gallon of gasoline for reasons of health when extra gallons might prove to be in short supply. . . It is the anguish of the children and urban adults who must continue to breathe our lead-polluted air that moves me."

If the court decision was in fact formulated with an eye on the energy crisis, it would, of course, not be the first time judicial rulings took into consideration the social and economic consequences of their actions. In past years, at the height of the environmental era, such decisions often favored the ecological cause. Now that the pendulum may be swinging a bit the other way, the courts may do the same.

MINNESOTA FARMERS FACE THE FUTURE

Mr. HUMPHREY. Mr. President, I would like to point out a very thoughtful and compelling statement by Minnesota's effective and forceful Commissioner of Agriculture, Mr. Jon Wefald.

While Secretary Butz and the Department of Agriculture continue to bask in the glow of their own rhetoric, this brief statement tells it how it is on Minnesota farms. And it also points out how some Minnesota farmers are responding to today's economic crisis.

I hope some of our urban Congressmen read this release in order to better understand the situation faced by our farmers. While farmers are proud and hardworking, they are increasingly determined to receive a fair return for their labor. They also become increasingly discouraged over the excuses offered by this administration in the name of the "free market," when many areas of agriculture are strongly influenced by Government actions.

And yet, as the statement points out, the farmers are not generally able to benefit from recession measures such as food stamps and unemployment compensation.

Many of our economists fail to understand the importance of agriculture in our national economy. A progressive and prosperous agriculture generates jobs in our factories and benefits the national economy. Our agricultural economy running at about $500 billion carries far more clout than the automobile industry at around $77 billion, but we show far more concern over unemployed factory workers than our farmers.

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

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

MINNESOTA AGRICULTURE TODAY,
MARCH 4, 1975

Agriculture Commissioner Jon Wefald asked rural Minnesota bankers today to help rescue livestock farmers from a sad new chapter in the bad and detoriorating agricultural story of 1974–75 weather and price disasters by making maximum use of the federal FmHA emergency livestock loan program.

"Livestock farmers out of money, out of credit, mortgaged to the eyebrows, behind in heat, electricity and insurance bills in order to maintain their families, now are perilously close to running out of feed and hay for their cattle, with six or weight weeks to go before spring pasture will be available.

"Young livestock farm families are in the most desperate predicament. They have discovered that the federal 'disaster' loan program is a hollow shell. Only farmers with adequate collateral to readily obtain commercial credit can qualify for the disaster loans. The federal benevolence places no value on experience, ability and desire," Commissioner Wefald said.

He said that not enough of the distressed livestock farmers or their bankers are aware of and making use of the one-shot emergency FmHA livestock loan program, which not only guarantees the local bank on 80 per cent of the principal, but which gives the bank the principal decision for issuing the one loan that can save young livestock farmers from total bankruptcy. The program will expire July 25.

"According to the Minnesota office of the Farmers Home Administration, only 51 emergency FmHA livestock loans have been approved to date, and only $7-million of the $50-million loan authorization for Minnesota has been committed. In contrast with the bitter experience many farmers have had with 'disaster' loan applications being rejected, only one emergency livestock loan application has been turned down," Commissioner Wefald reported.

Interest rates on the emergency FmHA livestock loans, negotiated entirely between the borrower and local bank, have averaged less than the federal 8.75 per cent rate requires on conventional FHA operating loans involving chattel mortgages.

Commissioner Wefald also urged young farm families in desperate circumstances to "lay all the cards on the table" with their bankers and creditors, and to ask for immediate processing of the emergency livestock loans.

"We have found a few cases where the creditors were unaware of families keeping homes at minimum heat, defaulting on insurance, and facing the prospect of both the family and their livestock actually going hungry. Off-farm job opportunities are attracting up to 200 applicants per opening.

"Farmers are proud, independent people, reluctant to share their problems or seek what limited help is available to them.

Because of this, society and the urban communities have had little experience in responding and processing farm family emergency problems. Farmers can't qualify for unemployment checks.

"Because of the lack of past experience, or specific programs, the few farm families that have sought food stamps and welfare assistance have experienced extreme difficulties. One of the sticky questions for farmers seeking short term welfare assistance is 'anticipated income?' I don't know anybody from the President's Economic Council or Agriculture Secretary on down who can give an honest answer to that question for any farmer in today's depressed agriculture industry.

"During these months ahead many Minnesota farm families are going to need all of the help they can get, from banks, from government, from welfare agencies, and from consumers perhaps most of all.

"If the farmer is unable to survive the losses of the disaster prices and costs for production of milk, meat and eggs, and many cannot do so with outside help, consumers and the already distressed national economy are in for even more serious problems in the year ahead," Commissioner Wefald warned.

"Only farmers produce food, and in Minnesota their industry supports over one-third of all jobs. If the farmer cannot afford to feed his family and maintain his business today, who will sustain our jobs and feed our families tomorrow?" Commissioner Wefald asked.

MIDEAST PEACE?

Mr. CHURCH. Mr. President, the March 8 edition of the New Republic carries an editorial discussing the alternatives for peace in the Middle East. It is a thoughtful, provocative, and capable of opening our minds to new possibilities for a settlement. The editorial sweeps away many myths and focuses on the unpleasant realities that must be faced if this Nation is to be of constructive assistance in that corner of the world. I ask unanimous consent to have the editorial printed in the RECORD.

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

MIDEAST PEACE?

Israel has become in world affairs a pariah nation. Why this is so is both complicated and simple: Israel is, after all, the political expression of a historically oppressed people, and the power of Arab oil is just now great enough to sway both the weak and the mighty to join the anti-Israel chorus. Surely, as two prominent French leftist intellectuals wrote recently in *Le Monde*, it is not that Israel can be seen on any comparative scale—whether measured against Communist, Western, Arab, or Third World countries—as a monster state. Whatever the reasons for the lopsided anti-Israel majorities in various UN agencies or behind the hostile rhetoric of intrinsically indifferent political figures from distant and otherwise preoccupied countries, the implications of the new mood are clear—and they constitute a peril to the security of Israel.

The persuasive capacity of insincere anlysis seems to be without match, and there is a particular virulence to the contagion of insincere phrases. With reference to the Middle East, these are now the stuff of orthodoxy. James Reston, in a column for some of whose factual and intellectual gaucheries he has already apologized, sees an obstacle to peace not so much in the reluctance of Israel itself to make concessions, as in the anxieties of Israel's friends in America that territorial concessions made to the Arabs will be the military advantage from which a future wag begins. Tom Wicker fears Israeli defiance of an "acceptable" settlement—and fears also American (for which read Jewish) support of that defiance. Evans and Novak, Carl Rowan, Nicholas Von Hoffman, others, the same and more. "Col-

umnists are like blackbirds on electric wires," Eugene McCarthy used to say. "They move in groups." Everywhere, it seems, it is assumed, "if only Israel were not so intransigent . . . if only Israel would return to the borders of June 4, 1967. . . ."

History and logic alike should confound the easy confidence with which such impatient sentiments are uttered. The frontiers existing at the outset of the six-day war separated Israel and her Arab neighbors for 19 years, and they were not frontiers of peace or even of real truce—but frontiers from which wars were waged and threatened. Indeed, much of the territory in the Sinai that Israel is now urged to restore to Arab sovereignty had already been restored twice in exchange for guarantees that proved to be of no value whatever. And if this was the case when the Arab governments were weak and divided; when there was virtually no Russian presence capable of great mischief in the area; why will the territorial *status quo ante* bring peace now that the Arabs are strong and relatively united, and now that the Russians are positioned to disrupt any situation not in accord with their own—and shifting—political ends? This isn't a rhetorical question intended to bolster an Israeli minority which opposes relinquishing Arab lands. In the first disengagement of Suez after the Yom Kippur war, more reluctantly to be sure on the Golan, Israel amply demonstrated that it would make territorial concessions to build momentum toward an agreement with the Arabs. Even those who fault what they call "Israeli truculence" know that in the next round of negotiations the Jerusalem government is willing to take considerable risks to keep alive, the process so painstakingly nurtured by Secretary Kissinger.

The question in the next days, however, is not what Israel will give up; it is rather what Egypt will give in return. It is sheer sloganeering to say, as some rather casually have, that since it is Egypt's land that is at issue, that country is obliged to give little or nothing to reclaim it. For what is expected of Israel is no small gesture toward Cairo. In the present environment, no one can underestimate the importance of fuel-poor Israel's withdrawing from the Abu Rhodeis oil fields at the tip of the Gulf of Suez, which have met half of Israel's petroleum needs during the last seven years. Nor, in an unstable situation, will the Shah's pledge to Kissinger to supply Israel's oil needs be fully reassuring. But the Mitla and Gidi passes, which are part of the anticipated bounty of negotiations, constitute an even more vexing problem for the Israelis. These mountain passes control the rest of the Sinai peninsula and an Israeli withdrawal would be a surrender of significant strategic advantage.

To the extent that risk is assumed, Israel is entitled to reciprocal—if necessarily asymmetrical—political concessions from Egypt. While the signals from Cairo have been confusing, perhaps deliberately so, the Egyptians do not yet seem to be particularly conciliatory. No doubt agreement to the demilitarization of the relinquished territories is a prerequisite of any Israeli withdrawal. But as with a decision to allow Israeli cargoes through the canal, this is an easily revokable concession. Installing tanks or missiles where it has been agreed they are not to be might be a *casus belli*, but that's sparse consolation. What is required from Egypt are moves, now, that would make it more difficult and costly for Egypt to wage war later—as the contemplated Israeli withdrawals would make a renewed war much more difficult and costly for Israel.

What is especially striking, and should make people suspicious, is Sadat's reluctance, in exchange for Israeli withdrawals, to commit his country to the politics of nonbelligerence, to tell his countrymen that the journey of conciliation with Israel has at long last begun. A leader who fears doing that might not be able to lead his country to peace; perhaps he does not want to. If he wants to but won't say so, he limits his flexibility and circumscribes the strategy of negotiations by bellicose talk. By continually saying, as he did again last week, that this next stage entails no political commitments on Egypt's part, Sadat bolsters those who want to make no political commitments to Israel of any sort. If "the hero of the crossing" cannot tell his own people what he is so eager to confide to American journalists, what Arab politician can? And if none can, how can anyone be so sure that the problem between Israel and the Arabs is simply a matter of territorial adjustments, a Mideast version of the Alsace-Lorraine question?

In addition, then, to earnests that draw the Egyptian people into the reality of negotiations, Israel is justified in wanting to know that the infinitely more complicated problems with Syria or regarding the West Bank will not be used sometime hence as an occasion for Egypt to abrogate the concessions it makes as part of an agreement on Israeli withdrawals. The most tangible measures insulating a rapprochement between Israel and Egypt from extraneous pressures would be an indefinite or, at minimum, a long-term extension of the UN peacekeeping forces in the vacated territories, revokable only by the Security Council. The present mandate, renewable every six months, institutionalizes periodic instability, and is an open invitation to interference from outside. To argue for less is to argue for making the resumption of war easy.

Given the depth of the conflict between the Arabs and the Israelis, it would be endangering the entire process of negotiations, in fact, if one side were to get concessions on the cheap. It would establish a pattern of unrealistic expectations without creating relationships between old foes on which a peaceful future for the region depends.

What with the difficulties encountered so far in eliciting significant concessions from Egypt—not, it should be noted, in eliciting such from Israel—an assortment of journalists and politicians have fixed on the notion of American guarantees to Israel as a substitute for an accord between the two contending parties. In a discussion with *New Republic* editors last week, Kissinger said that an American guarantee by treaty or otherwise would be only "icing on the cake," that such guarantees would make sense only once there were actual agreements on and concrete movement toward final settlement by the two countries.

Kissinger had been drawn into the discussion of guarantees by the persistent Russian offer to "guarantee" Israel's 1967 borders. The Soviets, of course, are wholly without *bona fides* on this matter, and Kissinger is in any case suspicious of their intentions. There is no justification, though, he reasoned correctly, for abjuring an American guarantee at some unspecified point in the future. But he knows, as surely the Israelis and Arabs know too, what is wrong with a guarantee now.

In the absence of tangible Arab, or in this instance, Egyptian, steps toward peace, an American guarantee to Israel upon its withdrawal from military significant positions increases the likelihood of circumstances that may require American intervention on behalf of Israel. Now Israel has never wanted, does not now want, such an intervention. Moreover, a firm guarantee is a politically dubious proposition in the U.S. The Arabs may well reason that the Americans might renege on such a guarantee in an extremity; but Israel also is aware of that possibility, and thus what is being talked about should seem to Israel hardly a guarantee at all.

The idea of an American guarantee to Israel emerged under curious auspices. Many of its enthusiasts have on the record no demonstrable concern for Israel's security, a fact that raises serious and unavoidable questions about motives. Many others who find an American guarantee an attractive alternative to measurable moves by Egypt adhere to a politics that would make the guarantee simply not credible. For a real guarantee to Israel might require a declared American interest and greater presence than the U.S. now maintains in the Indian Ocean, the Mediterranean, and the Persian Gulf. Moreover, it implies a commitment to produce certain weapons and aircraft like the big transport planes and more advanced fighter planes which may face the ax in congressional budget-making.

One cannot all at once credibly support an American guarantee in a very unsettled area while pushing for a general retrenchment of our foreign involvements everywhere else. Nor should it be imagined that the very idea of an American guarantee or protective arrangement with any country would appear at this moment in history as anything more than a bedraggled remnant of the past. There are many to blame for this, not the least the perpetrators of the Vietnam war. But congressional critics of American foreign policy, having belatedly and not very discriminatingly asserted legislative prerogatives against the executive, share responsibility for having rendered the U.S. incapable of acting decisively for its own interests and those of its allies.

While there are, then, many objections to the US as guarantor of agreements, there is everything to be said for the US continuing its role as broker between the adversaries. Indeed, no power other than America, and perhaps no man other than Secretary Kissinger, could aspire to these historic burdens. Such achievements as there have been in the Middle East are directly attributable to him and to his persuasive powers. But the obligations that Israel and Egypt now assume in negotiations should be to each other, and not to Kissinger—if only to preserve his ability to function as broker in future talks. Otherwise any violation committed by one side may injure his credibility with the other. In an interview with Philip Geyelin of *The Washington Post*, Sadat carried the concept of pledges to Kissinger one step further by suggesting that the secretary personally be the guarantor of commitments reached through him. Mr. Geyelin thought this to reflect "new flexibility" on Sadat's part.

If Israel is gradually to withdraw from the largest portions of the occupied territories, then its enemies will have to persuade Jerusalem that these are not likely to be scenes of new battles against Israel's survival. It is fashionable to say—the power of Clichés again!—that, with modern weapons, territory is no guarantee of security. But to think that is to have failed to learn one of the primary lessons of Indochina. With modern weapons, one should understand from the American air war against North Vietnam, you can heap excruciating torments on a country from afar; but unless you can get into its territory with conventional weapons and troops you cannot capture it or bring it to its knees.

That is why a small country like Israel, with hostile borders straddling in places only a few kilometers of its pre-1967 territories, is justifiably anxious about exactly where her frontiers will be and what armies and hardware are to be allowed beyond them. Worrying about particular hills and valleys is no trifle for the Israelis: It is a bare hour's march from the Jordan River to Jerusalem; geography itself seems almost to threaten both the agricultural settlements in the north and population centers on the coast. The cliche about the insignificance of terri-

tory—a distinctively American perception, one thinks—ordinarily goes on to assert that the only real guarantee of security is genuine trust between neighbors. This no doubt is true, but that trust can be built best—if there is reason to trust at all—when neighbors obligate themselves to each other.

This is precisely the kind of trust that the Secretary of State has been trying to foster. It has not been easy in the past, and it will not be easier in the immediate future. What is likely to develop as Kissinger shuttles back and forth between Cairo and Jerusalem is something less than optimal movement toward peace. This realistic expectation has provoked in many quarters, and for diverse reasons, a backlash against the step-by-step, country-by-country structure of Kissinger's mediation. But much of the pressure to dispense with these particular negotiations and revert to the Geneva conference derives also from the fact that it is now open season on Dr. Kissinger. This has much less to do with his actual performance than with the general demoralization of American politics and an embarrassed overreaction to an embarrassing exaltation of Kissinger's talents in the past. Sen. Stevenson's attack on the secretary's attachment to "the myth of his own personality and indispensability" is understandable as early campaign rhetoric. But the senator's corollary proposal to reconvene Geneva is not sensible.

For the strategy of peace requires first the maximization of those interests of Egypt that will keep it out of any future fighting in the Middle East. How much more difficult it would be to fix on the common concerns of Israel and Egypt in a conference attended by the other Arab states and with the redoubtable Gromyko in the chair. Sadat, in fact, does need peace. In a recent series of especially informative articles in the British *Guardian*. David Hirst found Egypt menaced by "serious internal instability . . . a growth of violence that is untypical of Egyptian society . . . deep social and economic frustrations, a sharpening of class antagonisms in a country where, some people now say, contrasts between rich and poor are quite as shocking, if different in nature, as they were in the day of King Farouk." This situation might incline Sadat to a diversionary adventure; but for the moment he has risked the enmity of fellow Arabs and alienated his on-again-off-again Russian benefactors to pursue Kissinger's byways. Consideration for Sadat's difficulties should not oblige the Israelis to overlook their own strategic concerns; but his problems do suggest that the coming talks may begin to unlock the generation-long political stalemate that has cost so many lives.

The reconvening of Geneva if these talks were to fail would be a perfect setting for the parties to play to the balconies, with full peace plans that don't give anything. The good offices of the United States—stigmatized by failure—would be broken. The initiative then would shift to the Soviet Union which, with the backing of the Europeans and Japan, terrorized by the specter of another oil embargo, would seek to force upon Israel a *dictat* devoid of the preconditions or components of genuine peace. Sadat might also not be in attendance, pushed by failure off history's stage; or he might be there only because the Soviets allow him once again to be their client. Every disruptive influence, including especially the PLO, which already shows signs of decline despite its successes on Manhattan's East River, will come to the fore; and the king of Saudi Arabia will frantically be trundling his billions behind those aiming in the end to undo him as eagerly as they would undo Israel. Paradoxically the king would also then be doing service for the Russians who need the format of Geneva and the vehicle of the PLO to install themselves on Israel's eastern borders, a standing irritant playing for stakes incompatible with a decent settlement.

It will probably not be possible to avoid Geneva in the long run. But what ultimately happens there will be much less inconsistent with a peaceful resolution of the conflict if Sadat's heretical tactics have paid off for him and if Israel's territorial concessions win some significant political responses from Egypt.

For this would mean that US diplomacy remains the key to an agreement between Israel and its neighbors, rather than another battered piece of evidence of how intractable their problems are. The awful prospect of Geneva without successful negotiations in the next stage on the Sinai should not induce a desperate Panglossian optimism about these present talks. But it is precisely the prospect of a witches' sabbath in Geneva that makes the success of Secretary Kissinger's current efforts so vital to those who live and otherwise might die in the Middle East.

EFFICIENT POWER FOR RURAL COMMUNITIES—THE FUEL CELL

Mr. MOSS. Mr. President, among the numerous ideas under consideration for alleviating our energy crisis, I note one common factor in nearly every scheme to produce electricity in the future. Powerplants must be huge in order to attain the efficiency required for economical operation.

Scientists tell me that this is true of any system in which heat creates steam to drive a turbine to turn an electrical clear reactors; coal, oil or gas-fired plants; geothermal plants, and ocean thermal designs.

All this may spell problems for rural communities. The cost of providing electricity for these areas already tends to be at a premium because of long distance transmission line losses. Inefficiencies associated with their own smaller powerplants, and heavy per capita investments.

Thus, I was delighted to hear about a NASA spinoff technology that appears to be adaptable to the energy needs of rural communities such as those located in Utah. That development is the fuel cell, a battery-like device that generates electricity for as long as fuel is supplied to it.

According to NASA's report, the fuel cell is an extremely efficient environmentally wholesome generator of electricity. Instead of using combustion to produce heat to create steam which spins a generator, the fuel cell involves a chemical reaction of the fuel with air to produce electricity directly. The intermediate mechanical processes are eliminated. In fact, the basic fuel cell has no moving parts.

The truly unique quality of this device is that even very small units are extremely efficient. This result flows from the fact that the fuel cell is really a stack of plates, screens, or wafers—depending on the design—as in a battery. Large fuel cells merely have more plates, screens, or wafers—the basic efficiency of the chemical reaction remains the same.

Consequently, we do not have to build enormous fuel cells to obtain acceptable levels of efficiency. I am told that the best steam and gas turbine generators operate at a thermal efficiency of about 39 percent of fuel used but such efficiency is achieved only if the plant produces power levels of about 100 million watts.

The best fuel cells in existence are only slightly more efficient, but that efficiency is achieved at a power output of less than one one-thousandth of that, a power level at which other systems are far less efficient. Advanced high temperature fuel cell designs that theoretically would operate at 60 percent efficiency are now under study.

Furthermore, that efficiency remains roughly constant over a variety of load situations, whereas conventional systems drop in efficiency if operated at less than maximum capacity. And the fuel cell responds automatically and very rapidly to changing loads. Conventional systems are not that flexible and adaptive.

Because fuel cells can be small yet highly efficient, they can be dispersed right into the community so that electrical transmission losses are minimized. Existing gas lines can carry the fuel right to these dispersed fuel cells. Last, the waste heat of the fuel cell can be used to heat nearby buildings, thus gaining an even higher overall efficiency.

Many advantages flow from the fact that the fuel cell's efficiency is for the most part independent of its size. First, utilities could add generating capacity only as they need it, instead of being forced to finance excess capacity in order to attain high efficiency. Recently, utilities have purchased gas turbine engines to get incremental growth that matches demand, but the low efficiency is distressing and expensive. It has been estimated that the fuel cell could displace all small gas turbine generators by 1985.

Because of its battery-like nature, the fuel cell can be built with modular construction so that incremental growth or repair is possible without a shutdown of the plant. Compact size also means that siting problems are reduced for utilities that have found the community's welcome mat rolled up. One report stated that a unit to supply the needs of 20,000 people can be placed on one-half an acre. The system would be manufactured at the factory, trucked onto its site and installed with a minimum of effort. Size is one of the merits of the fuel cell that led NASA engineers to investigate the feasibility of incorporating a fuel cell in their MIUS—modular integrated utility system—project. Waste and garbage would be processed to yield a gas which would power a fuel cell, the waste heat of which would be used to heat homes.

The fuel cell creates little air, water, thermal, nor noise pollution and so it is environmentally attractive. Waste heat is ejected into the air. Having no moving parts except perhaps cooling fans, its noise level is comparable to that of nighttime residential areas. The fuel cell's benign environmental characteristics would make it extremely attractive to utilities beset with onerous emissions control requirements.

Fuel cells were standard equipment on the Apollo spacecraft. With hydrogen

and oxygen as fuel the space fuel cells reliably generate electricity yielding a waste product of drinkable water for the astronauts.

Hydrogen is little used as a fuel today, although if we ever achieve a "hydrogen economy" then Apollo-type fuel cells would be ideal. However, with modified designs other fossil fuels can be used.

When examining future sources of electricity that use a fossil fuel, it seems to me that we ought to ask two questions:

First. Can it use existing scarce fuels more efficiently so as to stretch these limited reserves in the near future?

Second. Can it run on coal, our most abundant fossil fuel, in the distant future?

For the fuel cell the answer to both questions is yes. Natural gas or the methane now being collected from coal mines will power the cell. As for the future the fuel cell is expected to operate on gas from the coal gasification process now under development, on methyl alcohol which can be made from coal for about 8 cents a gallon, or on a great range of petroleum distillates.

Mr. President, a most heartening aspect of the commercial fuel cell venture is that it is a product of private development. NASA blazed a trail with its work on fuel cells for space, but industry explored the potential for commercial application. Pratt and Whitney Aircraft began research on fuel cells in 1959 for commercial application, but by the end of 1960, they were about to drop the project because developmental problems appeared too complex for economical solutions. However, they received a NASA contract in 1961 to build a small demonstration fuel cell for aerospace purposes. In 1962, they were awarded a contract to develop and manufacture fuel cells for the Apollo spacecraft thus extending Pratt and Whitney's fuel cell development program for 5 years. Ultimately, fuel cells provided power on Gemini, Apollo, Skylab, and will be included on the Space Shuttle.

The commercial history of the fuel cell began in 1962 when Pratt and Whitney set up an experimental unit to power a pumping station at Stanton, Ky. This was followed in 1966 by a larger fuel cell for the same utility company.

Then in January 1967, 28 gas utilities formed a nonprofit consortium called the Team to Advance Research for Gas Energy Transformation—TARGET—to cooperate in the development of a natural gas fuel cell for use at shopping centers, apartment buildings, and other on-site locations. Presently, 60 fuel cells produced in the program have operated for a total of nearly 200,000 hours at 37 sites around the world.

Another milestone occurred in 1971 when four utilities that supply gas and electricity joined TARGET. Heretofore, no electric utility had expressed interest in fuel cells.

In November of that same year, 10 electric utilities and the Edison Electric Institute underwrote a $3 million Pratt & Whitney program and in 1973 the Electric Power Research Institute added $9 million more.

TARGET and Pratt & Whitney spent about $50 million in their three-phase project to develop the commercial fuel cell. According to an article in Government Executive magazine, May 1974, Pratt & Whitney recently announced a program to develop a 26-megawatt fuel cell to supplement traditional power sources.

The electric companies have placed $28 million in down payments on 56 fuel cell plants, the earliest deliveries were slated for 1978. Total sales could reach $300 million, however, the orders are conditioned on successful completion of an R. & D. program expected to cost $42 million. Even if this first commercial program is given Federal assistance to assure the early availability of a commercially viable fuel cell, only a first step in realizing the potential of this device will have been taken. More sophisticated designs are under development which have higher efficiency and compatibility with other fuels.

For instance, Westinghouse Electric Corp., of Pittsburgh, Pa., is investigating the suitability of distillate fuel such as No. 2 fuel oil for fuel cells in central power stations. In 1972, a small experimental unit was installed at the Public Services Electric and Gas Co., in Newark, N.J.

Furthermore, Engelhard Minerals & Chemicals Corp. of Murray Hill, N.J., is developing fuel cells using ammonia or methyl alcohol for remote or small power needs. The use of methyl alcohol is attractive because it is pure and cheaply obtained from coal, our most abundant fossil fuel. Such a design might be the follow-on to the early natural gas-powered fuel cell, once the coal-derived methyl alcohol is available.

To supplant the enormous central station generators we could turn to the high-temperature fuel cells which theoretically have thermal efficiencies of about 60 percent. Westinghouse is engaged in development of these advanced fuel cells to be used at coal gasification plants. However, these high-temperature versions appear to be second- or third-generation follow-ons to the less complicated low-temperature fuel cells.

The demonstrated interest of the electric and gas utilities in fuel cells, the continuing research and development by technical corporations, and NASA's reliance on the fuel cell in the space program as well as its investigations in the MIUS program all emphasize the solid potential of this device. The technological feasibility is relatively clear. The obstacle is economics. What is needed is funding for the fine tuning required to make the fuel cell commercially viable, but at current levels of investment, the fuel cell will not come of age until well into the 1980's.

However, we can advance the timetable of the fuel cell's availability, so that it might "stretch" scarce fossil fuels, if more money is devoted to research and development of the fuel cell.

The National Rural Electric Cooperative Association wrote NASA last year, emphasizing that there are nearly 1,000 rural electric member systems which serve well over 20 million citizens in 2,578 counties:

> We have a high degree of confidence in the potential technical and economic feasibility of fuel cell electric power generation as a useful and desirable component of the future complete utility system. We urge immediate and full support of an all out effort to develop the fuel cell concept for utility purposes.

And this keen interest is not limited to rural electrical utilities. In a letter dated December 27, 1974, the Massachusetts Municipal Wholesale Electric Co., controlled by 23 municipal electric utilities, urged initiation of a national fuel cell program to be supported by Federal funding.

Now I know that the fuel cell is not the answer to all of our energy problems. Certainly, there is no single answer. But, I believe that the fuel cell has generated sufficient interest among suppliers of power to rural America to justify more intensive research.

Currently, NASA, which has more expertise and experience in fuel cell technology than any other Government agency, is spending a mere $55,000 per year studying the suitability of the fuel cell to be an integral part of the MIUS project. NASA of course recognizes that Congress gave the helm of our energy program to ERDA. Yet, it is my hope that Dr. Seamans, the Administrator of ERDA, will take advantage of NASA's ability in this area and that he will establish a national fuel cell research program. Such a program could be of particular benefit to our small communities.

A NEW PROCLAMATION

Mr. BIDEN. Mr. President, earlier this year, the students of the Lore Elementary School in Wilmington issued a new "Declaration of Independence," setting forth the goals they hold to be important to themselves, their community, and their Nation as we approach the 200th anniversary of our birth.

The spirit of this new proclamation is summed up in its third sentence:

> Our goal is to build upon our strengths and conquer our weaknesses so America and the world will live in peace.

It is frequently fashionable to be cynical these days about the "apathy" of young people toward government and public officials. Yet, this proclamation—written by a concerned group of young people—shows that students are every bit as concerned as their elders about the problems which beset their own communities, the United States, and the world at large.

I ask unanimous consent, Mr. President, that this Declaration of Independence of the Lore Elementary School in Wilmington, Del., be printed in the RECORD, together with a list of those students who signed it.

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

DECLARATION OF INDEPENDENCE

In school, February 1, 1975, a declaration by the students of the Lore Elementary School in Wilmington, Delaware, the First State.

We, the students of Lore, pledge ourselves to the future of the United States. We thank our forefathers for what they have given us. Our goal is to build upon our strengths and conquer our weaknesses so America and the world will live in peace. We will conquer all the diseases which kill and cripple man and overcome hate, prejudice, doubt, fear, unemployment, and starvation. In this way, there will be no more robberies, murders, or wars. We believe that the laws of nature and of nature's God are for all people—adults and students. By God's grace, He has given all of us the right to life, liberty, and the pursuit of happiness.

Let it be known that people will live better by these ways. We will have better education, better built schools, and better teachers to teach in these schools. We will have more freedom in the classroom. We will have more and better trained policemen and better equipment for the policemen and firemen. The United States will quit getting mixed up in wars which are none of their business. We will stop inflation for once and for all. The voting age will be lowered to 14 years old. We will have better court systems because criminals who commit crimes sometimes get away with them. Laws and judges will be tougher; cases will not take so long to get to the courts, and criminals will not get out of prison so easily. We will stop the drug problem by not letting it begin. People will start to become more self-sufficient—grow food, make cloths, and build things. Our leaders, including the President of the United States, will set the good examples. People who make more money than poor people will pay more taxes and taxes for poor people will never get any higher. Women will have equal rights and opportunities to serve the nation. The government will enforce stricter laws on pollution. It will not declare war without the consent of the people. It will not permit corruption to become part of our daily lives. We will stop the use of DDT and other insecticides without safeguards for the people. We will enforce strict laws to eliminate racism and ignorance. The government will use its processes the right way. The government will work to make life better for all the people of the world.

We hold that these pledges and statements are true, and that all children are created equal, and that our God has given us laws and rights to live by. So in support of this declaration and with the protection and guidance of our Lord, this year of 1975, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

Raymond Gross, Larry Hatton, Patricia Hopkins, Tammy Jackson, Michelle Joyner, Mark Kane, Debbie Marshall, Kenneth Murray, Carmen Scott, William Truitt, Steven Washington, Quinton Watson, Kenneth Wilson, Carol Wright, Earl Williamson.

Marilyn Villafane, Clarence T. Henry, Sharon Davis, Marita Bollins, Stephanie Jackson, Ronald Taylor, Crystal Carter, Carol Brown, Janet Carter, Quillie McDonald, Willie Snow.

Devin Park, Michael Jenkins, Richard Lively, Andre Johnson, Rochelle Starling, Christopher Boyd, Karen Carpenter, Donna Wilson, Sherry Venable, Angela Lawson, David Barber, A. S. Briggs.

Marion Warren, Carmen Roberts, Lisa Caldwell, Lisa Cornelius, Carrie M. Hutson, Betsy Struck, Richard A. Struck, principal, Dorien Cane, Guy Marshall, Darryl Lucas, Denise Royster, Robert, Lisa Foster, Edith Chapman, Joseph Wright.

Terry Walls, Carolyn Dupont, James Mack, Lisa Hendrix, Shawn Test, Mary Clay, Novice Lloyd, Eugene Crosland, Ronny Mitchell, Diana Barber, Cassious Jacobs.

Larry Cagnon, Melanie Lewis, Wendell Husser III, Tracy Murphy, Robert King, Lisa Davis, Terry Hagaus, Kevin Chamblin, Karen Hall, Valerie McManus, Norma Velaques, Gilbert Green

Kim Sewell, Shandra Davis, Audrey Headley, Tracey Colson, Beatrice Turner, Frank Bromwell, Nancy Perez, Richard White, Jerry Henry, Frederick Ryle, Marta Wright, Darlene Rodgers, Roland Hicks, Michael Morrow, Johnny Falcon, Debea Johnson.

Kenny Swanson, Horace Lee, Jackie Butcher, Joseph Tilghman, Renee Russ, Janice Johnson, Gay Thomas, Attley Lambert, Paul A. Loper, Emma J. Spence, Mark Coverdale, Bobby Lundy, Tracey Brown.

Teresa Lambert, Anthony Johnson, Sharonne Miller, Paul Chapman, Anthony Venable, Damon Millils, Mark Davis.

William Gosa, Tracey Cleveland, Alex Rogers, Ellsworth Brown, Steven Lockerman, Leslie Jones, Vanessa Morales, Valerie Hunt, Mayra Quinones, Eugenia Wright, Aaron Harley, Brian Artis, Carol Heady, Keith Daniels, Ben W. Ellis, Dwayne Wilmore.

Sylvia Cain, David Crosland, Gwendolyn Neal, Joseph Thomas, Phyllis Szymanski, Stephanie Grayson, Lisa Bunche, Lillian Villafane, Carmelia Berry, Marion Rodgers, Sterling White, Elizabeth Coxe, Roman Cross.

Alvin Davis, Ernestine Roberson, Rodney Wrench, James Harden, Leonard Melton, Patricia Jackson, Ralph Jackson, Johnny Bell.

Doretha Walley, Marion Spencer, Sylvia Patterson, Lisa Goldsberry, Joseph Chapman, Wayne Strong, Michael King, Maria Fowler, Dawn Taylor, Anthony Johnson, Kevin Grissett, Tracey Stokes, Tina Hicks, Chris Kotash.

Trudy Walls, Carla White, Lawrence Saienni, Todd Turner, Crystal Murray, Ronald Merritt, Kenneth Young, Allen Brown, Michael Brittingham, Donald Huestner, Betty Nelson, Jerry Evans.

Lawrence Glover, Kevin Lucas, Dion Matthews, Willard Schneese, Carmen Wright, Leatrice Elleabe, Gerald Ryle, Raymond Santos, Jacqulin Crews, Renee Bartley, Jose Gamgal.

Leon Rayfield, Don Laws, Mildred Glover, Julie Ulmer, Debgie Gibson, Terry Robinson, Kim Oates, Karen Wade, Darryl Evans, Donna Johnson, Juanita Graham, Randolph White, Joseph Jones, Kevin Agrew.

Pamela Kennedy, Sheila McQueen, Robin Baylor, Patricia White, Danny Hicks, Michael Brown, John Lively, Linda Sharp, Desiree Collins, Billy Boyd, Valarie Petty, John Bartley.

Reuben Baylor, Whitney Blake, Steven Bowie, Louise Brinkley, Melvin Brock, Angela Caldwell, Aleta Clay, Michelle Dunn, Dwayne Ennis, Carmen Ferguson, Timothy Fletcher.

RURAL AREAS BEING DENIED NEEDED HOUSING ASSISTANCE

Mr. HUMPHREY. Mr. President, on November 25, 1974, during floor debate on the agriculture appropriations bill H.R. 16901, the distinguished Senator from Maine (Mr. HATHAWAY) and I engaged in a colloquy with the able and distinguished chairman of the Appropriations Subcommittee on Agriculture, Environmental, and Consumer Protection, Senator MCGEE. This colloquy was to establish congressional concern for implementation of section 514, title V of the Housing and Community Development Act of 1974.

This section provides authority for establishing a rent supplement program for the FmHA rental programs. At that time, Senator MCGEE advised Senator HATHAWAY and me that the Agriculture Appropriations Subcommittee had considered the problem very carefully and had decided that the best way to proceed was to request a report from the Department on the severity of the problem, and the amount of drawdown on the Rural Housing Insurance Fund necessary in order to implement the rent supplement program.

During this colloquy the distinguished Senator from Wyoming advised us that information from FmHA would be available by December 31, 1974, because he had set that deadline in order that the Appropriations Subcommittee would have ample opportunity to conduct a review and act on the matter at the "first opportunity for a supplemental consideration."

Mr. President, I am very concerned that the Agency did not bother to respond to Senator MCGEE until after several communications. The answers to the request for specific information were evasive and unresponsive. Finally, the distinguished gentleman from Wyoming, had to send a strongly worded letter to the Agency, making it very clear that the subcommittee wanted the information on rent supplements.

Over 2 months after having requested the necessary information, a letter was received from FmHA on January 30, 1975, This letter was more than an evasion, this letter was a downright insult to the distinguished chairman, the subcommittee, and the entire Congress. Besides not providing the requested information, the letter advised the subcommittee that the Agency had decided that there is question about the need for and the effectiveness of a rent supplement program.

Mr. President, the Congress decided that there was a need for the rural rent supplement program when we enacted section 514 of the Housing and Community Development Act of 1974.

I am concerned that this action by the Department of Agriculture continues the type of operation carried out by the previous administration in defying the laws of Congress. I want to make it very clear that I will not sit still and watch this happen, especially from an agency which would cut back on a food stamp program for the elderly and the poor in order to balance the budget.

The housing programs of the FmHA have generally paralleled those offered by HUD—FHA—programs, with one notable exception, rent supplements. After several years of operating rental programs such as 221d(3) BMIR—below market interest rate—and section 202 for elderly, it became clear that the basic goal of serving the needs of low-income people could not be met. In recognition of this, Congress, as part of the Housing and Urban Development Act of 1965 (Public Law 89-117), enacted the rent supplement program. This HUD program provides for assistance payments to owners of federally insured projects such as 221d(3), 231, 202, and 236. The assistance payments supplement the rent of low-income tenants so that they do not have to pay more than 25 per cent of their adjusted income for rent. The supplemental payments are limited to those whose incomes are below the public housing limits established for a given area. There are a number of limitations built into the program such as the number of units in a project which can be aided.

Between fiscal year 1966 and fiscal year 1975 Congress appropriated $311 million for the HUD rent supplement program. This program has assisted thousands of families to achieve decent housing, primarily in urban areas. In the past few years the program has been increasingly directed to elderly and handicapped Americans who are given a priority. It has also helped to achieve an income mix in subsidized projects which is also a peripheral goal established under the Housing and Community Development Act of 1974.

Rural areas contain close to 60 percent of the substandard housing in America, as defined by the Census. In addition, with only 30 percent of the population, rural America suffers with 44 percent of those in poverty. It is clear, Mr. President, that rural America desperately needs every housing resource available if the promise of a decent home for every rural American is to be kept. One would have thought that rural America would have been the first place that the rent supplement program would be used. Unfortunately, this was not the case.

The FmHA section 515 rural rental program is supposed to provide rental housing for low- and moderate-income families and elderly persons. Despite subsidies similar to those in the HUD urban programs, the 515 program has not been able to serve the low-income elderly or families except in several Southern States where taxes and utility cost are low. In the main, the section 515 program has not been able to meet the congressional goal of serving low-income people, just as the urban rental programs were unable to do this without additional subsidies in the form of rent supplements.

In fiscal year 1974 the section 515 program was responsible for the production of 12,000 units of rental housing. Rentals for the section 515 program in a few selected States were as follows:

First. Pennsylvania—1974, 1 bedroom, lowest rental, $130 per month.

Second. New Jersey—1975, 1 bedroom, $167 per month—estimate.

Third. Massachusetts—1975, 2 bedrooms, $190 per month—estimate.

These are examples based on 50-year mortgages at a 1-percent interest mortgage. In many States, because of higher utility costs and tax rates, it is not feasible to build section 515 units, but clearly, Mr. President, Congress did not intend this program to be sectional in nature.

In order for the rural rental programs of the FmHA to carry out the congressional mandate to serve low-income elderly and families, it would be necessary for the rural housing programs to have available the same support as the urban programs. We recognized this when we enacted section 514 of the Housing and Community Development Act of 1974 and established the rural rent supplement program. After a 9-year hiatus, equity was finally provided to rural areas. As the House report (H.R. 93-1114) stated about rural rental assistance, "an important authority—long overdue."

And further that—

The higher incidence of poverty and generally lower median incomes in rural areas, coupled with the critical need for additional housing serving very low-income families, provide adequate justifications for this special assistance.

The enactment of the rural rent supplement program was an important step forward and had wide support both in and out of Congress. It now is clear that neither the FmHA nor this administration share this support. I want to take this opportunity to deal with the issues raised by Mr. Bostic, of the Department of Agriculture, in his letter to Senator McGee. After clearing away the obscurities raised by the letter the main objections raised by the Department of Agriculture are:

First. Substantial additional personnel required to administer the program.

Second. Question about the need for the program.

Third. Question about the effectiveness of the program.

The rest of the letter frankly is gibberish and consistent with an administration which would cut back on the food stamp program for the elderly and the poor in order to keep the national debt down.

I want to deal with the issues raised by Mr. Bostic, because they are a smokescreen for the real reason for not implementing the program. First, it is unlikely that any additional employees would be required, because the rent supplement program would be carried out as part of current operating activities of the agency and at the most would require a bit more bookkeeping. I also find it interesting that Mr. Bostic is now concerned about the need for additional personnel to operate a rent supplement program. Where were Mr. Bostic, Mr. Butz, and General Elliott when the Rural Development Act was added to the FmHA responsibilities? Did they complain about the need for more staff? The answer is no. The fact is that they cut staff. If additional staff is required for FmHA why has not the administration requested it?

Second, Mr. Bostic questions the need for the rent supplement program. I would suggest that Mr. Bostic and Mr. Butz also read the statistics of the 1970 census which indicate that some 900,000 rural families have average rent paying ability of less than $14 per month and most of these people live in substandard housing. The same census shows some 4,132,000 units of substandard housing in rural America.

In this period to even raise the issue of need for housing in rural areas shows either a complete ignorance of the problem or an absolute insensitivity to the needs of the poor and elderly.

Lastly, Mr. Bostic questions the effectiveness of the program and suggests that "HUD has produced a very large program with serious deficiencies." Mr. Bostic does not offer any supporting evidence for his statements. I would suggest that a number of investigations by GAO and congressional committees have established serious cases of mismanagement of the housing program on the part of HUD. Is this what Mr. Bostic means by "deficiencies"?

Mr. Bostic, in his letter to Mr. McGee, suggests that the HUD section 8 program may provide an alternative to rent supplements. Much ado is made of the 20 to 25 percent of the section 8 units which are set aside for nonmetropolitan areas. I would remind all that at the time of the ill-conceived moratorium on housing subsidy programs instituted by former President Nixon on January 1973, nonmetropolitan areas were getting close to 40 percent of all public units. While this did not meet the need based on the percentage of substandard housing in nonmetropolitan areas, it was a good deal closer than the 20 to 25 percent of units available under the section 8 program.

In addition, the section 8 program is new with regulations still not completed. It is interesting to note that regulations for the use of the section 8 program in combination with the 515 program remain to be drafted and promulgated. Similar regulations for the revised section 23 program and the section 515 program were in the drafting stage for over 18 months and never did get completed.

Beyond this, there are serious questions by many as to whether the section 8 program can work at all. Problems such as double processing, inadequate fair market rentals, limited HUD personnel, applicability of Davis-Bacon rates, and limited rural delivery systems are all serious questions which must be answered before we blithely follow the HUD section 8 pied pipers. The experiences of the last few years in housing by this administration should give us reason to pause to reflect before blindly following.

The rural rent supplement program makes a good deal more sense for obvious reasons:

First. It has a ready vehicle for its implementation—every section 515 project.

Second. There are built in legislative controls—a limit of 20 percent of the units in a project except for elderly and farmworkers.

Third. Easy processing—the program involves only one agency with a minimum of paperwork.

Fourth. Virtually no need for additional staff to implement the program.

Fifth. Less costly than the section 8 program. There is a HUD estimate that the section 8 assistance payments will average $3,400 per unit/per year. It is estimated that the rent supplement program will cost $500 per unit/per year below the 1-percent subsidy rate.

I think every effort should be made to use the section 8 program in rural areas, but the rent supplement must also be implemented immediately. We need every tool at our disposal to meet the housing needs of rural people.

I close by reminding you that this administration has spent the last 2 years in wrecking the homebuilding industry in our country. Thousands upon thousands of desperately needed units of housing went unbuilt. Billions of dollars of revenue for rural America went unspent. This policy has led to a deep recession generally and a depression in the rural construction industry.

We in Congress have been looking for ways to get the economy moving again. I suggest that by assisting the rural con-

struction industry to serve a broader section of the population, we would be accomplishing this. The rent supplement provision of the 1974 Housing and Community Development Act offers such assistance, and we should demand that it be implemented by the administration immediately. I believe that the next supplemental appropriations bill should contain the needed instruction to the FmHA to begin the program immediately.

Since the rent supplement program is tied legislatively to the rural rental programs of the FmHA and because, with the exception of elderly and farmworker housing, the program is restricted to assisting 20 percent of the units, I believe it is possible to carefully calculate the budgetary impact of the program. Using a base population figure of 20,000 units for the 515 rural rental program, of which 50 percent would be for the elderly, we estimate that 60 percent, or 6,000 units, will require rent supplements. Of the remaining 10,000 units, up to 20 percent could be supplemented, which would mean an additional 2,000 units. The production level of the farm labor housing program, sections 514–516, is estimated to be about 1,000 units, of which 75 percent would be assisted. The total of all units receiving assistance would be 8,750 in number. We calculate that an average rent supplement of $500 per unit per year will be required, which would mean a total expenditure of $4,375,000. This is certainly a modest amount to invest in the desperate housing needs of rural Americans.

Mr. President may I conclude my remarks by stating that unless I see evidence that the Department of Agriculture is acting responsibly with regard to congressional intent on rural housing programs, I will seriously consider amending section 514, title V of the Housing and Community Development Act of 1974, to mandate the use of the program and remove the present permissive language.

Mr. President, I ask unanimous consent that several supporting documents regarding this matter be printed in the RECORD.

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

OCTOBER 9, 1974.

Hon. GALE W. MCGEE,
Chairman, Subcommittee on Agriculture, Environmental and Consumer Protection, Committee on Appropriations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: With enactment of the Housing and Community Development Act of 1974, rural areas have finally gained parity with urban areas in a number of housing assistance programs. One new program for the Farmers Home Administration is "Rental Assistance" (Section 514 of Title V of the 1974 Housing Act), which is comparable to the rent supplement program authorized for the Department of Housing and Urban Development in 1965, but infrequently used in rural areas. The importance of that program in our inflationary economy cannot be overstressed. It will enable FmHA to make assistance payments to owners of rural rental (Section 515 program) or farm labor housing projects (Sections 514 and 516), so that low-income families will not have to pay more than 25 percent of their small incomes for housing.

This rental assistance program is financed through reimbursements to the Rural Housing Insurance Fund and, therefore, will not require an appropriation at this time. However, I am concerned that without specific language in either the Agricultural or the Supplementary appropriations bills, implementation of this program will be delayed. Farmers Home Administration was given new and wide-ranging authority in the 1974 Housing Act, yet it failed to request funds for any of the new programs. There is no indication that the Agency will move aggressively on this program either. I heartily agree with President Ford's message of October 3, in which he urges early implementation of the 1974 Housing and Community Development Act—particularly the provisions that will help those people who are hurt the most by our current economic situation.

The cost of the rent supplement program for rural areas is surprisingly small in comparison to its benefits. Furthermore, the program is legislatively limited to 20 percent of the units financed under the rural rental program, except in the case of elderly or farm labor housing projects. This past year FmHA financed approximately 12,000 rural rental units. Even if that workload is increased to 20,000 units in FY 75, and another 1,000 units of farm labor housing are built, I estimate that the cost of the rental assistance program would amount to only $4,375,000. My calculations are attached. You might note that the per unit assistance is estimated at $500; this is far less than the $1200 per unit average for the urban rent supplement program. The disparity is caused by a lower rental cost to the consumer under the rural housing programs.

Rural areas are generally the last to benefit from federal housing programs, yet they suffer the worst housing and the greatest poverty in this nation. With inflation causing almost daily rises in the price of housing, we cannot afford to wait until next year's appropriation to assist our rural families in obtaining decent housing. I strongly believe that the rental assistance program will be a valuable tool for our rural residents, and that FmHA should make it available immediately.

I am attaching some committee report draft language for your consideration. Since the Senate has not acted on either the Agricultural or the Supplementary appropriations bills, I think that either piece of legislation might be appropriate. If this is not possible, I intend to encourage implementation of the rural rental assistance program through a floor colloquy.

Thank you for your consideration.

Sincerely,

HUBERT H. HUMPHREY.

NOVEMBER 4, 1974.

Hon. JAMES T. LYNN,
Secretary, Department of Housing and Urban Development, Washington, D.C.

DEAR MR. SECRETARY: We urge that in the development of regulations by your Department for the implementation of the Housing and Community Development Act of 1974 (PL 93-383), careful consideration be given to the effective coordination and application of provisions relating to rural housing and development.

As you know, rural America contains half of the Nation's poor and two-thirds of its substandard housing. Moreover it should be clearly recognized by now that there is a direct connection between rural conditions and the exacerbation of urban problems. The central requirement of the present decade is the creation of comprehensive and coordinated Federal, State and local government policies to promote balanced *national* growth and development.

PL 93-383 reflects an awareness of these facts in concrete terms. Thus, while Title I explicitly calls for the development of a national urban growth policy, focusing on housing, environmental, and economic opportunity requirements principally for persons of low and moderate income, it is significant that 20 percent of community development assistance authorized under this Title is designated for allocation to units of general local government outside of metropolitan areas, and to states for use outside of metropolitan areas. More over, in addition to major new and revised housing assistance programs authorized under this Act, important improvements are made in the programs of rural housing assistance through amendments, under Title V, to the Housing Act of 1949.

In light of these considerations, we are concerned that effective coordination be achieved without delay between your office and that of the Secretary of Agriculture for the early implementation of various programs under this Act which can benefit rural residents. As you know, Section 603(b) of the Rural Development Act of 1972 empowers the Secretary of Agriculture to coordinate the rural development work of all departments and agencies of the Federal Government and to focus them upon rural development, both in terms of their substantive programs and in terms of their personnel and their offices.

Moreover, under Title V of the Housing and Community Development Act, a new program of "Rental Assistance" is established, for which the Farmers Home Administration would have administrative responsibility. We urge that you take such steps as may be necessary and appropriate to assist in avoiding any delay in the implementation of this program, which would enable FmHA to make assistance payments to owners of rural rental or farm labor housing projects, so that low-income families will not have to pay more than 25 percent of their small incomes for housing. This is the first time that FmHA has been authorized to provide assistance to the lowest income families, and it should be expedited, provided adequate funds, and targetted on those who are in serious need of this help.

We also want to bring to your attention our views on certain specific matters with respect to the development of regulations on PL 93-383.

First, equitable and effective housing assistance outside metropolitan areas, as authorized under this Act, may be hindered by difficulties confronted by local governments in the preparation of technical documents in the application process. It is important that legislative provisions for advance payments and technical assistance be made known to local governments in rural areas. The Department should also inform these governments without delay and in clear terms of revisions authorized with respect to applications for development assistance, to permit communities to follow simplified procedures and to enable local governments to determine readily whether they qualify for assistance.

Second, procedures should be clearly indicated in regulations to assure that the review and decision process on development assistance takes into full account the views of local governments and residents, which should be weighted effectively with the recommendations of State governments in final determinations by the Department on assistance allocations.

Third, policies of the Department should take account of the important role of private, non-profit corporations and of local housing authorities in the development of housing programs outside of metropolitan areas. For example, often in rural communities, without the efforts of church-related organizations as housing program sponsors, the job will not get done. We believe it is important, therefore, that the capabilities of such sponsors and local housing authorities be determined on a case-by-case basis, particularly with respect to project applications for rural areas.

Finally, Section 518 of PL 93-383 authorizes a new program of assistance for mobile homes and sites, under the Housing Act of 1949. However, while Title VI provides for the establishment of Federal construction and safety standards for mobile homes and authorizes a program of mobile home safety research and development, this important requirement in addressing problems associated with the utilization of mobile homes toward resolving housing shortages must be supplemented by carefully developed and scrupulously monitored regulations for administering the mobile homes program under Section 518. Standards must be clearly set forth on site requirements, density limits, and essential facilities and services to be provided in mobile home parks, for example, and persons purchasing or renting mobile homes under this program should have a reasonable expectation of protection from fraud and misrepresentation, and that site maintenance and services will be stipulated and continued by mobile home park developer-owners receiving Federal assistance under this Act.

We ask that you give immediate and serious consideration to these recommendations toward assuring that rural as well as urban areas are enabled to meet urgent needs and undertake planned development for future growth.

Sincerely,

HUBERT H. HUMPHREY,
U.S. Senate.

DICK CLARK,
U.S. Senate.

Mr. MCGEE. In response to the distinguished Senator from Minnesota's remarks let me reiterate my assurances to the Senator from Maine (Mr. HATHAWAY). The subcommittee will request a report from the Department of Agriculture on the status of this program, with the report to be submitted by the end of his calendar year. With this information in hand, the committee will be in a position to consider the program.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., January 30, 1975.

Hon. GALE MCGEE,
Chairman, Subcommittee on Agriculture, Environmental and Consumer Protection, U.S. Senate, Washington, D.C.

DEAR SENATOR MCGEE: This will reply to your letter of January 14 concerning implementation of the rent supplement program authorized by the Housing and Community Development Act of 1974.

This new authority in the Act is discretionary and would require substantial additional personnel and administrative resources for implementation.

As you observed in your letter, a rent supplement program for rural America is an undertaking of potential great magnitude. There are several important steps to be taken and difficult decisions to be made; consequently, we have not been able to lay out, with any precision, a timetable for implementing this program.

Primarily, there is concern in the Department and in the Farmers Home Administration (FmHA) about the need for and effectiveness of the new rural rent supplement program. The Department of Housing and Urban Development (HUD) experience with rent supplements has produced a very large program with serious deficiencies. The Administration believes that the rent supplement program authorized by this Act, which involves deep subsidies and resultant high Federal outlays, may not be effective and cannot be effective within any reasonable cost. Consequently, implementation of a rural rent supplement program is regarded as being of questionable value.

As you may know, HUD is currently providing rental housing assistance to low-income families under its section 8 leased housing program which may provide an alternative to rent supplements. Twenty percent of the assisted units under section 8 are required to be located in nonmetropolitan areas.

The FmHA has implemented many of the authorities included in the Housing and Community Development Act and has begun work on developing procedures for others (as the enclosed outline shows). In view of the foregoing reasons, it would be difficult to implement this new discretionary program and it is the judgment of the Administration that we should not proceed with implementation of the rent supplement program.

Sincerely,

WILLIAM ERWIN,
Assistant Secretary.

HOUSING CONDITIONS IN RURAL AREAS

State	Total rural housing units	Substandard rural housing units		Percent of substandard housing units in State which are in rural areas
		Number	Percent	
Alabama	457,000	166,000	36.1	57.9
Alaska	45,000	20,000	43.5	76.1
Arizona	19,000	33,000	11.0	14.9
Arkansas	334,000	178,000	34.5	69.5
California	665,000	93,000	8.4	9.3
Colorado	169,000	32,000	7.2	10.9
Connecticut	207,000	16,000	7.6	19.0
Delaware	51,000	9,000	17.6	53.9
Florida	474,000	85,000	18.0	27.7
Georgia	570,000	170,000	29.9	57.8
Hawaii	37,000	12,000	32.6	24.2
Idaho	109,000	19,000	17.8	61.5
Illinois	620,000	106,900	17.2	24.4
Indiana	586,000	102,000	17.4	44.8
Iowa	405,000	63,000	15.7	52.6
Kansas	274,000	43,000	15.9	51.5
Kentucky	504,000	218,000	43.3	75.5
Louisiana	377,000	125,000	33.2	49.7
Maine	170,000	47,000	27.7	67.9
Maryland	276,000	53,000	19.0	42.4
Massachusetts	269,000	26,000	9.6	15.1
Michigan	726,000	127,000	17.5	40.1
Minnesota	407,000	95,000	23.5	53.8
Mississippi	377,000	158,000	41.8	71.8
Missouri	523,000	142,000	27.2	52.9
Montana	112,000	25,000	22.3	62.3
Nebraska	203,000	32,000	15.6	53.4
Nevada	34,000	6,000	16.6	29.9
New Hampshire	111,000	18,000	15.9	57.1
New Jersey	256,000	22,000	8.5	11.7
New Mexico	94,000	38,000	11.2	20.8
New York	831,000	100,000	11.8	15.7
North Carolina	886,000	255,000	28.9	73.0
North Dakota	116,000	31,000	27.0	74.8
Ohio	800,000	150,000	18.7	39.9
Oklahoma	305,000	67,000	21.8	55.8
Oregon	231,000	29,000	7.3	8.6
Pennsylvania	1,054,000	165,000	15.6	42.6
Rhode Island	34,000	4,000	12.3	15.6
South Carolina	416,000	137,000	32.9	68.0
South Dakota	126,000	33,000	26.4	74.3
Tennessee	534,000	184,000	34.5	66.0
Texas	845,000	216,000	6.8	16.1
Utah	62,000	11,000	11.8	12.4
Vermont	102,000	16,000	15.5	79.0
Virginia	544,000	190,000	34.9	70.0
Washington	325,000	40,000	6.6	8.2
West Virginia	349,000	119,000	33.9	84.9
Wisconsin	482,000	97,000	20.5	51.8
Wyoming	45,000	9,000	20.0	59.6

PRIVATE MONEY IN PURSUIT OF PUBLIC NEEDS

Mr. HARTKE. Mr. President, this country is unique in that we have developed an extensive network of private philanthropic institutions to funnel private sector money into areas of social need. To encourage these institutions we have adopted a variety of tax incentives.

As chairman of the Senate Subcommittee on Foundations, I have been concerned that this private money benefit our people in the most effective manner possible. In effect, private philanthropy is subsidized by the American taxpayers. They and their representatives in Congress have a right to expect that this money will be used wisely.

Mr. President, I ask unanimous consent that the text of a recent speech I delivered on this subject be printed in the RECORD.

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

PRIVATE MONEY IN PURSUIT OF PUBLIC NEEDS

(By Senator VANCE HARTKE)

In one form or another, the charitable instinct has been a part of every major society in the history of mankind. It was prevalent among the ancient Chinese and among the Egyptians, the Greeks and the Romans. In a multitude of varieties, it has been nurtured by most of the countries of the Eastern and western worlds. In our own society, it has taken many forms, but none so unique as the private foundation.

Twenty-nine-thousand foundations with more than twenty-one billion dollars in assets, making about three billion dollars in charitable grants each year. Those are the hard figures which form the outline of the private foundation picture, but they do not begin to sketch-in the substance.

The fine lines of the brush strokes paint a picture of people helping other people—of people who were fortunate enough to have accumulated wealth, using their money to benefit others. They paint a picture of social concern, of humanity and brotherhood. From the schoolhouse to the scientific laboratory, foundations have been involved with the con-

cerns of American citizens and dedicated to the enrichment of our lives.

Although their numbers are proportionately small and their grants equal only one-tenth of all the charitable dollars spent each year, private foundations are significant because they engage in an institutional effort to make rational decisions about the best uses of their relatively scarce financial resources.

It is the business of making rational grant decisions which enables foundations to have an impact far beyond the dollars and cents limit of their money. A foundation which sets its sights on specific objectives and which approves grant applications representing the most helpful and imaginative means of achieving those objectives, can, make a far more effective and efficient use of money than almost any other charitable alternative. Unfortunately, many foundations lack the clearly defined purpose which they must have in order to be effective.

Foundations receive their tax exemption on the premise that they will serve a public purpose. It is one thing to meet the legal technicalities of that requirement, but quite another to satisfy its substance.

The annual reports of all too many foundations simply list grant after grant, or program after program. All that says is "we gave", but that is not enough to justify the continued existence of any private foundation.

It is time to be honest with ourselves. There are twenty-nine thousand private foundations in this country, but many are really not doing an effective job. Most foundations do not have adequate professional staffs to sift grant applications. And most have not engaged in the type of innovative programs which are truly responsive to the most urgent needs of the American people. No one could expect every grant made by each of the twenty-nine thousand foundations to be a shining example of dynamic creativity, but surely foundations as a whole can do better than they have been doing in recent years.

Each of us knows that many of the foundations established in the thirty years came into existence because our laws made them attractive tax shelters. Whether or not a foundation was established to avoid taxes is not as important as whether its money is serving useful public purpose. That is the responsibility of foundation managers, and it is a responsibility at which all too many fail.

American foundations have made significant contributions to our society and to people throughout the world. They have been at their best when their money has supported innovative, experimental, or imaginative programs. Doing things that neither government or other private institutions would do has been their hallmark.

There was a time some fifty years ago when foundations spent more for education than to any other single purpose, the Federal Government spends more on higher education alone than foundations spend on all of the grants for all purposes.

What this means is that government has expanded its role significantly in the past five decades. There is hardly an aspect of our lives that it does not touch. There are programs to aid businessmen, students, farmers, the unemployed, the poor, the aged, and the sick. If government is not aiding somebody, than it is probably regulating him in some manner.

The expanding role of government does not spell doom for private, voluntary charitable efforts. If anything, we need private initiative even more now than we did fifty years ago.

Foundations and other private sector institutions offer a useful alternative to total dependence on government for probing new ideas, treading into politically sensitive waters, examining the basic institutions and principles of our society, and experimenting with innovative approaches. At a time when there has been a growing dependence on the resources of government, private foundations remind us of the importance of the individual and the meaning of human concern.

There are millions of people in this country who have lost hope for the future. They no longer look toward the horizons with the zeal of an explorer, never knowing what lies ahead but always assured that there will be something new and exciting to be discovered. Growth, hard work and optimism have been the essential characteristics of America, but they are all in short supply today.

While rural communities are becoming ghost towns, many urban and suburban communities are adopting no-growth policies. At least seven-and-one-half-million men and women are unemployed, and that figure is likely to increase. Everywhere we turn, people look to the future with a pessimism which is encouraged by the statement of their President.

I do not believe that the American people are so tired and weak that they cannot be rallied to meet the challenges of the last quarter of this century.

I do not believe that the American people have lost their desire to dream.

I do not believe that we have abdicated the full responsibility for our destiny to government bureaucrats.

We have the capacity to build a better society with the help of private institutions like foundations.

That is the challenge facing foundations today. Will they live up to their promise of promoting pluralism and diversity, innovation and experimentation? Will they reach out a helping hand in those areas where their help is needed most? Will they carve out a new role for themselves, based on the needs of our society? I join with you in hoping for a resounding "yes" to each of those challenging questions.

The role which private foundations carve out for themselves will have many faces. On occasion, foundations will become involved in areas or projects where government or other private institutions fear to tread. At other times, foundations will be partners with government, business, or public charities. Their grants may be for only a year or two, or they may represent a long-term commitment over many years. Above all, those grants must represent the best public use of private resources which the foundation can find.

Each and every one of the twenty-nine-thousand private foundations must understand that it exists to do charitable work which cannot be done as effectively by any other available source of money. Once the full meaning of that premise is clearly understood, every foundation should take a close look at the unmet needs of the community it serves and decide how best its available money can be used to meet one or more of those needs.

The Senate Subcommittee on Foundations has been devoting its efforts to shedding as much light on this subject as possible. During the last Congress, we held nine full days of hearings and we have rather extensive plans for more hearings this year. All of this activity is indicative of the increasing attention which Congress is likely to pay to private, charitable organizations.

As you know, the Tax Reform Act of 1969 was designed to put an end to serious abuses of the tax privilege on the part of foundations. A few Members of Congress wanted to sign a death warrant for foundations, but the overwhelming sentiment came down on the side of encouraging foundations to exist as long as they continued to meet those legislative requirements which were designed to assure that a public purpose was being served.

To carry out that objective, Congress enacted one of the most complicated sections of the Internal Revenue Code. The Tax Reform Act of 1969 included a tax on foundations to pay the costs of governmental supervision of all tax-exempt organizations. Anyone with a basic course in business economics knows that governmental taxes are merely passed along to the consumer in the form of increased price.

In the case of foundations, there is no product to sell. Foundations are trying to give away their money. The only one who suffers from the four percent excise tax is the charitable recipient.

I have no quarrel with the principle of charging foundations for the costs of administering exempt organizations, but the four percent excise tax brings in more than twice the revenue which is needed for that purpose. It would be simple common sense to reduce that tax to two percent, and the quicker that is done, the better it will be for all those in our society who will benefit from the forty million dollars in new money which will go to charitable purposes.

I am deeply concerned about the budget which has been proposed for the new assistant I.R.S. Commissioner for exempt organizations and employee benefit plans. That budget will mean less money going into the exempt organization functions of I.R.S. this year than was spent last year.

One of the principle efforts of the subcommittee on foundations has been to develop new information about the foundation community. We have been fortunate to have the active cooperation of Commissioner Alexander of the Internal Revenue Service. But if the proposed budget means that no new personnel will be devoted to exempt organization activities, and if that budget means that our subcommittee will be getting less information than we had expected to receive, I can assure you that I will be at least one strong voice speaking out for more money.

The four percent excise tax will bring in around eighty million dollars in revenue this year. There is no reason that at least twenty-five million dollars cannot go into the exempt organization activities of the Internal Revenue Service. What the administration has proposed is that foundations not only pay for the costs of supervising all types of exempt organizations, but that they will pay part of the cost of administering private pension plans, as well. That is not what Congress intended and it will not be accomplished without vigorous opposition.

There has been a significant amount of discussion about the minimum payout provision of the tax code. The principle behind that provision is sound. Foundations should not be permitted to sit on their money, simply accumulating more and more wealth. One measure of how well the public purpose is being served is the amount of money which a foundation gives out each year. The minimum payout provision sets a floor for that amount, but it does it in way that may be endangering the future of many worthwhile foundations.

No foundation has a right to an unlimited lifespan. Foundations should be measured by accomplishments, not longevity. But it is disturbing that nearly five thousand foundations terminated their existence since 1969 and that there were too few new foundations formed to take their place. And it is equally alarming that economic conditions are eroding the assets of many existing foundations so that their impact on our society is rapidly diminishing. It may be that the economics of inflation mandate that foundations have a decreasing importance to the people of this country, but there is no reason why our tax laws should encourage that trend.

The present minimum payout provision requires foundations to be penalized unreason-

ably during periods when total investment yields, and therefore money available for grants, is decreasing. They are penalized because the payout provision yields a result which is simply unrealistic under economic conditions such as those which now prevail. The law should require foundations to make prudent investment decisions. That was the intention of Congress in 1969, but the legislative language we adopted six years ago may now be producing unintended results.

The Subcommittee on Foundations has asked both the foundation community and the Treasury Department to produce information which will help us assess the impact of the minimum payout provision. When we get those facts, the members of the subcommittee may decide that a legislative modification is needed.

For the past three months, we have been working with the Treasury Department to determine if a more equitable formula for determining the applicable percentage can be adopted under the existing statute. I have seen close to a dozen different formulas for computing the minimum payout level. Quite frankly, each one is more intricate than the others. The staff of the subcommittee and the Joint Committee on Internal Revenue Taxation, together with the assistance of many highly talented tax attorneys, have spent hours trying to come up with a better formula than the one now being used by the Treasury Department. So far, those efforts have not been fruitful.

The present payout formula is clearly inadequate. In light of the fact that there are problems with the statute as written and difficulties in assessing 1974 data on money rates and investment yields, it is extremely difficult to come up with an alternate formula which will be more equitable. I am today, therefore, requesting the Treasury Department to exercise its statutory authority to refrain from changing the payout rate for 1975. This would mean that all foundations will operate under the statutory six percent rate for 1975.

If my proposal is adopted, there will be time for Congress and the Treasury to examine the statute to determine if legislative modification is necessary. The six percent payout rate for 1975 will be at least one percent less than the rate which would have applied under the present payout formula.

Within the next several weeks, the Subcommittee on Foundations will examine this question in detail. If there is a need for new legislation, I expect it to be offered as part of a general tax reform package which will come before Congress later this year.

Legislative proposals which seek to benefit private foundations should be approached with caution. Foundations have rarely had a high profile, and most Members of Congress have little idea what foundations do. The Subcommittee on Foundations will do its part to provide Congress with some of that information. We intend to hold a series of hearings on areas such as aging, education, health, and urban problems to examine what foundations have been doing. But foundations themselves must bear the major responsibility for informing Congress and the public.

Very few foundations maintain contact with their representatives in Congress. When it comes time to vote on a matter affecting private foundations, each Congressman and Senator must make his own judgment about the value of this type of charitable institution. If a foundation has a story to tell, it should make every effort to see to it that Congress knows about that story.

I am well aware of the concerns which many people in the private charitable field have about the statutory prohibition regarding lobbying and legislative activity. That prohibition deserves to be re-examined by Congress. The regulations of the Internal Revenue Service give such a broad interpretation to the restriction, that foundations are discouraged from involving themselves in some of the most important issues facing this country. Other foundations have used the restriction as a convenient shield behind which to hide.

There is no sensible reason to prohibit foundations and other organizations declared tax-exempt under section 501(c)(3) of the Internal Revenue Code from expressing their views on legislation which affects their operations or which in some way relates directly to their program activities. This is a basic first amendment right which should not be denied to any person or institution in our society.

Because this gathering is sponsored by the Council on Foundations, it is appropriate to comment about its activities. Under the able leadership of Bob Goheen and Dave Freeman, the council has been very helpful to the Subcommittee on Foundations. I know what the council has been trying to do, and I support those efforts. But I also believe that its role must be expanded if the foundation community is to be encouraged to meet its responsibilities.

There is no more pressing issue facing foundations today than the necessity to become more responsive to public needs. The problem can be approached from the perspective of new legislation, but it would be far more effective if it were solved by foundations themselves.

The Council on Foundations could assist smaller foundations by establishing a pool of talent to help them evaluate grant proposals. Some of the larger foundations are being forced to reduce their program personnel; surely these people could form the nucleus to assist foundations which are unable to afford a permanent professional staff of their own.

Grant evaluation is another area of deficiency in which the council could assist. Foundations should be encouraged to adopt standard evaluation procedures which enable them to determine the results of their grants. These procedures should include an effort to reach out to the community to get an idea of how the public evaluates the impact of the foundation's money.

Another method by which foundations can improve their operations is to provide public representation on their governing boards. No group which seeks to serve the public can afford to limit itself to dependence on a select group of executives to set policy and direction.

The council must continue to take the lead in urging foundations to go public. I suspect that a minority of the council's members publish annual reports, and that an even smaller number make any effort to publicize their grants. That attitude must be turned around for the good of the foundation community.

In an effort to encourage the formation of new foundations, the council should help compile new literature which makes it easier for the potential foundation donor to wade through the maze of statutory requirements.

Above all, the council must take the lead, through programs such as the one we are having today, to help foundations define the issues which confront them and to approach those issues with the type of dynamic and creative ideas which will guarantee their role in American society.

For my part, I intend to do all that I can to encourage foundations to do more and to do better. Most of the institutions in our society are being challenged and foundations can expect no special immunity. Survival is not the issue; rather it is a question of the quality of life which we establish for ourselves and our children.

Each of us must bring a spirit of optimism and hope to our work. There are brighter days ahead for all of us, and foundations will be no exception. All that is required is that we accept the responsibility for shaping our own destiny. I look forward to working with you to meet that challenge.

NEEDED SENATE STAFF REFORM

Mr. CRANSTON. Mr. President, too much of the current criticism of Senate staff and operating procedures has reached the totally unrealistic conclusion that Senators receive too much help—too much staff—too much space. Anyone who spends 5 minutes within these halls knows how absurd such commentaries are.

Thus, it was refreshing this morning to read the Washington Post editorial about reform of Senate operations, particularly since it followed a series of perceptive critical articles in the Post about Senate operations.

The Post proposes that Senators should receive more—not less—expert aid and that basic staff authorizations should be changed to reduce Senators' dependence on committee staff payroll.

This reform which the Post proposes can be accomplished through adoption of an amendment authorized by Senator GRAVEL of Alaska and Senator BROCK of Tennessee. Since that amendment may be before us next week, I hope all Senators will consider carefully what the Post has to say.

Mr. President, I ask unanimous consent that the Post editorial may be printed in the RECORD.

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

SPRAWL IN THE SENATE

It is a good rule of thumb that every institution of government should be reassessed at least once in each generation. By this gauge the U.S. Senate is due for a check-up, since its basic committee system has not been reviewed since 1946. For three decades the Senate has responded to changing needs and increasing pressures by adding on—more subcommittees, more staff, more buildings, more special bureaus and ad hoc arrangements. Most institutions of course react this way, but the tendency toward unexamined growth is accentuated in the Senate because that body is really an agglomeration of 100 or more small bureaucracies, each with its own purposes and leadership.

The resulting unevenness has become evident in staffing practices. Senators with demanding constituencies and wide-ranging legislative interests—not to mention presidential ambitions—find their office allowances for staff inadequate. Committee staff resources thus are fought for, constantly expanded and occasionally misused. A recent Washington Post study of committee practices found, for example, that some senators have built sizeable empires on a few key chairmanships, while it is common practice to use people on committee payrolls for other legislative work, political errands, constituent services and answering the mail.

More important than the petty connivances are the effects of this approach on the performance of individual senators, committees and the Senate as a whole. Some internal competition and inequalities in staff resources are not only inevitable but desirable in any legislative body—to a point. But the Senate may have passed that point. Last year, for instance, three subcommittees found reason to hold hearings on national security wiretapping—and none of them had

jurisdiction over bills on the subject. Energy policy falls within the grasp of so many panels that special arrangements had to be made to orchestrate consideration of the Ford administration's comprehensive bill. Oversight of the Executive Branch is fragmented. Staff budgets bear so little relation to committee workloads that members of some panels, notably Judiciary and Labor and Public Welfare, use committee-paid professionals for other projects while many senators on the Appropriations and Finance Committees lack adequate expert help for crucial committee work.

Some say the way to cope with all of this is to cut back. That view is common, for instance, among oldtimers who like to recall how things were done with a few clerks and one trusted legislative aide when *they* were on the Hill. But few senators can function well that way today; the workloads are too big and the issues too complex. Indeed, if the Senate is really going to exercise its legislative and oversight responsibilities effectively, many of its members are going to need even more expert aid. The Financial Committee, for example, is seeking $960,000 more this year than last, so every member can obtain some staff. The dollar figure may be excessive but the intention is certainly sound.

There are, however, alternatives to simply continuing to add on. The basic staff budgets for Senate offices could be revised and the dependence on committee payrolls reduced. Subcommittees could be consolidated and committee jurisdictions modernized. The use of institutional resources such as the Congressional Research Service and the new Office of Science and Technology could be enlarged. Better ways could be devised for senators to pool their resources informally. Sens. Adlai E. Stevenson III (D.-Ill.) and William Brock (R-Tenn.), backed by many junior senators, are advocating a comprehensive study much like the bipartisan effort that produced some real improvements in the House last year. The idea is timely, but no such review is likely to be launched until the Senate leadership and Rules Committee—those who manage the current system—have been persuaded that some changes might not hurt.

THE U.S. NUCLEAR STOCKPILE

Mr. ABOUREZK. Mr. President, the Center for Defense Information has just published an excellent report on the U.S. stockpile of nuclear weapons. Needless to say, the statistics are frightening. Instead of the 8,000 nuclear warheads in the U.S. stockpile that we often hear about, CDI reports that the United States now possesses almost 30,000 nuclear weapons and there are more where they came from.

The Center has found that we have 22,000 tactical nuclear weapons in addition to our 8,000 strategic warheads. We have been producing strategic nuclear weapons like they were vitamin pills—at the rate of 90 a month—with apparently no end in sight, except for that which was set by the somewhat nebulous Vladivostok Agreement. Even under this so-called arms limitation our strategic nuclear stockpile can grow to at least 21,000 weapons.

Cause for alarm should be recognized beyond that posed by shear numbers, however. CDI reports that "there is no coherent doctrine for using land-based tactical weapons." They also suggest that because 11,200 tactical nuclear weapons are actually stored abroad, they are much more susceptible to sabotage and accidents.

Just as important as their findings, however, are their excellent recommendations. The Center strongly recommends that all tactical nuclear weapons and strategic nuclear weapons not presently on U.S. ships and aircraft, be brought back to the United States. I strongly agree with this recommendation and I urgently recommend that the Congress give careful consideration to this suggestion.

I also believe that the Center's recommendation that far greater oversight is needed in this area is well founded. We have had the unfortunate experience, in the last few months, to learn what the dangers are to the lack of proper oversight of the Central Intelligence Agency. In the area of nuclear weapons and the potential for international disaster, there is even greater cause for meticulous and extensive congressional oversight.

Mr. President, I ask unanimous consent that the report by the Center for Defense Information be printed in the RECORD.

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

THE DEFENSE MONITOR

DEFENSE MONITOR IN BRIEF

The United States has 30,000 nuclear weapons in Europe, Asia, the United States and at sea. Eight thousand of those are strategic nuclear weapons; 22,000 are tactical nuclear weapons.

There are 7,000 nuclear weapons aboard U.S. Navy ships and submarines. 4,500 are strategic weapons on nuclear missile submarines. 2,500 are short-range tactical nuclear weapons; 1,400 of these are aboard U.S. aircraft carriers.

There is no coherent doctrine for using land-based tactical nuclear weapons. Tactical nuclear weapons create an impossible command and control problem and they invite pre-emptive nuclear strikes by an enemy. If tactical nuclear weapons were used in a war abroad the likely result would be the destruction of the country in which they were used.

The very presence of tactical nuclear weapons abroad creates a dangerous situation for the United States. The likelihood is great that an exchange of tactical nuclear weapons would escalate into a full-scale nuclear war.

The dispersion of so many tactical nuclear weapons around the world greatly increases the danger of theft, terrorism, and accidents.

Most land-based U.S. tactical nuclear weapons in Europe should be removed. All land-based tactical nuclear weapons in Asia should be removed. All nuclear bombs and nuclear air-to-surface weapons aboard U.S. aircraft carriers should be removed. The safety and security of U.S. citizens would be enhanced by such a move.

The excessive secrecy surrounding tactical nuclear weapons hinders oversight by Congress and is unnecessary to preserve U.S. security. A national debate on U.S. tactical nuclear weapons is in the public interest.

22,000 TACTICAL AND 8,000 STRATEGIC: 30,000 U.S. NUCLEAR WEAPONS

The United States has nearly 30,000 nuclear weapons at home, at sea, in Europe, and in Asia. 8,000 of these weapons are considered strategic weapons. 22,000 are considered tactical weapons. The main difference between strategic and tactical nuclear weapons is the difference in range. Tactical nuclear weapons have a shorter range but are sometimes more powerful than strategic weapons.

The 8000* U.S. strategic nuclear weapons are on (1) the 1054 U.S. Minuteman and Titan land-based missiles, (2) the 656 Polaris/Poseidon missiles on the 41 U.S. ballistic missile submarines, and (3) the nearly 500 U.S. SAC bombers. The U.S. has been producing strategic nuclear weapons at the rate of three per day for the past four years, and the total promises to grow to about 21,000 U.S. strategic nuclear weapons under the limits set by the November 1974 U.S.-Soviet Vladivostok Agreement.

Less publicized and understood is the fact that nearly 22,000 U.S. *tactical* nuclear weapons are in position worldwide. 7000 U.S. tactical nuclear weapons are on land in Europe. Approximately 1700 are located on land in Asia. 2,500 tactical nuclear weapons (as well as 4,500 strategic nuclear weapons) are estimated to be aboard U.S. Navy combat ships. The remainder, approximately 10,800 tactical nuclear weapons, are assigned to U.S. bases and forces in the United States.

U.S. tactical nuclear weapons widely dispersed

Europe	7,000
Atlantic Fleet (U.S. Navy)	1,000
Asia	1,700
Pacific Fleet (U.S. Navy)	1,500
United States	10,800
Total U.S. Tactical Nuclear Weapons	22,000

7,000 Tactical Nuclear Weapons in Europe: In Europe the U.S. and its NATO allies have 2250 aircraft, missile launchers, and nuclear cannons that can deliver 7000 U.S. tactical nuclear weapons. These weapons carry a combined explosive capability equivalent to an estimated 460,000,000 tons of TNT—roughly 35,000 times greater than the nuclear weapon that destroyed Hiroshima in 1945. These U.S. tactical nuclear weapons are in all NATO European states with the exception of Norway, Denmark, Luxembourg, and France. France maintains its own tactical nuclear weapons in France and Germany. U.S. nuclear forces in Europe are most heavily concentrated in West Germany where 207,000 U.S. military personnel are based.

U.S. tactical nuclear weapons in Europe include at least four different kinds of surface-to-surface missiles (Lance, Sergeant, Honest John, and Pershing), two sizes of nuclear artillery shells (155 mm and 203 mm), and over 500 U.S. nuclear capable fighter-bombers. The aircraft can be loaded with air-to-surface missiles or four different sizes of bombs or a combination of missiles and bombs. The largest tactical nuclear missile has over 400 kilotons in explosive power, equivalent to over 30 "Hiroshimas." Forward based systems such as the Pershing surface-to-surface missile or the nuclear-loaded aircraft are capable of attacking targets inside the Soviet Union from Western Europe.

U.S. Has 2-to-1 Advantage in Europe: The first U.S. tactical nuclear weapons were introduced in Europe in 1954, three years before the Soviet Union. Since that time the U.S. arsenal has grown dramatically and has undergone extensive changes as new U.S. tactical nuclear weapons replaced older ones. Soviet tactical nuclear deployment has been later, slower, and shows little weapon turnover. Soviet weapons in Europe have accumulated without much retirement of earlier weapons. This resembles the pattern, of their deployment of strategic nuclear weapons.

Still, there are two U.S. tactical nuclear weapons for each Soviet tactical nuclear weapon in Europe. Altogether U.S. forces in Europe have 7000 tactical nuclear weapons to 3000 to 3500 for Soviet military forces in Europe.

The U.S. armed forces deployed nuclear weapons to Europe in the early 1950's to offset numerically superior Soviet forces in

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* U.S. will have 8,500 strategic weapons by mid-1975.

Central Europe. At the time the Eisenhower administration was seeking to check Soviet manpower advantages through a strategic policy which threatened "massive retaliation" and U.S. tactical nuclear weapons in Europe were part of that policy. When the U.S. first placed tactical nuclear weapons in Europe the Soviets had no tactical nucelar weapons. By the late 1950's the U.S. monoply on tactical nuclear weapons was ended.

1700 U.S. Tactical Nuclear Weapons in Asia: Far less information has been released to the public by the Pentagon about the estimated 1700 tactical nuclear weapons that the U.S. maintains on land in Asia. U.S. tactical nuclear weapons are in Korea and the Philippines as well as at U.S. installations on Guam and Midway. Most of these weapons are for U.S. fighter-bombers, except in the Republic of Korea where Army and Air Force tactical nuclear weapons are based.

Thousands of U.S. Nuclear Weapons at Sea: The U.S. today has approximately 7000 strategic and tactical nuclear weapons at sea. There are 284 ships and submarines in the U.S. Navy that can carry nuclear weapons. In 1965, only 38 percent of U.S. ships could carry nuclear weapons. Today 56 percent are nuclear capable and the percentage is increasing each year.

The U.S. Navy is capable of delivering up to 12,000 tactical nuclear weapons in bombs, depth charges, torpedoes, and missiles. Many of these are capable of carrying both conventional and nuclear explosives. Center for Defense Information estimates place the number of U.S. tactical nuclear weapons at sea at 2500. (This is a conservative estimate. The maximum loading of nuclear weapons would result in a number four times larger than the Center estimate. SUBROC (a rocket propelled nuclear torpedo) is assumed to be loaded one-third nuclear, two-thirds conventional. All other U.S. Navy tactical nuclear weapons are assumed to be one-quarter nuclear loaded and three-quarters conventional.) This number of weapons carries an explosive punch equivalent to 150 million tons of TNT, more than 75 times the amount of explosives dropped from 1941 to 1945 on Germany and Japan by U.S. bombers. Over 90 percent of this nuclear destructive power is found in the 1400 tactical nuclear weapons aboard 14 U.S. attack aircraft carriers.

Nearly 15,000 Nuclear Weapons in U.S.: An estimated 14,800 U.S. nuclear weapons are kept in the United States. 4000 strategic nuclear weapons are depolyed at U.S. Minuteman and Titan missile sites and at SAC bomber bases. An additional 10,800 U.S. tactical nuclear weapons are estimated to be in the custody of U.S. forces in the U.S. The seven Army divisions on active duty in the U.S. have the full spectrum of tactical nuclear weapons. Stateside Navy and Air Force units also have a full complement of tactical nuclear weapons. Thousands more are stockpiled at U.S. storage facilities.

AWESOME TACTICAL NUCLEAR ARSENAL IN EUROPE

"The significance of our nuclear weapons stockpile in Europe, only in Europe, becomes all too apparent when one realizes that the destructive force, in TNT equivalent, of the nuclear weapons we have currently stockpiled alone is more than 20 times that of the combined total force of all the air ordnance expended in World War II, the Korean war and the war in Vietnam." Senator Stuart Symington, March 7, 1974.

TACTICAL NUCLEAR WEAPONS IN SEARCH OF A DOCTRINE

According to Secretary of Defense James Schlesinger, the U.S. deploys nuclear weapons to Europe to: (1) deter Soviet use to tactical nuclear weapons and Warsaw Pact attacks, and (2) to provide a nuclear option short of all-out war should deterrence fail and our conventional defenses collapse. As Morton Halperin, former Deputy Assistant Secretary of Defense, recently put it, "The NATO doctrine is that we will fight with conventional forces until we are losing, then we fight with tactical nuclear weapons until we are losing, and then we will blow up the world."

No one yet has been able to devise any reasonable set of scenarios for the use of our European-based tactical nuclear weapons. Defense Secretary Schlesinger had admitted to continuing to search unsuccessfully for a doctrine whereby tactical nuclear weapons could be confidently used without triggering all-out war. That is likely to be a fruitless search. It is a Center conclusion that there is no rational doctrine for the use of the U.S. land-based tactical nuclear weapons in Europe and Asia.

Defending Allies By Destroying Them: Something is wrong with a strategy which, if implemented, would destroy the country it is designed to defend. The use of 10 percent of the 7000 U.S. tactical nuclear weapons in Europe would destroy the entire area where such massive nuclear exchange occurred. War games practiced by NATO troops indicate the tremendous collateral damage that would be inflicted upon cities and people bordering the battle area. A NATO war game named Carte Blanche was run for 48 hours during which 335 tactical nuclear weapon explosions were simulated, 268 on German territory. A very conservative estimate placed Germans killed at between 1.5 and 1.7 million plus an additional 3.5 million wounded. In the six years of World War II 305,000 Germans were killed and 780,000 were wounded. Thus a very limited tactical nuclear war would produce over five times as many German casualties in two days as occurred in the entire Second World War.

A similar NATO war game, Operation Sagebrush, simulated the use of 275 tactical nuclear weapons that ranged in yield from 2 to 40 kilotons. According to the evaluation of the exercise, "the destruction was so great that no such thing as limited nuclear war was possible in such an area." Former Assistant Secretary of Defense Alain Enthoven, in testimony before the Senate Foreign Relation Committee, quoted a Defense Department report on war games conducted in Europe in the 1960's as saying that: "Even under the most favorable assumptions about restraint and limitations in yields and targets, between 2 and 20 million Europeans would be killed in a limited tactical nuclear war . . . and a high risk of 100 million dead if the war escalated to attacks on cities."

Any Nuclear War Likely to be Total: Once the nuclear threshold has been broken, it is highly likely that the nuclear exchanges would escalate. Radio, radar, and other communications would be disrupted or cut. The pressures to destroy the adversary's nuclear forces before they land a killing blow would lead to preemptive attacks. In the confusion, subtle peacetime distinctions between lower level tactical nuclear war and higher level tactical nuclear war, and all-out spasm nuclear war would vanish. Once the threshold is crossed from conventional warfare to nuclear warfare, the clearest "firebreak" on the path to complete nuclear holocaust will have been crossed.

Small Weapons Trigger Big Ones: One risk of developing tactical nuclear weapons, especially those now euphemistically called "mini-nukes", is that they may create the illusion that a limited nuclear war can be fought. Small weapons such as the 155mm nuclear artillery projectiles have already been introduced. The trend is for more of the same. As smaller, "cleaner", and more accurate tactical nuclear weapons are added to the U.S. arsenal, they will add to the dangerous illusion that tactical nuclear weapons can be used with no risk of escalation.

This overlooks two factors. First, the U.S. tactical nuclear arsenal is still loaded with large "Hiroshima-size" weapons. Second, the Soviet Union would respond massively to U.S. nuclear attacks. Even if all larger U.S. tactical nuclear weapons were replaced by new "mini-nukes", using them would trigger the older, bigger, and "dirtier" Soviet weapons with the same consequences for persons living in the area and the same resultant escalation.

The idea of a limited nuclear war is an illusion. However, it may encourage policymakers to be more reckless and make nuclear war, especially during acute crises, more likely.

U.S. NAVY TACTICAL NUCLEAR WEAPONS

U.S. Attack Aircraft Carriers: 14 U.S. carriers carry fighter bombers configured for attack roles and capable of launching nuclear air-to-surface missiles or dropping nuclear bombs. An estimated 100 nuclear weapons are aboard each U.S. carrier.

Forward-based aircraft: Fighter-bombers, nuclear capable, are deployed at bases in Europe and Asia and aboard 14 U.S. Carriers. Combat radiuses vary between 400 and 1100 miles. U.S. aircraft include F4s, F111s, A4s, A6s, A7s, F8s, and F14s.

Mark 57 and Mark 101 Nuclear Depth Bombs: Used in anti-submarine warfare (ASW) and delivered by P-3 and S-3 aircraft and ASW helicopters. Estimated yield of 5-10 kilotons.

Talos Surface-to-Air Missile: Yield of warhead of 5 kilotons. Found aboard U.S. cruisers to defend against air attack. Range of 70 miles.

Terrier Surface-to-Air Missile: Yield of warhead is about one kiloton. Found aboard U.S. destroyers and cruisers to defend against air attack. Range of 25 miles.

Anti-Submarine Rocket: ASROC weapons carry an explosive of 1 kiloton and are aboard U.S. cruisers, destroyers, and destroyer escorts. ASROCs are fired by 8-celled "Pepperbox" launchers. Range of 6 miles.

SUBROC Missile: Anti-submarine rockets, fired below water by submarines and travel in the air before reentering water. Yield of one kiloton. Range of 30 miles.

U.S. ARMY AND U.S. AIR FORCE TACTICAL NUCLEAR WEAPONS

Lance Surface-to-Surface Missile: Located in Europe and the U.S. Warhead yield up to 50 kilotons. Range of 70 miles.

Nike-Hercules Surface-to-Air Missiles: These SAMs have an explosive yield of up to 5 kilotons and will be phased out to be replaced by the new SAM-D under development. Located with U.S. and NATO forces in Europe and in Korea. Range of 80 miles.

Pershing Surface-to-Surface Missile: Located in Europe with U.S. Army and German units. Warhead of missile has explosive yields up to 400 kilotons. Range of 450 miles. Pershings are capable of hitting the USSR from Germany and are put on Quick Reaction Alert status.

Nuclear Artillery: 155mm and 203mm nuclear howitzers are located in Europe with U.S. Army and NATO forces. These are also found in Korea, in the U.S., and perhaps elsewhere. Range 10 miles.

Honest John Surface-to-Surface Missile: Located in Korea and in Europe with U.S. and NATO units. Warhead has an estimated yield of up to 100 kilotons. Range of 25 miles. Being phased out of Europe and replaced by Lance.

Walleye Air-to-Surface Missile: Carried by fighter-bombers like the F4, F111, A4, A6, or A7. Warhead has a yield of 5 to 10 kilotons. Range up to 35 miles.

Sergeant Surface-to-Surface Missile: Located in Europe with U.S. and NATO units. Warhead has estimated yield of up to 100 kilotons. Range of 85 miles. Sergeants are now being phased out by the U.S. Army.

Nuclear Air-to-Surface Bombs: Carried by U.S. and NATO fighter-bombers. Bombs such as the B-28, B-43, B57, B-61, and W-72 have yields from 5 kilotons to more than one meg-

aton. Picture is of "Fat Man," the atomic bomb that destroyed Nagasaki. For picture of a modern H-bomb, see page 9.

16,000 U.S. NUCLEAR WEAPONS ABROAD

7,000 U.S. tactical nuclear weapons in Europe (NATO):

(One-third of U.S. nuclear weapons in Europe are designated for U.S. forces, two-thirds for use of U.S. allied forces in NATO.):

Atomic Demolition Munitions (ADMs).
155mm Nuclear Cannons and Shells.
203mm Nuclear Cannons and Shells.
Lance Surface-to-Surface Missiles.
Pershing Surface-to-Surface Missiles.
Honest John Surface-to-Surface Missiles.
Sergeant Surface-to-Surface Missiles.
Nike-Hercules Surface-to-Air Missiles.
Nuclear Bombs (Air-to-Surface).
Walleye Air-to-Surface Missiles.
Nuclear Depth Bombs (Air-to-Subsurface).

2,000 total NATO nuclear capable fighter-bombers—including 500 U.S. aircraft.

Force outnumbers Soviet Tactical Nuclear Weapons in Europe 2 to 1.

U.S. Nuclear Fleet—Atlantic; 162 Nuclear capable ships and submarines:

6 Attack Aircraft Carriers.
2 Cruisers.
47 destroyers.
32 destroyer escorts.
30 ballistic missile submarines.
37 attack submarines.
7 ammunition ships.
1 escort research ship
U.S.N. Nuclear Capable Aircraft:
288 carrier attack aircraft.
144 carrier defense aircraft.
108 P-3 land-based ASW/Recon Aircraft.
5016 U.S.N. Nuclear Weapons:
Air-to-Surface Missiles (ASM).
Anti-Submarine Rockets (ASROC).
Nuclear Torpedoes (SUBROC).
Surface-to-Air Missiles (SAM).
Nuclear bombs.
Nuclear depth bombs.
Sea-launched ballistic missiles (SLMB).

U.S. Nuclear Weapons in the Philippines:

54 Nuclear capable fighter bombers.

Storage of U.S. Army, Navy and Air Force Nuclear Weapons.

U.S. Nuclear Weapons in South Korea:
155mm Nuclear Cannons & Shells.
203mm Nuclear Cannons & Shells.
Honest John Missiles.
Nike-Hercules SAMs.
Nuclear-Capable F-4 aircraft.
Nuclear bombs.
Air-to-Surface missiles.
Atomic demolition munitions.

U.S. Tactical Nuclear Weapons Abroad

Europe	7000
Atlantic Fleet	1000
Asia	1700
Pacific Fleet	1500
Total	11,300

U.S. Strategic Weapons at Sea

Atlantic	4016
Pacific	528
Total	4544

U.S. Nuclear Fleet—Pacific

122 Nuclear Capable Ships and Submarines:

8 Attack aircraft carriers.
3 cruisers.
38 destroyers.
32 destroyer escorts.
11 ballistic missile submarines.
20 attack submarines.
10 ammunition ships.
U.S.N. Nuclear Capable Aircraft:
384 carrier attack aircraft.
192 carrier defense aircraft.
108 P-3 ASW/Recon. Aircraft.
2028 U.S.N. Nuclear Weapons:
Air-to-Surface missiles (ASM).
Anti-Submarines Rockets (ASROC).
Nuclear Torpedoes (SUBROC).
Surface-to-Air Missile (SAM).
Nuclear Bombs.
Sea-launched ballistic missiles (SLBM).

FOUR NUCLEAR SAFETY DILEMMAS

Dilemma 1: Danger From Nuclear Terrorists: The risk of war with the Soviet Union has long been regarded as the primary threat to the security of the United States. In hopes of averting such a catastrophe, thousands of man-years have been spent by analysts exploring how such a war is likely to erupt.

The research and contingency plans designed to control escalation of crises and limited wars, to prevent accidental war or unauthorized attacks, and to deter a surprise attack, may be ignoring a likelier danger to U.S. national security—the nuclear terrorist.

A half-dozen terrorists with a home-made or hijacked nuclear weapon could cause thousands of deaths in a city like New York. Yet thousands of nuclear weapons are deployed by the United States, Soviet, French, and British forces in many different locations, some with questionable security precautions. If a terrorist group stole and detonated one "small" 10 kiloton nuclear weapon in New York City, the explosion could cause nearly 100,000 deaths—more than all the U.S. battle deaths incurred together in the Vietnam *and* Korean Wars.

One of the hundreds of U.S. tactical nuclear bombs in the one-megaton range, if exploded on Manhattan Island, would inflict casualties exceeding the *combined* totals of the war dead from the American Revolution, the War of 1812, the Mexican War, the U.S. Civil War, the Spanish-American War, the First World War, World War II, the Korean War, and the Vietnam War. Nearly one-and-a-half million people would perish in such an event.

More than 50 major terrorist groups are reported to exist worldwide. Urban guerrilla activities, Olympic murders, airplane hijackings, terror bombings, and airport massacres are all well known.

How safe are nuclear weapons from theft by terrorist groups? Not very, according to the few indicators available in this highly classified area. U.S. Army Special Forces exercises have shown that nuclear weapons storage areas can be penetrated successfully without detection despite guards, fences, and sensors. Their example could obviously be followed by a daring and well-organized terrorist organization.

The United States, its allies, and the Soviet Union have now deployed thousands of tactical nuclear weapons across the world, each in an effort to bolster its own national security. In doing so, these governments have made their societies more vulnerable to the nuclear terrorist. Our cities, as a result, are more likely to become casualties from nuclear terrorist attacks than from attacks by other countries.

Dilemma 2: Seizure by Allies: More than half of all U.S. nuclear weapons are stationed abroad or on the high seas. Countries where U.S. nuclear weapons are reportedly stationed include: Federal Republic of Germany, United Kingdom, Netherlands, Belgium, Italy, Iceland, Greece, Turkey, Spain, Portugal, Philippines, and Republic of Korea.

Once the U.S. deploys nuclear weapons to an allied country, we put in jeopardy our control of those weapons if that nation ever becomes unfriendly to the United States. Allied seizures of U.S. weapons could result in the United States having to fight its way into an allied country in order to rescue its own weapons.

This scenario takes on more plausibility in the light of the recent Greek and Turkish fighting on Cyprus. Both Greece and Turkey are host countries for U.S. tactical nuclear weapons and U.S. security forces were put on maximum alert guarding the weapons compounds during the short war between these two NATO allies.

Too many of the allied host countries that permit U.S. nuclear bases are dictatorships with oppressive regimes that spark dissent. Franco of Spain and Chung Hee Park of Korea are vintage examples of the genre. Some allies who permit U.S. nuclear weapons already have domestic insurrections on their hands. The Philippines and the United Kingdom are current examples. In Greece and Portugal recent coups d'etat have changed the complexion of the ruling groups. In countries plagued by civil wars and coups, U.S. tactical nuclear bases may not be safe from our "allies." During internal political disruptions in allied countries, U.S. bases might find themselves caught in the middle of a firefight. One side or the other might find it advantageous, or even necessary, to seize U.S. tactical nuclear weapons to gain the upper hand in the local struggle. Nor can we discount the possibility that allies such as the Republic of Korea might seize U.S. weapons in order to defend themselves from—or possibly to attack—their antagonists.

Dilemma 3: Unauthorized Use of Nuclear Weapons: The danger of misuse of U.S. nuclear weapons increases dramatically with the number of persons who are involved in their production, transportation, storage, security, and wartime use. Yet the 30,000 U.S. nuclear weapons are handled by many thousands of people, including U.S. military personnel, NATO allies, security guards, scientists at weapons labs, and shipyard and arsenal workers. Overall it is estimated that nearly 120,000 persons have access to U.S. nuclear weapons and weapons-grade fissionable material. While these positions are carefully screened by the Human Reliability Programs set up by the U.S. Government, there have been problems with the people who handle and would fight with nuclear weapons. An average of three persons per thousand in the U.S. armed services have been identified as suffering from mental illness serious enough for professional care. Congressional testimony indicates that 3,647 persons with access to nuclear weapons were removed from their jobs during a single year because of mental illness, alcoholism, drug abuse, or discipline problems. Twenty percent of the discharges which occurred in 1972 and 1973 were for drug abuse.

Many of the military security police are less qualified than their civilian counterparts in law enforcement and run into many of the same problems of morale and recruitment. Military training of security police is less extensive than that given civilian policemen. Lack of adequate screening hampers recruitment of high-confidence security forces. Military police have a record of higher-than-average crime and drug abuse rates and record more failures under the human reliability program than is found in the rest of the U.S. armed forces as a whole.

Dilemma 4: Nuclear Accidents: The dispersion of 30,000 U.S. nuclear weapons across the world's oceans, in dozens of ports, in numerous countries in Europe and Asia, and in the United States creates risks of accidents of unprecedented magnitude.

The Department of Defense has admitted at least eleven of what it calls "Broken Arrows", or major nuclear accidents. The Atomic Energy Commission reports at least four other accidents involving various components of nuclear weapons while under the agency's control. There is evidence that many other unreported and unconfirmed nuclear accidents have occurred since World War II. Serious students of the problem estimate that an average of one U.S. nuclear accident has occurred every year since 1945, with some estimating as many as thirty major nuclear accidents and 250 "minor" nuclear incidents during that time.

LETTER FROM A CONCERNED U.S. SOLDIER TO SENATOR SYMINGTON

"I am aware of the existence of [U.S.] tactical nuclear warheads . . . in Greece . . . and . . . in Turkey. . . . If Greece and Turkey should come to blows and seek to gain the advantage by forcibly taking these warheads to use upon the other it would undoubtedly cost many American lives and plunge the U.S. into an untenable position. . . . No more than 4 to 6 U.S. soldiers guard the bunkers which store the nukes! Most of the troops (about 40 per detachment) are housed about a quarter of a mile from the bunkers and could easily be isolated from the warheads."

"BROKEN ARROWS"—NUCLEAR ACCIDENTS ADMITTED BY THE PENTAGON

1. *Aircrash over Palomeres, Spain.* On January 17, 1966 an American B-52 bomber collided with a KC-135 refueling tanker causing the deaths of five crewmen and the dropping of 4 hydrogen bombs which were recovered after an intensive ground and sea search. Radioactive leakage and conventional explosions occurred in the area.

2. *Bomb Accidently Dropped over South Carolina.* On March 11, 1958, a B-47 bomber accidentally dropped a nuclear weapon in the megaton range over Mars Bluff, South Carolina. The conventional explosive "trigger" of the nuclear bomb detonated leaving a crater 75 feet wide and 35 feet deep. One farmhouse was obliterated. Luckily no nuclear radiation leakage was detected, no nuclear explosion occurred and no one was killed.

3. *Bomarc Missiles Burned in Fire.* On June 7, 1960, a fire at McGuire Air Force Base led to a series of shattering explosions and the destruction of one of 56 nuclear armed Bomarc missiles. While no nuclear explosion occurred there was a small amount of radioactive leakage creating a temporary health hazard.

4. *24-Megaton Bomb Safety Devices Sprung.* In 1961 a near catastrophe occurred at Goldsboro, North Carolina when a B-52 bomber had to jettison a 24-megaton bomb. Five of the six interlocking safety devices were set off by the fall. A single switch prevented the bomb from exploding, an explosion which would have been over 1800 times more powerful than the Hiroshima bomb.

5. *Greenland Air Crash Scatters Plutonium.* On January 21, 1968, a B-52 attempting an emergency landing at Thule Air Force Base, Greenland, crashed and burned on the ice of North Star Bay. The high explosive components of all four nuclear weapons aboard detonated producing a plutonium-contaminated area of at least 300-400 feet wide and 2200 feet long.

CENTER CONCLUSIONS

The secrecy surrounding nuclear weapons has made it nearly impossible for the Congress and the public to understand how many U.S. tactical nuclear weapons exist, where they are, how they would be used, and what the effects of their use would be. Increased Congressional oversight and public understanding is necessary and secrecy should be abandoned to the extent neccessary to guarantee it.

Most of the U.S. tactical nuclear weapons overseas can be brought home with no loss in national security. Indeed, there should be a net gain in security as the chances decrease for accidents, for theft, and for unauthorized use of the weapons. Increased U.S. national security would be the result of adoption of these Center recommendations:

1. Substantially cut the number of U.S. nuclear weapons in Europe. Perhaps no more than 500 would be enough to guarantee the participation of the U.S. strategic deterrent forces, yet this number would substantially cut the safety problems and costs of maintaining the force. Phasedowns could be gradual (e.g. 1000 per year) and might serve to produce similar Soviet phasedowns as the danger to them somewhat receded.

2. Restructure the remaining tactical nuclear weapons in Europe so that they are under the continuous operational control of the Supreme Commander of NATO (SACEUR). Weapons should be taken away from frontline field commanders of local units and deployed in the rear. This will improve security and control of these weapons.

3. Remove all Quick Reaction Alert Aircraft (QRA). Such systems are vulnerable to a surprise attack and lend themselves to the danger of hair trigger reactions and unauthorized use by U.S. and NATO pilots. Their missions can be taken over and performed more effectively by the ballistic missile submarine fleet.

4. Remove all forward deployed atomic artillery. Such weapons are subject to unauthorized use if forward units are surrounded and under attack. Moreover they might be easily captured if not used and turned against the NATO army they were designed to serve. Their forward deployment makes it likely that any war in Europe will be nuclear.

5. Remove all forward deployed atomic demolition munitions (ADMs) and all of those not permitted to be prechambered where that is necessary. Forward deployed ADMs, even if prechambered, would guarantee nuclear escalation of a conventional conflict—something to be avoided. ADMs that have not been prechambered to the optimal depth can cause excessive nuclear fallout and high damage to surrounding civilians and troops.

6. Remove aircraft and surface-to-surface missiles capable of hitting targets in the Soviet Union or deploy them to the rear where their status as tactical weapons is clear to the USSR. This also reduces the danger of unauthorized launching of bombs and missiles by U.S. forces directly against the Soviet Union.

7. Remove all nuclear weapons from South Korea, the Philippines, and other Asian states where they exist. Such U.S. weapons pose dangers of theft, unauthorized use, allied seizures, and accidents. They threaten to involve the U.S. in areas where we would be forced to intervene. Such situations not only make our foreign policy hostage to our weapons policy but might force the U.S. to create another precedent of nuclear first-use.

8. Substantially increase the security precautions around U.S. nuclear weapons compounds and more intensively screen U.S. personnel who handle tactical nuclear weapons.

9. The program to "modernize" tactical nuclear weapons should be shelved. Nothing is gained by their introduction and the dangers of creating illusions of "usable" nuclear weapons and blurring the distinction between conventional and nuclear war both increase rather than reduce the threat to U.S. national security.

10. Nuclear capable missiles, and missile launchers, should not be sold or given to countries that have a near-nuclear capability. To do so increases the risks of new countries "going nuclear" and increases the dangers to U.S. security thereafter.

11. Remove all nuclear weapons from U.S. aircraft carriers. Carrier aircraft have no strategic nuclear role that cannot be better carried out by other systems. Carriers are unlikely to exist for long in a nuclear war and their primary remaining useful mission is as mobile launching platforms for aircraft engaged in conventional attacks. Nuclear weapons aboard would degrade the capability of the carriers to perform that role.

REGIONAL OBSTRUCTIONISM FOSTERS UNEMPLOYMENT

Mr. PELL. Mr. President, today I would like to relate, in some detail, the story of a conspiracy, in which the Federal Government has combined administrative expertise and bureaucratic indifference in a successful effort to keep people unemployed.

Mrs. M. is a Rhode Islander of Portuguese descent: she is fluent in both English and Portuguese, she is a bright, intelligent, and hardworking woman. She needs a job, and needs it badly.

Mrs. M. responded to an advertisement for a position, funded under title II of the Comprehensive Employment and Training Act—CETA—as a bilingual teacher's aide in East Providence. This is not a "busy-work" job, but a position which is badly needed in my State, and which sorely misses a qualified employee.

Mrs. M. learned that, although she lives in a State whose unemployment rate is over 14 percent, and which has more than 61,000 unemployed workers, and in which unemployment has increased by more than 44 percent in the last month, she was ineligible for the job. Why was she declared ineligible? Because in the specific census tract in which she lives in East Providence, unemployment as measured in May of 1974—8 months ago—was not in excess of 6.5 percent as required by the Department of Labor's regulatory requirements.

In short, this woman was denied a meaningful job because she lives on the wrong block in a city and in a State that is beseiged with unemployment.

And, she is denied a job because the Labor Department's statistics are not up to date. Eight months ago, when unemployment in that census tract was measured, statewide unemployment was 6.4 percent. Today it is more than double that figure. It is a reasonable assumption that if the Labor Department measured the census tract unemployment today, they would find Mrs. M. eligible.

Here we have a clear example of blind application of inflexible administrative regulations by indifferent Federal Government bureaucrats, with several results: The intent of Congress is thwarted, an able woman is denied a meaningful job, and there are schoolchildren in East Providence who are denied the assistance of a bilingual teacher's aide.

I became aware of this case when Mrs. M. wrote to me. I will quote briefly from her letter:

> Firstly, I want to apologize for writing you this letter at a time when you have so many unpleasant issues to deal with, but I feel that my problem is of great importance . . . I feel no one has the right to keep a badly needed job unfilled on the basis of a technicality. . . .

My staff then traced Mrs. M.'s specific case from city government to State government to the regional office of the Labor Department in Boston, Mass. It became clear very quickly that while local and State officials were trying to be helpful, the problem lay in the CETA Federal regulations administered by the Boston regional office.

In response to my inquiry, the Federal regional office did two things:

First, they cited, after a 30-minute search, a matrix of regulations, which

taken in combination, could be construed to deny Mrs. M. a job.

Second, they informed me that "nothing can be done on a regional level" to help work out Mrs. M.'s problem.

I had always understood that the primary purpose of regionalism and Federal regional offices is to bring Government nearer to the people and more responsive to their needs.

But here we see, regionalism as it really works. It is a one-way conduit for restrictive, irrational, and ossified Federal regulations helping to insulate Washington administrators from reality. It does nothing to assist in the solution of a problem. It does not even perform the useful purpose of bringing to the attention of Washington administrators the fact that their regulations are not working right. In this case, regionalism is obstructionism—it just sits there and says "No".

Perhaps it will take an act of Congress to provide jobs for people like Mrs. M. But, frankly, I thought we had already passed an act that was intended to do just that.

SENATOR MUSKIE REVIEWS CHALLENGES TO ENVIRONMENTAL IMPROVEMENT

Mr. RANDOLPH. Mr. President, for more than a dozen years the Committee on Public Works has been actively involved in the development of legislation to protect and enhance our natural environment.

Programs developed in our committee and enacted by the Congress are being implemented with a resulting decline in the pollution of our country's air and water. The advances have been significant, but much remains to be done before we achieve adequate protection of public health.

The knowledgeable Senator from Maine (Mr. MUSKIE) has occupied a strong position of leadership throughout the evolution of Federal environmental programs. He has approached the task realistically, fully aware of the enormity of the challenge and equally conscious of the obstacles to be overcome. Senator MUSKIE, as chairman of our Subcommittee on Environmental Pollution, has carried out his work with fairness and with determination to fashion workable laws to facilitate the ending of contamination of our air and water.

In this time of energy shortage and economic recession the temptation is great to blame environmental programs for these problems and to seek solutions through the weakening of antipollution efforts.

Senator MUSKIE discussed the status of the environmental programs in a thoughtful and informative address before the International Conference on Biological Water Quality Alternatives in Philadelphia on March 4. His observations should be shared with all who share our concern, and I ask unanimous consent that the text of Senator MUSKIE's address be printed in the RECORD.

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

SPEECH OF SENATOR EDMUND S. MUSKIE

You have had an opportunity in the last two days to delve into the technical and scientific realm—to look at present and future biological alternatives for water treatment—and you have heard from distinguished and topical speakers. I would like to try to put things in the following context: how do the purposes here mesh with other purposes of the national water pollution program, and how do the systems you are discussing fit within it?

In today's political climate, any discussion of environmental issues is risky at best. Not only must those of us who continue to believe in environmental objectives explain our position more carefully but also we must defend those objectives in the context of an unfavorable economic climate.

We must begin by documenting the point that environmental programs did not generate either the economic crisis or the energy shortage.

We must begin by demonstrating that environmental controls do not cost jobs but rather create jobs.

And we must begin by restating that basic objective of improving the quality of human life while not detracting from an improved standard of living, especially for those who have not enjoyed the abundance which so often has caused deterioration of our environment.

So let me place environment in context. A recent study for the Environmental Protection Agency came to the following conclusions:

First, "The stimulus of increased expenditures on pollution control equipment in the early years of the decade is expected to raise the rate of economic growth through 1976 above the rate of increase otherwise projected for those years. . . ."

Second, "The unemployment rate, in keeping with the pattern of overall economic growth, is projected to be 0.4 percent lower in 1975 and 0.3 percent lower in 1976 than it would have been without pollution controls. . . ." and

Third, "The impact on prices over the decade show only slight increases which are almost phased out by 1972."

Now what do these figures mean? In essence they indicate that environmental requirements will have a stimulative economic impact—more jobs—more GNP—and slightly higher prices.

And what will the investment accomplish? You have heard broad statements about ecological and biological integrity. You have seen evidence of improved recreational and aesthetic benefits. You have probably seen statistics on the benefits to public health.

I cannot place a dollar value on these benefits.

I cannot tell you precisely what the value is of a clean stream or a clean sky. I am not prepared to place a dollar value on the estimated 15,000 deaths a year which result from dirty air. I am not even certain that our estimates of the value of a productive fishing resource are particularly accurate.

I am satisfied that man lives in a delicate balance with his environment and that our objectives—healthy air and clean water—are essential to maintaining that balance.

I am satisfied that our short term investment on environmental improvement will provide immediate economic benefit and in the longer run, essential ecological protection.

To those who assert that we are going too fast, I must respond that we are going too slow. Five years after Earth Day—four years after enactment of the Clean Air Act—three years after enactment of the Clean Water Act we are still negotiating over how clean is clean.

Only last month was the issue of water pollution funding finally resolved. Only now can we get on with the task of cleaning the nation's water. This is the question with which this Conference is concerned.

It is as if we are beginning again. The recent Supreme Court decision, declaring illegal the Administration's failure to allot the full program authorization, and our recessionary economy, with its ever-increasing unemployment, have accomplished what couldn't be accomplished before—they have stirred the sleeping giant—the 1972 Clean Water Act—put to sleep by the Administration's disregard of the law of the land—and headed that law again toward its stated objective: "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

The Supreme Court decision, dated February 18, 1975, made the following statement: "As conceived and passed in both Houses, the legislation was intended to provide a firm commitment of substantial sums within a relatively limited period of time in an effort to achieve an early solution to what was deemed an urgent problem." An early solution to an urgent problem indeed!

It is now two and one-half years later. President Nixon, with a stroke of his pen impounded the funds to do the job and delayed the program two and one-half years, thus seriously impairing our ability to meet our national goals.

The decision, in the end, turned on a technicality: whether the Administrator had the authority to withhold certain amounts from allotment, and was decided on the basis of overwhelming legislative history to the contrary. But its impact will be far-reaching—on the environment and on the economy.

During Senate consideration of the Conference report, I said in a passage that was cited by the Supreme Court decision as evidence of Congressional intent:

". . . to achieve the deadlines we are talking about in this bill, we are going to need the strongest kind of evidence of the Federal Government's commitment to pick up its share of the load. We cannot back down, with any credibility, from the kind of investment in waste treatment facilities that is called for by this bill. And the conferees are convinced that the level of investment that is authorized is the minimum dose of medicine that will solve the problem we face."

We didn't get the minimum dose—and, consequently, the deadlines are not being met—at least the 1977 deadlines for communities are not. Municipalities have been able to raise the local share, many states have been willing to participate financially, but the Federal commitment hasn't been there to match it.

Plans have been shelved, workers have been idled, factories have slowed down production of component equipment, and—this is the most insidious result—communities have lost hope—and lost belief—in the program. Projects that were ready to go in October of 1972 are no longer ready. There is no incentive to maintain momentum when there is no follow through. Why go through the motions, they ask?

We passed a law specifically designed to prod the communities into action—and to push the states to develop aggressive programs. The prod and the push was to be assured Federal assistance. But when they did their part, when they conducted their infiltration-inflow studies, when they established user charge systems, the Federal Government held back.

How can we cause innovation, how can we keep the pressure on technological improvement, when the Federal Government does not live up to its part of the bargain?

We have listened to the argument that the money couldn't be spent—that there were not enough projects ready to go—and we know that is not true. In Maine alone, we could obligate—within one year—the full en-

titled allotment of water pollution funds and still have to hold off on some projects.

And, we have been told that impoundment would have little impact on the program to clean up industry. The contrary is true.

Industries which had planned to hook into municipal systems have been stymied—they don't know what way to go—whether to build their own system or whether to wait for the municipal system.

And other industries have argued that it is unfair to force them to make a financial commitment when the Federal Government is not prepared to meet its own obligations.

But now the Supreme Court has ruled and the Administrator of EPA has agreed to make the full $9 billion available for obligation. We are, indeed, beginning again.

It is a time for decisive action—if the money is going to do any good, it must be quickly delivered. It is also a time to remind ourselves of our long-term objectives. That's what this Conference is doing today.

Your Conference—the speakers you have heard—remind us that it is not time to take the pressure off the technological community to find better and less expensive ways to do the job. We are, first and foremost, interested in reducing, and then eliminating pollution from our water—restoring and maintaining the quality of our lakes and streams. The more pollution we eliminate with each dollar invested, the better off we are.

But the water pollution program, conceived and designed to meet one major national concern—cleaning up the water—has taken on a new major role as well—stimulating a stagnant economy. The economy needs the money now—we must move those projects that are ready. But the environment ultimately needs long-term solutions, as well—solutions which may not be available in time to help stimulate our present sagging economy, but which, nonetheless, must be developed, refined, and perfected.

When we were working on the Clean Water Act some said that the country couldn't afford the cost of water pollution control, now it appears that the country can't afford not to do it—for economic, as well as environmental reasons.

These are two vital purposes—to restore our economy and to restore our environment—and they come together in the clean water program. As Chairman of the Senate Budget Committee and Chairman of the Subcommittee on Environmental Pollution, I have unique vantage point and an awesome responsibility. My role illustrates the scope of the legislation—and how its components reach out to touch many segments in our society. The extent to which the immediate and long-term needs of each effort can be merged into an active and vigorous program will provide a blueprint for solving major problems of the seventies. The seventies will show the health of the economy as dependent upon, not exclusive of, many other major social forces—education, health as well as environment.

As a United States Senator, my major objective is to get America back to work again—we desperately need to pump money into the sagging areas of the economy. We have a program ready to go—a program already committed to a major national purpose. By allotting and quickly obligating available water pollution funds, we can mitigate some of the construction industry's 15–20 percent unemployment rate.

The program will have important direct beneficial effects—the obligation of the $9 billion in impounded funds will create 360,000 direct new jobs, 180,000 in actual construction. But its major impact may be in its indirect effects. Factories will have to gear up and take on workers to provide equipment. The equipment will have to be transported and installed. Municipalities will have to hire consultants and staff for implementation. The 360,000 new workers will have money to spend on homes, appliances, and other consumer goods, further stimulating the economy. Steel and concrete will have to be made. The ripple effect is manifold and essential.

Of course, there will be some delays. All of the states will not be ready to spend all of the money; that's expected. But the appearance of movement and the promise of funding will have the effect of a stirring giant. Everyone will know the giant is going to move. Training programs will be revived. I would suspect that the full release of the money, if announced, will even move the market up a point or two.

But this is only rhetoric. We need a specific national commitment to accelerate the rate at which we approve projects, obligate these available funds, get construction under way, get people back to work and reduce the pollution load on our streams.

Yesterday Administrator Train and I discussed the need for this kind of commitment. As a result of that discussion and other information, I am convinced that EPA can and will more than double the monthly level of obligation of water pollution funds this year. And I am convinced that Administrator Train shares this goal. I think we can expect the level of obligation to increase from $200 million a month to more than $400 million a month by the end of the calendar year.

Testimony taken last Friday from states and communities indicate that we should be able to achieve that rate of obligation of Federal funds.

In order to accelerate the obligation of funds some projects which are not ready to go will have to be replaced on state priority lists with projects on which construction can begin within the next 12 months.

Enforcement of permits for municipal discharges, heretofore ignored because communities lacked the Federal funds to move ahead must now be enforced if communities delay submitting applications or are slow in getting approved projects under construction.

Communities should establish penalty provisions in contracts to assure prompt performance by engineers and contractors.

Reviews and analyses of projects and project applications which have been sequential must become concurrent. And projects which are routine must move so that projects which are controversial can be subjected to adequate public review.

Projects which will significantly improve water quality—such as projects which eliminate raw waste discharges—must receive priority in order that projects designated primarily to serve new growth can complete environmental impact analysis.

As Chairman of the Public Works Subcommittee on Environmental Pollution, I want to keep pollutants from reaching the water—or the air, for that matter. We developed the 1972 Clean Water Act to challenge technology to do better, to develop new and better treatment systems for all sources.

We should be on guard, however, against repeating past mistakes as we move quickly to gain the economic benefits of the construction grant program. I do not want to see the technological community—both public and private—interpret the rush to move the construction grant program as an opportunity to reinforce their old patterns, to rely on their old solutions.

For example, we adopted secondary treatment as a minimum concept. But we need, as a Nation, to move beyond that minimum. The current waste treatment methodology has been around, without major improvement, for 60 years.

The methods you are discussing in your conference hold great promise, and we need more people looking into more alternatives. We have spurred technology before, and technology has responded. Technology must respond again. It must go beyond existing methods.

The Act provides for this. The Administrator of the Environmental Protection Agency is directed to "encourage waste treatment management which results in . . . the recycling of potential sewage pollutants through the production of agriculture, silviculture, or aquaculture products . . ."

Systems which cooperate with nature are cheaper in the short run, and in the long run, use less of our valuable resources because they are renewable.

There will be a tendency, as the full amount of money is allocated, to rely on easy solutions—traditional engineering and construction practices. This would be contrary to the Clean Water Act's purposes.

Through the coming years as the program moves into full implementation, the Subcommittee on Environmental Pollution will continue to push for the development of that kind of innovative technology. Last year, we discussed the question in a hearing in Hawaii, and I said:

". . . secondary treatment is not necessarily the last word in methods to deal more effectively with water purity. Indeed . . . I am personally a little disturbed that in all the years since 1916 we have developed nothing better than secondary treatment as a way of dealing with these problems . . . I don't think we ought to be inhibited by the question of expenditure of monetary and other resources. If we can find a better method, we ought to go do it, hopefully at less cost and resource demands . . ."

As a Senator representing the State of Maine, I am especially interested in systems with a biological or natural base because, in the long run, they tend to employ more people from the local area and they are less capital and energy intensive.

My state has hundreds of small communities which tend to rely on treatment systems that were really developed for big cities. Thes communities are employing capital-intensive, energy-intensive systems, designed for areas that have a minimum of available land. In other words, they must put up something they don't have—money and machinery—and not something they do have—land. These communities have retained their natural support system which the cities have abandoned, but they are often not using it. We need to provide them with options tailored to their specific locations and needs.

Our economic problem is immediate, to be sure, but in addressing it, we should not provide only short-term solutions. Treatment plants that employ people only for construction are not the optimum solution. When the construction is completed, the jobs are done. The long-term employment implications must be factored in.

As Chairman of the new Senate Budget Committee, I want to keep our expenditures in reasonable proportion to our income. I am especially interested in those treatment systems which produce financial, as well as environmental benefits—benefits which recover valuable resources. Further, I want to see systems which can expand as a community expands, at community, not Federal expense.

This round of Federal assistance should not have to be repeated. The Federal Government should not and cannot commit itself toward an endless capital expense. The land application system developed in the community of Muskegon, Michigan, recently sold a corn crop for $400,000 despite an early killing frost, and that community predicts, during calendar year 1975, that they will pay their full

operating expenses with the receipts of their corn sale.

Muskegon is capable of handling growth without new construction. Their system is adaptable. In fact, two industries have sited in that area because of the adaptability of their system—and those industries are going to pay their full share of the costs of operation. Muskegon also uses land and air as cleansing agents—both renewable resources. There is no resource depletion.

In the greatest food-producing country the world has ever seen, we continue to consider nutrients as pollutants. Phosphorous, nitrogen and potassium have been the targets of water pollution clean-up efforts for years, and then viewed as a sludge disposal problem, while the cost of fertilizer has escalated to unacceptable levels.

The average day's worth of municipal waste is 40 billion gallons per day. With an average of 40 parts per million of nitrogen and 10 parts per million of potassium and phosphates, it is laden with nutrients.

Each year in the United States we discharge over $200 million worth of valuable nutrients into our waterways—and call them pollutants; 486 million pounds of organic nitrogen worth $121 million; 121 pounds of available phosphorous worth $68 million; and the same amount of potassium worth $12 million. And these are deliberately conservative figures. The value of these three major chemical fertilizer components does not tell the whole story because of the micro-nutrients: zinc, copper and lead which are frequently added at the farmer's expense to agricultural land. Healthy soil is composed of myriad organic components which need to be replenished; these are present in a municipal waste stream. Finally, in many areas of the country we cannot overlook the value of water, which is imported to agricultural lands at great cost.

We need to return these materials to nature, for nature's use, for economic, as well as environmental reasons.

We need to continue to push the program toward self-sufficiency and permanence—long-term solutions, based upon sound ecological concepts—like the kind that are being discussed at this conference—the kind that are required by the Clean Water Act.

As I have said, we are beginning again, and provided with new opportunities. We have great problems to meet and overcome, and we have a law to do it; enacted by an overwhelming majority of the people's representatives and embodying fundamentally sound ecological principles.

We need all of the most expert help we can get: of scientists and engineers; of lawyers and laborers; of politicians and administrators; all of us need to work together again to restore our economy and our environment, and create an order which embodies the ethic of the naturalist, Aldo Leopold:

"A thing is right when it tends to preserve the integrity, stability and beauty of the biotic community. It is wrong when it tends otherwise."

COMMUNIST MILITARY AND ECONOMIC AID TO NORTH VIETNAM, 1970–74

Mr. NUNN. Mr. President, as a result of my study of the Vietnam question, I found our intelligence estimates for the amount of aid that the Soviet Union and China provided to North Vietnam were incomplete and somewhat fragmented. In my report dated February 12, 1975, I called for vastly improved efforts to collect and synthesize our knowledge of what was going on regarding aid to North Vietnam. I am pleased to note that in a memorandum dated March 5, 1975, and prepared jointly by the Central Intelligence Agency, the Defense Intelligence, and concurred by the Bureau of Intelligence and Research of the Department of State that there have been efforts to improve our information on this matter. I believe that this report presents clear and unbiased estimates of the amounts of aid being provided to North Vietnam, even though there are still areas of uncertainty in those estimates.

I recommend that my colleagues read this memorandum, and I ask unanimous consent that it be printed in the RECORD.

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

MARCH 5, 1975.

Subject: Communist Military and Economic Aid to North Vietnam, 1970–74 [1]

1. The Intelligence Community has been requested to estimate the amounts of Communist aid delivered to North Vietnam in the years 1970–1974, using current US dollar costs of the materiel and services provided (see Table I). It is important to recognize that the Intelligence Community's estimate on this subject is not equivalent to—and hence not comparable with—US appropriations for military and economic aid to South Vietnam, for the following reasons:

(a) On the matter of accuracy, our information on North Vietnam has always been incomplete, although coverage on civilian imports is substantially better than for military aid. The drawdown of the US presence in Southeast Asia has further limited intelligence collection capabilities in the area, so that current information on North Vietnam is less comprehensive than it was formerly. In particular, on the question of Communist military aid, our information base is very spotty. Hence we know we are seeing only part of the picture on military aid, and our estimates for the part we cannot see have a wide margin of error.

(b) Military aid to North Vietnam is focused on materiel required for the type of military action undertaken by the Communist forces in South Vietnam—i.e., selected attacks from redoubt areas at times and places of their choice. US military aid to South Vietnam supports a different military mission—i.e., defense of scattered communities, large agricultural areas, and lines of communication, plus reaction and reinforcement of local forces after Communist attack. As the total forces for the different missions differ in size, so do their requirements for assistance. Throughout the war, South Vietnam's forces have been roughly twice the size of North Vietnam's forces in the South, primarily because the missions of South Vietnam's forces—protecting population and holding territory—have required a much larger and widely dispersed military structure.

(c) The GVN has therefore also required a combat air force and an ability to redeploy forces rapidly by ground and air transport. Thus, the types of equipment supplied to South Vietnam by the US have been more sophisticated and therefore more expensive than those required by Hanoi. South Vietnam also requires considerably more logistic support.

(d) In addition, shipping, overhead, and other support costs of military aid to the GVN are substantially more than support costs of Communist aid to North Vietnam because of the greater distance involved and other factors. (See Table II at annex.)

2. Several conclusions may nonetheless be drawn with respect to levels of military and economic assistance to North Vietnam from 1970 through 1974.

(a) Total Communist military and economic aid to North Vietnam in 1974 was higher (in current dollars) than in any previous year.

(b) The suspension of US air bombardment in North Vietnam at the beginning of 1973 brought about a large decrease in assistance for defense against such bombardment or to replace losses caused by it (e.g., air defense equipment, missiles, trucks, etc.)

(c) The U.S. disengagement from combat and the reduction in the level of hostilities in South Vietnam in 1973 were reflected in a substantial decrease in the amount of ammunition and ground force equipment received by North Vietnam, compared with 1972.

(d) In 1974, the delivery of ammunition to Hanoi markedly increased over 1973 and reached a level as high as that of 1972,[2] although deliveries of ground force equipment continued at relatively low levels.

(e) Economic aid was reduced in 1972 with the closure of North Vietnamese ports, but with their reopening rose sharply in 1973 and reached a record level in 1974. The economic aid increase in 1974 was further spurred by typhoons which damaged the 1973 North Vietnamese autumn rice harvest, the inflation of dollar values in 1974, and the increased pace of reconstruction during 1974.

3. The figures leading to the above conclusions are shown in Table I. They give a rough order of magnitude of Communist military assistance to North Vietnam and a somewhat more precise indication of economic aid. Within the category of military assistance, the estimates of deliveries of equipment and materiel ($275 million in 1974), as well as the estimate for transportation equipment ($25 million in 1974), are fairly good. Even a more complete data base would produce estimates of the same relative magnitude. This is not true, however, for those items listed under the "other military-related support" heading, where the lack of hard data makes our estimates subject to wider margins of error.

4. It should also be noted that in the final analysis what is significant is not so much the level of military assistance but the relative balance of forces on the battlefield in South Vietnam. North Vietnamese forces in South Vietnam, supported by record stockpiles of military supplies, are stronger today than they have ever been. The Communists are expected to sharply increase the tempo of the fighting in the next few months. Given the present military balance in the South, the GVN's forces will not be decisively defeated during the current dry season. At currently appropriated levels of U.S. military assistance, however, the level of combat that we anticipate in the next few months will place the Communists in a position of significant advantage over the South Vietnamese forces in subsequent fighting.

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[1] This memorandum has been prepared jointly by the Central Intelligence Agency and the Defense Intelligence Agency, and concurred in by the Bureau of Intelligence and Research, Department of State.

[2] The dollar figure shown in the table for ammunition deliveries in 1974 is considerably higher than that for 1972, but tonnages were about the same. Inflation of ammunition prices explains the difference.

TABLE I.—ESTIMATED COMMUNIST MILITARY AND ECONOMIC ASSISTANCE TO NORTH VIETNAM

[In millions of current U.S. dollars] [1]

	1970	1971	1972	1973	1974 [2]
Military	205	315	750	330	400
Military equipment and materiel	140	240	565	230	275
Air defense equipment	20	85	310	100	55
Ground forces equipment	45	80	110	40	45
Ammunition	70	60	130	85	[3] 170
Other	5	15	15	4	5
Military transportation equipment (trucks, helicopters, transports)	20	15	30	35	25
Other military-related support (delivery and packaging costs, spare parts, POL for the military, technical assistance and training, medical supplies) [4]	45	60	155	65	100
Economic	735	755	465	670	1,295
Commodity shipments [5]	635	645	360	540	1,145
Food	65	60	80	170	420
Fertilizer	10	15	5	5	25
Petroleum	10	10	5	15	55
Machinery, transport equipment, and metal products	240	175	125	165	345
Other	310	385	145	185	300
Technical assistance (includes cost of foreign technicians in North Vietnam and North Vietnam trainees abroad)	100	110	105	130	150
Total of estimated Communist goods and services provided to North Vietnam	940	1,070	1,215	1,000	1,695
Less North Vietnamese exports to Communist countries [6]	50	50	30	80	125
Total estimated Communist aid to North Vietnam	890	1,020	1,185	920	1,570

[1] Because of rounding, individual figures do not always add to the totals in this table.
[2] The data for 1974 are preliminary.
[3] Although ammunition supplied to North Vietnam in 1974 constituted an estimated 40 percent of its military aid, our data regarding probable ammunition costs per ton are admittedly "soft." Therefore, if our price estimates are off by, say, 10 percent, the total value for ammunition alone could fluctuate by some US $17,000,000.
[4] The lack of hard information on the items included under "Other military-related support" makes these estimates subject to a wider margin of error than exists for other categories of military assistance to North Vietnam.
[5] For economic goods, the cost of transportation is included in the cost of the goods as shown in the table. (For military goods, delivery and packaging costs are included under "Other military-related support.")
[6] Since North Vietnamese exports in these years paid for some of North Vietnam's imports, we have subtracted them to derive our estimates of Communist aid to North Vietnam.

TABLE II.—COMPARISONS OF MAJOR CATEGORIES OF COMMUNIST MILITARY AID TO NORTH VIETNAM AND UNITED STATES AID TO SOUTH VIETNAM

[In million U.S. dollars and percentages]

	Communist military aid delivered to North Vietnam, calendar year 1974		United States military aid so far appropriated to South Vietnam, fiscal year 1975	
	Amount	Percent	Amount	Percent
Total military aid [2]	400	100	700	100
Military equipment and materiel	275	69	268	38
Air defense equipment	55	14	----------	(3)
Ground forces equipment	45	11	----------	(3)
Ammunition	170	43	268	38
Other	5	1	----------	(3)
Military transportation equipment	25	6	----------	(3)
Delivery costs	20	5	74	11
Other military-related support (including spare parts, POL for the military, technical assistance and training, medical supplies, and miscellaneous costs)	80	20	358	[4] 51

[1] For reasons explained in the text, our figures on Communist aid to North Vietnam (some of which are soft estimates) are not readily comparable with U.S. aid appropriations for South Vietnam. Also, the data we have on Communist aid is kept on a calendar year basis while U.S. aid appropriations are keyed to a fiscal year cycle. The above table, however, gives a rough indication of the way the 2 aid packages break out in calendar year 1974 for Communist aid and fiscal year 1975 for U.S. aid.
[2] Figures may not add because of rounding.
[3] One reason for the wide disparity is a charge against the U.S. aid account for administrative expenses for the DAO in South Vietnam which has no known counterpart on the Communist side. There are also other items for which no counterparts on the Communist side are available, such as offshore maintenance servicing of military equipment, and construction.

NATIONALIZING THE RAILS

Mr. McGOVERN. Mr. President, last year I introduced S. 3177, the Rail Revitalization and Energy Conservation Act. I am preparing similar legislation now and will reintroduce it later in the session. The purpose of this bill is to formulate a national rail policy thereby providing railroads with the means to upgrade and expand their existing facilities and thus offer more and better rail service. The legislation would provide, along with the development of this national transportation plan, immediate Federal relief for the most significant railroad problems.

It is interesting to note that in its March 17 issue, the respected magazine Business Week has essentially endorsed this concept, calling it "the only workable idea left." Mr. President, I ask unanimous consent that this article be printed in the RECORD.

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

NATIONALIZING THE RAILS

In its long-awaited report, the U.S. Railway Assn. estimates that more than $2.3-billion is needed to upgrade the roadbeds of the bankrupt railroads in the Northeast and the Midwest. Because such sums can come only from Washington, the report suggests that Congress create a federal corporation, the Consolidated Facilities Corp., to buy, rehabilitate, and own the tracks. In a word, the roadbeds would be nationalized.

Shocking as nationalization may have been a couple of years ago, it now seems to be the only workable idea left. Large sections of track owned by the bankrupt lines are in such bad shape that derailments are frequent, and shippers can no longer depend on rail service for safe, efficient transportation. If nothing is done, they would gradually be forced to shift from rail to truck, worsening the nation's energy and environmental problems.

Under the proposed plan, only the track would be federally owned. ConFac would lease the rehabilitated rails to a privately owned operating company which would be known as the Consolidated Railroad Corp. ConRail would market freight service in the area, operate the trains, and pay user charges to ConFac. ConRail would need some government subsidy in order to get started. But it is someday supposed to turn a profit.

The government could, of course, pay the rehabilitation bill without taking ownership of the rails. But taxpayers could then justifiably question the propriety of such a large-scale public bailout of private corporations.

To speed the rehabilitation of the rails, Congress should also consider a vast public works program to tap the huge pool of unemployed labor that has been created by the recession. Thousands of jobs—on the rails, in steel mills, and in factories—could be filled. The time is economically ripe for such a program, and the benefits would be enormous.

Nationalization—even of decaying facilities owned by bankrupt companies—is never easy for businessmen to accept. But under the circumstances, nationalization of the rails is the only way out.

ARAB ECONOMIC BOYCOTT

Mr. BENTSEN. Mr. President, as one who has long been concerned about the

Arab economic boycott and who some time ago called on this administration to publicly protest it, I commend President Ford for deploring the policy of economic discrimination being pursued by the Arab nations. I am pleased to join in cosponsoring Senate Resolution 100 which will put the Senate firmly on record as condemning such coercive tactics as being contrary to the principles on which our Nation was founded: no discrimination on the basis of race, creed, or national origin.

The United States must not stand in silence but must protest the virtual state of economic belligerency which exists in the Middle East as well as the more recent toward discrimination against American companies with Jewish management. There have even been allegations that U.S. Government agencies are bowing to Arab demands to exclude Federal Government employees who are Jewish, from participating in official business with Arab nations.

We must not tolerate the existence of those discriminatory practices which amount to an intrusion into the internal affairs of our country. U.S. law clearly states that it is the policy of this Nation to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries. I believe that is a good policy and it should be followed. And I firmly believe that an investigation should be carried out to determine whether that statute is being violated.

I urge my colleague in the Senate to support Senate Resolution 100, which is a clear statement that we must not permit our national integrity to be undermined or compromised.

JOHN FENWICK TERCENTENARY MONTH

Mr. CASE. Mr. President, the Salem County, N.J., Board of Chosen Freeholders has proclaimed September of 1975 to be John Fenwick Tercentenary Month.

In view of the contribution to our heritage made by John Fenwick, I ask unanimous consent that the Salem County Board of Chosen Freeholders' resolution proclaiming John Fenwick Tercentenary Month be printed in the RECORD.

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

RESOLUTION NAMING SEPTEMBER 1975 AS JOHN FENWICK TERCENTENARY MONTH

Whereas, the good ship Griffin having dropped anchor in the Delaware River near the mouth of the Salem River on or about September 23, 1675; and

Whereas, John Fenwick, his three daughters, two sons-in-law, thirteen servants and forty-eight other settlers alighted from the said Griffin and founded the first permanent English speaking colony in the Delaware Valley; and

Whereas, the said John Fenwick due to his Quaker teachings of love and peace named the new land Salem, taken from the Hebraic word, Shalom, meaning peace; now, therefore, be it

Resolved by the Salem County Board of Chosen Freeholders that in memory of these happenings do declare the month of September, 1975, to be John Fenwick Tercentenary Month throughout the entire County.

RULE XXII

Mr. CURTIS. Mr. President, in the debate and discussion of a proposal to change Senate Rule XXII, references have often been made to the number of quote "good" bills that have died because of the failure to invoke cloture and cut off debate. Proponents of a change in the filibuster rule have stated that many of these good bills would have passed if the number of Senators voting to invoke cloture was reduced from two-thirds to three-fifths of those present.

I do not need to expound on my beliefs on the issue of changing cloture requirements under rule XXII—I am sure most of my colleagues are aware of my position just as I am aware of the positions of most of them.

However, I do think there is a need to set the record straight on the past actions of the Senate involving cloture votes. We should always attempt to have the facts clearly presented in any matter before us, and in this case, perhaps the facts will help some who are not firmly decided in their position on this important matter.

I happen to think it is important that the whole truth be told, that all the facts are presented, that a complete picture is painted, before a decision is made. Thus, I think it is important that statements about the obstructionist impact of rule XXII be answered by facts that can only lead to conclusions to the contrary. The figures which I will use here are based on tabulations of three-fifths of Senators present and voting, and not on the constitutional three-fifths requirement contained in the compromise we have worked out for action today. The information is condensed from a record of cloture votes in the Senate which was compiled by Congressional Quarterly.

Mr. President, such general statements as "only 22 of 101 cloture votes have been successful," and "24 other cloture votes would have been successful on the basis of a three-fifths requirement," while true enough, are nevertheless very misleading. They do not tell the whole story about the Senate's record on cloture votes, and are therefore misleading.

These statements would have us believe that only 22 bills have been saved from the death of the filibuster and that another 24 bills would have survived if cloture had been allowed to be invoked by a three-fifths vote. The fact is that these were not votes on all different bills, and that they were not votes on bills themselves, but on the question of ending debate on bills and motions.

Expressed in percentages, proponents of a three-fifths vote for cloture would have us think that 22 percent of bills on which cloture was voted were enacted, and that another 24 percent of bills would have been enacted if a three-fifths vote had been required on cloture instead of a two-thirds vote.

However, the facts borne out in the record of Senate votes on cloture prove how misleading these statements and assertions are. Some of the cloture votes did not involve legislation at all, many were not on the bills themselves, many were repetitions of previous attempts at cloture, and none was a vote on the actual legislation involved. I will not get into a lengthy discussion of the distinction between a vote to end debate on a motion, bill or other point, and a vote on an actual bill itself—I am sure that is apparent to all here. But, I feel it is important that we look at the numbers of actual bills and cloture issues that have succeeded and have failed, where proponents of cloture change have so readily referred to the seemingly small number of issues that have succeeded under cloture.

Mr. President, rule XXII was established by the U.S. Senate in 1917. In the 58 years since that time, through February 26 of this year, 101 cloture votes have occurred in the Senate. Of those, 22 votes were successful in stopping debate under the two-thirds vote required. Another 24 would have been successful if the vote to invoke cloture was three-fifths instead of two-thirds. But it is interesting to note that 10 of those votes were on matters that eventually had cloture invoked anyway in subsequent votes. Furthermore, seven cloture votes were taken that failed to get three-fifths support and which on subsequent votes got three-fifths support but failed to obtain the necessary two-thirds.

Of the 101 votes on cloture, nine were on matters for changing rule XXII itself, and not on legislation. One subject that failed on cloture under the two-thirds requirement actually would have succeeded under a three-fifths vote on one day, but on a vote for three-fifths the very next, would have failed. A total of 22 cloture votes were taken on seven bills that were eventually successful in having debate stopped under the two-thirds requirement. There have been five issues involving more than one attempt which have not been successful but would have been successful under a three-fifths vote requirement. But, those five issues had a total of 14 vote attempts of which nine received three-fifths support but not two-thirds.

Cloture has been successfully invoked on 15 first attempts on legislation, under the two-thirds requirement, and there have been 13 issues which have only one attempt at cloture and have failed to get either two-thirds support or three-fifths support.

There were two single unsuccessful cloture attempts that would have succeeded under a three-fifths requirement. Nine issues had multiple attempts at cloture—a total of 22—that failed to get either two-thirds or three-fifths support. These do not include the nine attempts to change rule XXII itself, and which were not concerned with specific legislation.

I think it is important also to point out that only two past attempts at cloture required less than a simple majority of the membership of the Senate—one in 1928, and one in 1946—under the two-thirds requirement. But, under a three-fifths requirement, there have been 16 votes on cloture that would have required less than a majority of the total Members of the Senate to be successful. No votes to invoke cloture have been successful with less than a simple majority of the total number of Senators. But of those invoked with two-thirds of the

Senators in attendance, eight were on votes with fewer than two-thirds of the number of Senators, and two were votes of fewer than three-fifths of total Senators.

In the history of the Senate cloture rule, the highest vote to invoke cloture was 86 to 8 to end debate on the Rail Reorganization Act of February 26 of this year.

The lowest vote to end debate was an unsuccessful attempt on labor disputes on May 25, 1946, that failed 3–77. But, before and in between these votes, many cloture attempts were made that had less than a majority of total Senate support and several with very little support. A total of 41 of the 101 cloture votes had fewer than a simple majority of the entire Senate in support.

Mr. President, what all of these figures point out is that the references to cloture being obstructionist in blocking many good bills are simply not accurate. From the record of the Senate in its past votes on cloture, it is obvious that there were only a total of 53 issues, and not 101, which had attempts at cloture. Of those, 22 did have cloture invoked. Of the remaining 31 issues on which cloture was attempted, a total of only seven would have been successful under a three-fifths vote of Senators present. The remaining 24 issues involving 44 votes for cloture failed under the two-thirds requirement, and would have also failed under a three-fifths requirement. It should be pointed out that many of those cloture votes had less than a simple majority of the total number of Senators.

The point of this is that if the Senate had been operating under a three-fifths rule of Senators present to invoke cloture in the past, it would only have changed the outcome of seven cloture attempts over a 58-year period. I think this points out that our cloture procedure requiring a two-thirds vote has not been as obstructionist as has been claimed. At the same time, I think it shows the importance of our need to insure a voice for minority opinions and positions, and suggest that my colleagues bear this in mind when considering their vote on any proposal to change the cloture vote requirement.

Mr. President, there have been 79 votes taken on cloture in the time I have served in the Senate. A check of my record in voting on those cloture attempts will show that I have been on both sides of the question, and that I was as frequently on the prevailing side as on the losing side in deciding to cut off or continue debate. Furthermore, I think my statement could be applied to most of my colleagues who have served in the Senate for any length of time. But, in those instances when I was on the losing side, either for cutting off or continuing debate, I did not demand that the rules be changed on cloture. And, when I have been on the prevailing side either way, I have respected the right of the minority side to present its case, to make its arguments, and to be heard.

The U.S. Senate is required by the Constitution to ratify treaties of the United States by a two-thirds vote. The Senate is required to pass amendments to the Constitution by a two-thirds vote, and the House of Representatives must also pass amendments by a two-thirds vote. And, we are required to override Presidential vetoes of legislation by a two-thirds vote.

Mr. President, I do not think it is too much for the people of this great Nation to expect that the voices of the minorities will be heard in the Halls of Congress; and I suggest that the same two-thirds requirement for treaties and constitutional amendments and veto overrides can best assure the right and opportunity of those voices to be heard in the U.S. Senate.

I ask unanimous consent to have printed in the RECORD a listing of cloture votes taken in the Senate since 1917.

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

Issue	Date	Vote	2/3 majority required	Votes needed under 3/5 majority present
Versailles Treaty	Nov. 15, 1919	78–16	63	57
Emergency tariff	Feb. 2, 1921	36–35	48	43
Tariff bill	July 7, 1922	45–35	54	48
World Court	Jan. 25, 1926	68–26	63	57
Migratory birds	June 1, 1926	46–33	53	47
Branch banking	Feb. 15, 1927	65–18	56	50
Disabled officers	Feb. 26, 1927	51–36	58	52
Colorado River	Feb. 26, 1927	32–59	61	55
District of Columbia buildings	Feb. 28, 1927	52–31	56	50
Prohibition Bureau	Feb. 28, 1927	55–27	55	49
Banking Act	Jan. 19, 1933	58–30	59	53
Antilynching	Jan. 27, 1938	37–51	59	53
Antilynching	Feb. 16, 1938	42–46	59	53
Antipoll tax	Nov. 23, 1942	37–41	52	47
Antipoll tax	May 15, 1944	36–44	54	48
Fair Employment Practices Commission	Feb. 9, 1946	48–36	56	50
British loan	May 7, 1946	41–41	55	49
Labor disputes	May 25, 1946	3–77	54	48
Antipoll tax	July 31, 1946	39–33	48	43
FEPC	May 19, 1950	52–32	64	58
FEPC	July 12, 1950	55–33	64	58
Atomic Energy Act	July 26, 1954	44–42	64	58
Civil Rights Act	Mar. 10, 1960	42–53	64	57
Amend Rule 22	Sept. 19, 1961	37–43	54	48
Literacy tests	May 9, 1962	43–53	64	58
Literacy tests	May 14, 1962	42–52	63	57
Comsat Act	Aug. 14, 1962	63–27	60	54
Amend Rule 22	Feb. 7, 1963	54–42	64	58
Civil Rights Act	June 10, 1964	71–29	67	60
Legislative reapportionment	Sept. 10, 1964	30–63	62	56
Voting Rights Act	May 25, 1965	70–30	67	60
Right-to-work repeal	Oct. 11, 1965	45–47	62	55
Right-to-work repeal	Feb. 8, 1966	51–48	66	59
Right-to-work repeal	Feb. 10, 1966	50–49	66	59
Civil Rights Act	Sept. 14, 1966	54–42	64	58
Civil Rights Act	Sept. 19, 1966	52–41	62	56
District of Columbia Home Rule	Oct. 10, 1966	41–37	52	47
Amend Rule 22	Jan. 24, 1967	53–46	66	59
Open Housing	Feb. 20, 1968	55–37	62	55
Open Housing	Feb. 26, 1968	56–36	62	55
Open Housing	Mar. 1, 1968	59–35	63	57
Open Housing	Mar. 4, 1968	65–32	65	58
Fortas Nomination	Oct. 1, 1968	45–43	59	53
Amend Rule	Jan. 16, 1969	51–47	66	59
Amend Rule	Jan. 28, 1969	50–42	62	55
Electoral College	Sept. 17, 1970	54–36	60	54
Electoral College	Sept. 29, 1970	53–34	58	53
Supersonic transport	Dec. 19, 1970	43–48	61	55
Supersonic transport	Dec. 22, 1970	42–44	58	52
Amend Rule 22	Feb. 18, 1971	48–37	57	51
Amend Rule 22	Feb. 23, 1971	50–36	58	52
Amend Rule 22	Mar. 2, 1971	48–36	56	50
Amend Rule 22	Mar. 9, 1971	55–39	63	57
Military Draft	June 23, 1971	65–27	62	55
Lockheed Loan	July 26, 1971	42–47	60	54
Lockheed Loan	July 28, 1971	59–39	66	59
Lockheed Loan	July 30, 1971	53–37	60	54
Military Draft	Sept. 21, 1971	61–30	61	55
Rehnquist nomination	Dec. 10, 1971	52–42	63	57
Equal Job Opportunity	Feb. 1, 1972	48–37	57	51
Equal Job Opportunity	Feb. 3, 1972	53–35	59	53
Equal Job Opportunity	Feb. 22, 1972	71–23	63	57
United States-Soviet Arms Pact	Sept. 14, 1972	76–15	61	55
Consumer Agency	Sept. 29, 1972	47–29	51	46
Consumer Agency	Oct. 3, 1972	55–32	58	53
Consumer Agency	Oct. 5, 1972	52–30	55	49
School Busing	Oct. 10, 1972	45–37	55	49
School Busing	Oct. 11, 1972	49–39	59	53
School Busing	Oct. 12, 1972	49–38	58	53
Voter Registration	Apr. 30, 1973	56–31	58	53
Voter Registration	May 3, 1973	60–34	63	57
Voter Registration	May 9, 1973	67–32	66	59
Public Campaign Financing	Dec. 2, 1973	47–33	54	48
Public Campaign Financing	Dec. 3, 1973	49–39	59	53
Rhodesian Chrome Ore	Dec. 11, 1973	59–35	63	57
Rhodesian Chrome Ore	Dec. 13, 1973	62–33	64	57
Legal Services Program	Dec. 13, 1973	60–36	64	58
Legal Services Program	Dec. 14, 1973	56–29	57	51
Rhodesian Chrome Ore	Dec. 18, 1973	63–26	60	54
Legal Services Program	Jan. 30, 1974	68–29	65	58
Genocide Treaty	Feb. 5, 1974	55–36	61	55
Genocide Treaty	Feb. 6, 1974	55–38	62	56
Government Pay Raise	Mar. 6, 1974	67–31	66	59
Public Campaign Financing	Apr. 4, 1974	60–36	64	58
Public Campaign Financing	Apr. 9, 1974	64–30	63	57
Public Debt Ceiling	June 19, 1974	50–43	62	56
Public Debt Ceiling	June 19, 1974	45–48	62	56
Public Debt Ceiling	June 26, 1974	48–50	66	59
Consumer Agency	July 30, 1974	56–42	66	59
Consumer Agency	Aug. 1, 1974	59–39	66	59
Consumer Agency	Aug. 20, 1974	59–35	63	57
Consumer Agency	Sept. 19, 1974	64–34	66	59
Export-Import Bank	Dec. 3, 1974	51–39	60	54
Export-Import Bank	Dec. 4, 1974	48–44	62	55
Trade Reform	Dec. 13, 1974	71–19	60	54
Fiscal 1975 Supplemental Funds	Dec. 14, 1974	56–27	56	50
Export-Import Bank	Dec. 14, 1974	49–35	56	50
Export-Import Bank	Dec. 16, 1974	54–34	59	53
Social Services Programs	Dec. 17, 1974	70–23	62	56
Tax Law Changes	Dec. 17, 1974	67–25	62	55
Rail Reorganization Act	Feb. 26, 1975	86–8	63	57

Mr. FANNIN. Mr. President, the cloture rule may very well be the most vital issue that will come before the Senate in this session. I would like to highlight some important facets.

Let me remind those who represent the less populous and smaller of the States of the Union in the Senate that the adoption of the proposed changes will deprive them of an important weapon that Representatives of such States have to protect the rights of their people. The Senate and its rules are the last citadel where these States are afforded an equal chance with their larger neighbors.

Every man who has ever served as a delegate from a small State to a political convention, where Presidents are nominated and platforms are written, knows they are overwhelmed by the huge delegations from the populous States. In the House of Representatives, it is impossible for the Representatives of small States to protect their constituents. States that have 2 or 6 or even 10 Representatives are at an obvious disadvantage in dealing with those that have 25, 35, or 41 Representatives. They are often hard put to get even 5 or 10 minutes to present the views of their people. It is amazing to see Representatives from these States support the pending proposition. There has never been an issue presented that more asserts the doctrine that the end justifies the means.

If the present proposal is adopted, there will be many cases where Senators will have little choice, no voice and no rights. Rule XXII will be a gag rule that is more summary and less justified than is the gag of the previous question in the House of Representatives.

Mr. President, in the Constitutional Convention of 1787 the question of representation in our legislative bodies was the rock on which the Convention all but foundered. The most difficult question faced by the Founding Fathers was in finding some place in our system where the least populous and smaller States would have an equal chance to protect their rights in a representative government joined in a republic of States.

The greatest genius of that Convention was the creation of the Senate. The representatives of the small States in the Convention had the vision to resist until they secured a forum of equality. They even exacted a pledge and wrote it into the Constitution that equality of representation in the Senate could not be denied any State except by its own consent.

The trend of the times frankly causes me to fear that through similar tactics to those being employed here a way will be found to eliminate that provision.

By striking down the protection that the Senate rules provide for a minority or for the individual Senator, there is some purpose at work that bodes no good for the maintenance of our system of government.

I believe the Senate is the most important, vital organ in our whole system of government and is the only forum where any minority or any State or individual Member may express himself. I have, therefore, always fought to the limits of my ability to protect and preserve the Senate in the form envisioned and agreed upon by the Founding Fathers.

It is well to remember, Mr. President, that the majority in this body or in any legislation body does not need the protection of any rules. The majority, in the absence of rules, can use raw political power to run roughshod over the minority. The rules of the Senate not only propose orderly procedure, but seek to protect the right of minorities down to individual Senators. What we are asked to do here now is to disregard our rules and allow imposition of a gag rule by a bare majority. I know that there will be those who delude themselves with the idea that they can follow this policy and find a way to impose cloture by a three-fifths vote. This idea is fallacious.

Mr. CHURCH. Mr. President, on February 21, 1975, I presented my argument against any modification of rule XXII.

I ask unanimous consent that the statement I made at that time may be printed again in the RECORD.

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

ON AMENDING SENATE RULE XXII

Mr. CHURCH. Mr. President, each day brings news that the winds of change are sweeping away ancient rules, privileges and prerogatives in the Congress. The House of Representatives has taken the unprecedented step of electing its committee chairmen on a basis other than seniority. The Senate Democratic caucus has itself followed suit. In the future, committee chairmen may be elected by secret ballot, secretly called for.

I voted for this change. During may 18 years in the Senate, the seniority rule has imposed the virtue of patience. Junior Senators have had no alternative but to keep living until the day that they, too, would be rewarded for longevity with a committee chairmanship. Now that some of us, having survived the years, stand on the threshold, suddenly we have voted away the prize. Like the Allies stopping at the gates of Berlin, we have chosen to deny ourselves the certitude that rank will bring privilege. And this is probably best.

Presently, we are considering yet another ancient rule, a 56-year-old section of the Standing Rules of the Senate which, for many years, was perceived as the procedural weapon of civil rights opponents. Rule XXII was indeed invoked, again and again, to prevent a vote on civil rights legislation. Nevertheless, despite the rule, a way was found to pass the Civil Rights Act of 1957. By the mid-1960's, after a strenuous fight over a much stronger bill, the two-thirds majority required by the rule to end debate, was achieved. Since then, cloture has been voted much more frequently, due in part to changes in the Senate's composition and in part to success in one cloture vote leading to success in another.

Paradoxically, although rule XXII has steadily become a less formidable barrier to legislative action in the Senate, it remains the symbol of the old order, and therefore the irrestible target of all would-be reformers.

This was true in my own case, as it has been in so many others. The first vote I cast, upon entering the Senate in 1957, was against rule XXII. Since then, at the opening of several sessions of the Congress, I have led the fight to reduce to three-fifths the requirement of the rule that two-thirds of the Senators present and voting must approve, in order to end debate. Four years ago, Senator PEARSON and I offered an identical resolution to that now before us.

During the intervening years, however, cloture has been invoked much more frequently; genuine filibusters, undertaken for the purpose of preventing a vote, usually fail. But the rule does give a measure of protection against hasty action on controversial proposals, sometimes insufficiently understood. Extended debate has often served the country well.

Moreover, as I have finally come to understand, the rule greatly strengthens the hand of the Senate in its dealings with the House of Representatives, as well as with the Presidency, itself. It follows that every curtailment of rule XXII weakens the institutional strength of the Senate.

Finally, it must be stressed that rule XXII no longer favors any particular clique in the Senate, neither the South against the North, nor conservatives against liberals, nor hawks against doves, nor any other grouping. From time to time, rule XXII is now being utilized by widely differing factions ranging across the whole spectrum of political philosophy and economic beliefs. It is being used often with good effect, as when reliance on the rule enabled determined opponents of the SST to ultimately prevail. In the closing days of the last session, resort to the rule made it possible for our conferees to reinstate important Senate amendments to the Export-Import Bank bill, which had been summarily stricken by the House.

Moreover, as a result of developments in the final hours of the last session, I suggest we have been given still another reason to retain rule XXII in its present form.

When the Trade Reform Act came to the Senate in December, cloture was invoked before a single word of debate was uttered. A two-thirds majority approved cloture, not for the purpose of ending debate, but for the purpose of excluding nongermane amendments. All at once, rule XXII was transformed into a closed rule, more constraining in certain respects than that used in the House of Representatives, where at least the Rules Committee can vote for a closed, a partially closed, or an open rule.

This was the first time I can remember that cloture was ever used for a purpose other than curbing debate. But now that this technique has been discovered, it will be used again. If this is a pernicious reverse twist of the rule, as I believe to be the case, the abuse will be all the easier to practice, if only a three-fifths vote is required.

For these reasons, I am convinced that rule XXII should not be altered as proposed. I do not derogate the arguments in favor of changing the rule. I, myself, once made them, believed them, and urged their acceptance. But, for nearly 2 years now, I have come to a different view, and so must seek such refuge as I can in the well-known words of Ralph Waldo Emerson:

"A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines."

LEAN TIMES FOR CATTLEMEN

Mr. McGOVERN. Mr. President, the business of raising cattle is one of America's oldest and proudest traditions. But that tradition is in danger of becoming just a legend, for the cattle industry is in very serious trouble. Cattlemen suffered heavy losses last year and the industry is facing more financial ill health this year. Given our dependence on the cattle industry to fill the huge national demand for beef, that outlook threatens all of us, not just the cattlemen.

The March 17 issue of Business Week discusses these problems, their back-

grounds and repercussions, and ideas that may bolster the cattle industry. I ask unanimous consent that this article, "Lean Times for Cattlemen" be printed in the RECORD.

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

LEAN TIMES FOR CATTLEMEN

The U.S. cattle industry has rarely looked sicker. Cattle producers are staggering from losses that totaled close to $2.5-billion in 1974, chiefly because of an oversupply of cattle. And as a result of high feed prices, there is disaster at the feedlots. Some feedlot operators are already bankrupt. And others are striving to maintain a viable business base by chopping heavily into other properties.

"We're paying a hell of a price for the privilege of wearing boots and cowboy hats," claims Dudley T. Campbel, general manager of the sprawling Chaparrosa ranches that, with 10,000 cattle, form one of the largest cattle-raising empires in south Texas.

Moreover, the industry faces financial slaughter again this year. At a minimum, many cattlemen agreed at last week's Houston Livestock Show & Rodeo, the U.S. market for beef sales will not pick up until after the recession. That could mean two or three more years of heavy losses, more than many cattle raisers will be able to withstand. And because of a growing oversupply of cattle in the U.S., there is very little any single producer can do to help himself.

Inventories of cattle and calves now stand at more than 132-million head, or roughly 6-million more than the market profitably can sustain. This is a 3% jump from a year ago, compared with a normal 1% annual inventory rise.

A partial liquidation is the obvious answer to the cattle industry, inventory problem. And it could be accomplished quickly if cattlemen were willing to sacrifice some of their breeding stock. But there is a profit-making motive working against such a move.

"We don't care if our neighbors kill their cows," admits one rancher. "But my herd took me five years to build. If I cut it back now, I can't produce big calf crops when the market improves."

"We're just going to have to eat our way out of this," agrees rancher Lee Duggan, who keeps 300 cows on a spread just outside Houston. "And that takes time."

Ironically, cattle raisers were having their best year just two years ago, getting up to 65¢ a lb. in the slaughterhouse for top-grade steers. Now the steers command only 30¢ a lb. and that may fall still lower because a peak in cattle inventories is not now expected until 1976.

Cattlemen accept a big part of the blame for the disastrous drop in the price they now get for their cattle. Spurred on by the healthy beef market in the early 1970s, they overexpanded their herds, ignoring the fact that periodically they always seem to get in trouble with surplus stock. That surplus tends to run in 10-year cycles. And since 1965 was a peak surplus year, they should have anticipated another big surplus about this time.

Now, cattlemen are suffering severely. But this time, they claim, they also have been hit by a series of market disruptions that were not all of their own making.

REACTION

First, they point out, the big grain sale to Russia triggered a three-fold jump in U.S. feed grain prices. Then, in July, 1973, the Nixon Administration announced 45 days in advance that it was lifting price ceilings on beef. Beef producers, feedlot operators, and packers all fell into the trap. They saw an opportunity to get higher prices by holding beef back from market until controls were lifted. What they did not see was what would happen next.

When the price ceiling did come off, so many cattlemen stampeded to the marketplace that the price they got for beef plunged. Meanwhile, inventories, which had started to decrease, began growing again. And they were raised further by a truckers' strike.

"Our problems have been as bad as those of the auto and real estate industries in the past year," contends B. Kleberg Johnson, a director of the famed King Ranch, based in Kingsville, Tex.

Surprisingly, U.S. demand for beef has remained healthy during the cattle industry's present cost-price squeeze, despite the growing pressure on Americans' pocketbooks. Annual beef consumption increased about 6% in 1974 to 115.8 lb. per person and it is expected to hit 122 lb. per person this year. That compares to an average annual consumption increase of about 2% a person between 1960 and 1970.

FEEDLOT MISERIES

Steadily growing beef consumption may save cattle producers before the end of the 1970s. But it will be too little and too late to salvage many feedlot operators who have been absorbing huge losses for the past 18 months. The main culprit here is the soaring price of grain, which has all but wrecked the economics of fattening cattle in feedlots.

The feedlot business by the early 1970s had blossomed into a $10-billion industry. But by the end of last year, the cost of adding weight to a steer in the feedlot had risen to 60¢ a lb., vs. 25¢ a lb. as recently as late in 1972. Now, prices of both grain and young calves have dropped to the point where feedlot fattening of cattle begins to make good economic sense again. But the feedyards still are stocked with large inventories of cattle, bought at higher prices, which are selling at a loss of about $50 a head.

Things are so bad that close to a score of feedlot operators have already dropped out of the business, and the industry's losses have "taken most of the liquidity of the industry," according to Kenneth W. Monfort, president of Monfort of Colorado, Inc., the country's biggest feedlot operator.

Monfort is weathering the storm because its profitable meat-packing business has covered part of the losses suffered by its cattle-feeding business. But another giant feedlot operator, Texas-based Wheatheart Feeders, Inc., has declared bankruptcy, and Mesa Petroleum Co. has sold its cattle feeding business. For others, the shakeout still may not be over.

California's Fat City Cattle Co., which was feeding 70,000 cattle in its feedyards a year ago, is now down to 3,000 cattle in its pens.

Stratford of Texas, Inc., which in 1973 was the second largest cattle feeder in the U.S., lost almost $20-million in 1974, and is selling off most of its non-feedlot assets to keep float.

GLIMMERS OF HOPE?

There is little question that the economic problems in the cattle business are changing the way the industry does business. Since January, 1973, the number of cattle in U.S. feedlots has dropped 34% to 9.6-million head. With the higher cost of grain, cattlemen are leaving their cattle to fatten in pasture longer and sending more of them directly from pasture to the slaughterhouse. In 1973, almost 70% of all cattle slaughtered in the U.S. had been fattened in a feedlot. By last year, that number had dropped to 60%, and a further slide to 50% is expected this year.

For cattlemen, that means no real difference in the price at which they sell their cattle. And for consumers, there is the unexpected bonus of bargain-hunting for lower-grade, leaner cuts of beef.

But when the turnaround comes, it could be the feedlot operators who will see their fortunes improve the soonest. William C. Helming, president of the Livestock Business Advisory Services, Inc., in Kansas City, Mo., for one, expects that shrewd feedlot managers who are able effectively to hedge their feeding programs by buying and selling grain and cattle futures, could even return to profitability by early next year.

"We are more optimistic about cattle feeding because grain prices are coming down," he explains. Farm prices for feed corn have dropped from a peak of $3.85 a bu. last year to about $2.50 a bu. now. "Feed corn may get down to the $1.75 to $2.25 range in the fourth quarter of this year or early next year," Helming predicts.

THE OIL DEPLETION ALLOWANCE

Mr. GARN. Mr. President, the House of Representatives has acted to end the oil depletion allowance, and I am informed that the Senate will soon be given an opportunity to vote on the same question. As I am sure other Senators have, I have received a number of letters from my constituents discussing this issue and wondering what the rationale is for it.

One such letter makes particularly good sense to me, and I ask unanimous consent that it be printed in the RECORD at the close of my remarks.

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

(See exhibit 1.)

Mr. GARN. Mr. and Mrs. Croft correctly note the anomaly of trying to encourage domestic production of oil in order to reduce our dependence on foreign sources, while at the same time acting to discourage oil exploration and dependence on foreign sources, while at the same time acting to discourage oil exploration and development in particular by the small companies which do the bulk of the exploration.

EXHIBIT 1

PROVO, UTAH,
March 1, 1975.

DEAR SENATOR GARN: My wife and I would like to express our concern over the House of Representative's vote to eliminate the oil depletion allowance.

It does not seem logical, at a time when we are striving for energy self-sufficiency, to reduce the incentive for oil companies to explore for and develop new oil wells. Particularly does it not seem appropriate in view of the economic benefit that does now and will continue to flow to Utah from oil.

The oil companies have been grossly maligned for exhorbitant profits. But their profits allow them to develop new energy resources—of benefit to all Americans.

We are very much opposed to the measure passed by the House, which would eliminate the oil depletion allowance. We urge you not to support such a measure in the Senate.

Sincerely yours,

DOUGLAS O. CROFT.
CHARMAIN R. CROFT.

S. 625—EMERGENCY UNEMPLOYMENT HEALTH BENEFITS ACT OF 1975

Mr. BAYH. Mr. President, this Nation is fast approaching a double-digit rate of unemployment; a desperate situation that cries out for stronger medicine than anything yet prescribed by the administration. The jobless rate for January was 8.2 percent, up from 7.1 percent in December. January's unemployment rate was higher than it has been since 1951—

24 years ago. One labor expert recently noted:

The past three months (November 1974 to January 1975) have witnessed the sharpest rise in unemployment since the Great Depression of the 1930's.

Between September 1974 and January 1975, almost 2 million persons lost their jobs. Recently, the administration estimated that during an average week in calendar year 1975, about 7.5 million workers will be unemployed. And this does not include hundreds of thousands of Americans who are either underemployed or who have stopped looking for jobs.

One of the most serious problems that the jobless will face—and one that could quickly have catastrophic effects on the families of the unemployed—is the loss of group health insurance coverage.

A recent study published by the Social Security Administration found that the vast majority of full-time workers in the United States are covered under a group health insurance plan. However, once an individual becomes unemployed, he or she loses this group coverage and generally has only a limited period of time to convert to private coverage. Private health insurance coverage is expensive. A minimum private health insurance plan for a family now costs about $40 a month. In contrast, group health insurance is relatively inexpensive to the worker since the employer usually pays a substantial portion, and in some instances, all of the costs.

It is unrealistic to expect a jobless worker, receiving an average weekly unemployment benefit of $64 a week, to pay for private health insurance coverage. Under such circumstances, health insurance quickly becomes an unaffordable luxury.

A recent survey by the Washington Business Group on Health indicates that the current 8.2-percent unemployment rate, translated into people, represents over 8 million unemployed and 25 million dependents without group health insurance protection over the next year.

Obviously, this situation cannot be permitted to occur. That is why I am cosponsoring and strongly support S. 625, the Emergency Unemployment Health Benefits Act of 1975. Given the urgency of this situation, it is gratifying that the Labor Committee moved quickly to hold hearings on this legislation.

In effect, the bill would provide each unemployed worker entitled to Federal or State unemployment compensation with the same health coverage he and his family had prior to being unemployed. The bill would authorize the Secretary of Labor to make payments to the unemployed worker's insurance carrier or union fund to cover the costs of health insurance premiums.

Almost everyone agrees that unemployment has reached critical proportions. It is widespread, growing and complex. The sharp declines in the automobile and construction industries are now reverberating throughout the economy. Even our larger cities, faced with declining tax revenues, are beginning to make major job cutbacks in municipal staff.

As my distinguished colleagues noted upon introducing S. 625, this is an emergency piece of legislation which calls for immediate passage in order to assist millions of Americans who need the protection of health care insurance during this critical period in their lives and in the life of the Nation.

Experts tend to describe unemployment in terms of "rates," "percentages," "decimals," and "ratios." However, these statistical terms cannot accurately reflect the impact of joblessness on the affected workers, on their families, or on the quality of their individual lives.

It is with a sense of this human cost of soaring unemployment that I urge the Senate to move expeditiously to approve S. 625.

WILLIAM T. COLEMAN, SECRETARY OF TRANSPORTATION

Mr. HUGH SCOTT. Mr. President, I am very pleased that the Senate acted promptly in confirming my good friend Bill Coleman as the new Secretary of Transportation. He brings outstanding qualifications to this high office. I ask unanimous consent that an editorial from the Philadelphia Inquirer of March 6, 1975, on Mr. Coleman be printed in the RECORD.

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

MR. COLEMAN CONFIRMED

As the Nation stands on the threshold of revolutionary changes in transportation—mandated by energy, pollution and traffic problems resulting from overreliance on the automobile and neglect of mass transit—it is fortunate to have William T. Coleman as the incoming secretary of transportation.

His unanimous confirmation by voice vote in the Senate followed impressive performances in committee hearings. The distinguished Philadelphia lawyer with long experience in transportation matters will bring to his new post not only knowledge of the subject but intimate sensitivity and appreciation of the special difficulties, including inadequate funding, that plague public transit systems in urban areas.

Even while confirmation proceedings were under way in the Senate, Mr. Coleman was representing SEPTA in tough contract negotiations that underscore both the immediate and long-range fiscal crunch on urban transportation.

William Coleman, noted for his sense of fairness as well as sound judgment, can be counted on to give a full hearing to all sides in the total spectrum of transportation matters within the jurisdiction of his Cabinet office. We wish him well, and congratulate President Ford and the Senate on their selection and confirmation of an uncommonly well qualified head of the Transportation Department.

OUTSTANDING MEDICAL TRANSPORTATION

Mr. MATHIAS. Mr. President, we now recognize that doctors and nurses and hospitals and laboratories are not the whole story in providing adequate medical care. For many Americans, a vital ingredient of adequate medicine is transportation.

I am particularly pleased by the fact that my own home community has created a model facility to provide transportation for those who need to travel to medical facilities. The Medical Transportation Unit of Frederick County, Md., has been saluted by medical leaders in many parts of the country. An example is a recent letter from the seizure clinic at the John F. Kennedy Institute in Baltimore, Md., which has invited the Frederick unit to present the features of its services at a meeting in Baltimore. I am proud of this pioneer work done by my friends and neighbors in Frederick County.

Donald Date, director of community services in Frederick and his associates in the Frederick Medical Transportation Unit should be thanked for their work in forging the link between patients and the medical resources they need. Frederick County has set the pace for the whole State of Maryland in this essential paramedical service.

I ask unanimous consent that the letter from the Kennedy Institute be printed in the RECORD.

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

SEIZURE CLINIC,
JOHN F. KENNEDY INSTITUTE,
Baltimore, Md., February 24, 1975.

DONALD DATE,
Director, Community Services, Winchester Hall, Frederick, Md.

DEAR MR. DATE: I recently met with Ms. Karen Lapidus, Director, Developmental Disabilities Council for the State of Maryland, to discuss the problem of transportation after having spoken with representatives from each and every country.

We would like very much, if it is acceptable to you, to use the county of Frederick as a model for transportation across the state for services to handicapped people. Your county, in my opinion, offers the most efficient service to date. We would like to know how your transportation service came about, who organized it, where the funding comes from, what the pitfalls were in the beginning, what the problems are that exist now, what the cost is to serve the people of your county, what unmet needs you see and how you would go about implementing more extensive service if the opportunity presented itself.

We would like to invite you to come to Baltimore and make such presentation at a meeting sometime in the early part of March. We felt that by using a model system such as yours, it makes much more sense to begin there than to try and tackle the state as a whole at this point in time. I would appreciate it very much if you could let me know if such a meeting would be possible and when it could be arranged. I may be reached at 955-6382 or 955-5300.

Thank you very much and looking forward to hearing from you.

Sincerely,

DIANA J. PILLAS,
Administrative Assistant, Seizure Clinic.

GHANA CELEBRATES NATIONAL DAY

Mr. HARTKE. Mr. President, in 1879, a few cocoa seeds were imported into the country which we now know as Ghana. Today Ghana furnishes half of the world's supply of cocoa.

The history of this independent country was recorded as far back as 743 A.D. when Arab traders entered the region searching for the source of the fabulous gold trade.

On March 6, Ghana celebrated its National Day. Under the leadership of Col. I. K. Acheampong, Ghana has greatly increased its gross national product and has moved very rapidly from a one-crop economy to a multifaceted, diversified system of self-reliance.

The Government of Ghana has always welcomed and encouraged foreign companies to participate in the growth of the country and has granted a wide range of fiscal and tax incentives. American companies such as Kaiser Aluminum, Firestone Tire & Rubber Co., Union Carbide, and Star Kist enjoy a fruitful participation in the Ghanian life.

One of West Africa's oldest universities, Achimota, is in Accra and there is an estimated 5,000 Ghanain students studying in various schools in the United States.

With the kind of energy and drive manifested by the people of Ghana, it is fitting that the American people congratulate the people and the Government of Ghana on her Independence Day, March 6, 1975.

THE NATIONAL CANCER PROGRAM

Mr. JAVITS. Mr. President, public attention was recently focused on an article in the Washington Post by Daniel Greenberg which sought to cast serious doubts about the effectiveness of the crash national cancer program, which had been initiated under legislation I authored and introduced with Senator KENNEDY.

I believe my colleagues and the American public are entitled to have the benefit of a thoughtful analysis of the points made in Mr. Greenberg's article. Accordingly, I ask unanimous consent that the full text of an article entitled "The National Cancer Program: Now the Good News," by Frank J. Rauscher, Jr., Director of the National Cancer Institute, be printed in the RECORD at the conclusion of my remarks.

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

Mr. JAVITS. Mr. President, scientific progress is mainly a matter of incremental movement, and I believe that there have been sufficient advances made to warrant the congressional conclusion for a continuation of the national attack on cancer, as evidenced in Public Law 93-352.

Although Mr. Greenberg, the author of the Washington Post article, is a sophisticated and constructive critic, it is essential that we have the opportunity to read Dr. Rauscher's thoughtful response to the Greenberg article. A critical element in Dr. Rauscher's response, with respect to the national cancer program, which I would commend particularly to my colleagues' attention is, as Dr. Rauscher states:

> The fact is that increased funding for the NCP did not become available until 1972 and in 1973 the new NCI Cancer Control Program began its first year of operations designed to speed the application of the latest research results for the benefit of people. The full impact of this Congressionally mandated control program will not be felt for several years because it takes time to get the latest diagnostic and treatment methods into community practice where they may be applied for the benefit of all patients.

EXHIBIT I

THE NATIONAL CANCER PROGRAM: NOW THE GOOD NEWS

(By Frank J. Rauscher, Jr., Ph. D., Director, National Cancer Program, National Cancer Institute)

A recent article in the Washington Post entitled "Cancer: Now, the Bad News": which has appeared in Science and Government Report and the Columbia Journalism Review requires comment because it completely disregards the major accomplishments of the National Cancer Program.

The central theme of the article, by Mr. Daniel S. Greenberg, is that because 5-year survival figures published by NCI on patients who were treated from 1964 to 1969 showed only slight improvement in survival from many common forms of cancer, therefore, the National Cancer Program (NCP) enacted by Congress in 1971 was making little progress.

The fact is that increased funding for the NCP did not become available until 1972 and in 1973 the new NCI Cancer Control Program began its first year of operations designed to speed the application of the latest research results for the benefit of people. The full impact of this Congressionally mandated control program will not be felt for several years because it takes time to get the latest diagnostic and treatment methods into community practice where they may be applied for the benefit of all patients. It takes even longer to get knowledge about cancer prevention translated into public action. The Surgeon General's Report identifying cigarette smoking as the major cause of lung cancer was published 11 years ago, yet lung cancer is now at epidemic proportions.

While Mr. Greenberg is correct in stating that survival from major forms of cancer did not improve dramatically between 1964 and 1969, obviously this cannot be used to evaluate a program which became operational 8 years later. Significant advances were, in fact, made in the 1960's and additional advances have been made since establishment of the national program.

Before discussing these advances, it is useful to examine the conceptual basis which is the foundation of our scientific effort to reduce and eventually eliminate deaths from cancer. The NCP plan, developed by more than 250 leading scientists and clinicians (most of them from outside the Federal Government) recognized that to reduce cancer mortality requires five things:

1. Finding causes in order to prevent the disease.
2. Early detection and diagnosis because early disease is most successfully treatable.
3. Better treatment for early disease, since not all early disease is cured and too many patients go on to develop advanced disease.
4. Better treatment for advanced disease because people most often die of advanced disease.
5. Application of research findings for the benefit of people.

The research and outreach thrusts of the NCP are directed to all five of these necessary objectives. Uncovering the causes of the more than 100 forms of cancer will lead to prevention. Our programs in viral causation, chemical carcinogenesis and epidemiology all search for cancer causes. We can take credit for having developed the sophisticated scientific techniques necessary to elucidate the role of viruses in human cancer and we can take credit for having recently isolated the strongest candidate to date for a human cancer virus. We have been able to identify chemicals and industrial pollutants that cause cancer and in some cases we have succeeded in identifying persons at high risk for developing cancer.

Some events are beyond our control or knowledge such as the sharp decline in the U.S. in the incidence of stomach cancer. We do not know why this is and we take no credit for it. A similar decline in the incidence and deaths due to cervical cancer can be largely credited to the development and application of better diagnostic methods.

Mr. Greenberg makes one reference to the fact that survival rates are not the only criteria for evaluating research in a field as complex as cancer, and the trend in cervical cancer is an excellent example of this. Survival had not improved in the 1969 figures because *only* women with more advanced disease were included. Those women with early curable lesions, which would develop into widespread disease, were not included in the cervical cancer statistics. If they had been, survival would have shown a dramatic statistical improvement. This is just one example of how prevention, which is the best form of treatment, can be highly effective, yet the casual reader of survival statistics will conclude that there has been no progress.

In the area of early detection and diagnosis, NCI and the American Cancer Society are now supporting 27 diagnostic centers to apply the techniques of early diagnosis that reduced breast cancer mortality by 30% among women screened by the Health Insurance Plan of New York. Approximately 250,000 women will be screened annually and we predict that this will yield a substantial saving in lives. Other projects in early diagnosis are under way for cervical and lung cancer.

Developments in early treatment include a report in recent months that adding a single chemical to the surgical treatment of breast cancer has substantially reduced recurrence of the disease.

Since advanced disease is the form of cancer that usually kills, it has been the focus of much of the research on treatment. In the last 15 to 20 years we have developed forms of systemic treatment that could be applied to patients with early cancer. These systemic treatments have been developed with advanced cancers such as the leukemias and lymphomas, which are usually widespread when discovered. Now that treating these disseminated diseases has been successful, we know that the same principles should be applicable both to other advanced cancer and to early cancers. Thus early and advanced breast cancer, and advanced ovarian cancer are now being treated with good results by the techniques that were developed over the years with leukemia and lymphoma. Today, the successful less disfiguring treatment of cancer is also a distinct possibility.

However, before better measures for prevention, diagnosis and treatment can be reflected in reduced mortality statistics, research findings must become common knowledge among both practicing physicians and the people. This is the mandate of the Cancer Control Program.

The concept of lag time is an important but poorly understood aspect of medical research. Perhaps this is because the American people have grown accustomed to rapid accomplishments such as the proof, in just two months of a summer in the early 1950's, that an effective polio vaccine was at hand. The scientific research leading up to these dramatic events required many years. 1969 survival figures cannot measure progress in the 1970's, but it is probably less obvious that they also barely reflect the effects of successful research programs—for example in the leukemias and lymphomas—that were introduced in 1963 and 1964. It will undoubtedly take several years for improved survival for specific cancer sites to be reflected in overall (or national) figures. For example, to test the effect of new treatment methods (such as new surgical techniques, new types of radiation, new chemotherpeutic agents, or a combination of these) usually takes a minimum of 3 to 5 years or more. Initial studies must be done on small

numbers of individuals at selected institutions with particular expertise. After a new treatment has been evaluated, the next step requires dissemination of the new information and the adoption of the new methods by the medical profession for application to the population at large.

Thus, new treatment methods necessarily require 10 or more years to be reflected in overall survival figures. The fact that end result figures do not reflect what we know can be accomplished now at centers with special expertise in a given disease is all the more reason for a sustained national effort. Until passage of the National Cancer Act of 1971 the NCI had no mandate or specific funding for the translation of research results into widespread application—Cancer Control. Because of Congressional and Executive Branch initiatives the NCI now has a Cancer Control Program, but it is only in its second year of operation. Through a wide variety of agencies and voluntary organizations, it is setting up programs specifically designed to convert new research findings into widespread application as quickly as possible.

One example of our optimism both for new treatments that have been developed and for the human impact we can expect by applying these, is the 100% improvement in 5-year disease free survival from all forms of childhood cancer treated since 1967 at M.D. Anderson Hospital and Tumor Institute, Houston, Texas.

In 1967 the number of children surviving five years without disease was 25% but by 1972 it was 50%. Obviously one of our goals is to save all of the roughly 7000 new cases of cancer which occur annually in the U.S. in children under the age of 15. However, saving 3500 children for 5 years is the equivalent of saving 17,500 years of life annually and 175,000 years of life per decade.

Unfortunately, all of these children will not live to be 75, but if they did (and if their average age at treatment was 5 years) we would be preserving 245,000 years of life annually or 2,450,000 years of life over a decade. No one can responsibly dismiss savings of this human magnitude as statistically insignificant. Getting these improved treatments out to the American people, their doctors and community hospitals is a major goal of the Cancer Control Program.

Recent studies have also shown that 80% 2-year disease free survival from osteogenic sarcoma can now be achieved compared to 20% a few years ago. These 2-year data are encouraging because the disease was nearly always lethal within that time period.

Breast cancer is a major killer in which important progress has been made since the beginning of the NCP. Preliminary 2-year results indicate that a single drug (L-PAM) substantially reduces recurrences of disease and there are similar encouraging results in combination chemotherapy of advanced breast cancer. If these preliminary trends are sustained over a 5-year period the toll from this disease should be substantially reduced. Breast cancer is an instructive example of how therapeutic principles we have developed with less common advanced diseases can be applied to major cancer killers.

The ability to cure and control 10 cancers has been developed since 1960. Even though these cancers account for only 8% of all cancer deaths per year in this country, these cancers are generally biologically virulent and frequently occur in young people causing a great emotional and economic impact and a staggering loss in years of life. For example, leukemia and lmyphoma are often referred to as uncommon types of cancer, however together in males they account for 360,976,000 person years of life lost. This is more than half of the loss caused by lung cancer, which is the leading killer of males. Leukemia, which accounts for one-sixth as many deaths as lung cancer in men, accounts for almost half as many work-years lost as lung cancer and is the second ranking cause of work-years lost for both men and women.

Thus, the ability to cure or control less common cancers may be far more important than incidence figures suggest. In 1960 survival from acute childhood lymphocytic leukemia was measured in months and less than 10% of patients with advanced Hodgkin's lymphoma survived for 5 years or more, and few if any of them were cured. Today, 5-year survivals without disease are reported for 51% of children with this form of acute leukemia at certain centers, and at other centers 5-year survival from advanced Hodgkin's disease has increased to approximately 70%. A substantial percentage of these patients are undoubtedly cured.

The key point to be made here is that these examples—and they are only a few of many—illustrate how we have built a scientific base with certain advanced cancers which enables us now to develop effective combined therapies for many other cancers, both early and advanced.

We have long recognized that since 1950 survival from cancer has continued to show a slow but steady improvement. The increase has not been as dramatic as increases between 1940 and 1950, but we have now built a rational scientific base which will exert an enormous impact on the cancer problem over the next decade. This is precisely the reason why we are conducting a broad-based program to improve on the four ways of reducing cancer mortality, which are prevention, early detection and diagnosis, and improved treatments for early and advanced disease. The application of our advances in all four of these areas through the Cancer Control Program will have a major impact over the years.

It should be noted that from 1950 to 1969 cancer mortality in the U.S. has decrease for women and increased for men. If cancers associated with smoking are removed from the overall statistics, cancer mortality has also decreased for men. Of 19 major forms of cancer reported in the recently published HEW document, "Cancer Rates and Risks," only three cancers—stomach, uterine cervix and pancreas—show no improvement in three-year survival after diagnosis and the incidence is declining for two of these cancers, stomach and uterine cervix.

Finally, it is well to remember that almost half of the cancer patients diagnosed in 1975 will not die of cancer and at least 3 million Americans who have had cancer are alive today.

FISCAL ALTERNATIVES FOR 1976

Mr. MOSS. Mr. President, the preliminary report of the staff of the Senate Budget Committee released on March 4 provides "fiscal alternatives" for 1976. I believe this comprehensive proposal reflects an imaginative and timely effort which will be of great value to the Budget Committees in particular, and to the Congress in general, in reaching decisions on the Federal budget for fiscal 1976. The staff report is consistent with the objectives of the Budget Control and Impoundment Act of 1974, which emphasized the need for development and analysis of alternatives to the President's annual budget as a whole as a basis for setting national priorities.

The report provides a comprehensive proposal—offering three alternatives and describing one in detail. It suggests that we can get more of the unemployed back to work than the administration proposes without additional inflation, aims for a faster, stronger upturn in the economy, lays out a program which, if adopted, could lead to a balanced budget where full employment is achieved and points to the need for budget discipline at a time when the economy calls for additional stimulus. If additional analysis bears this out, the Congress would be remiss if it did not make that choice. While the report calls for a larger deficit than the President's budget, it also provides additional benefits in terms of economic output and employment. These are important features and, of course, will have to be weighed carefully against a temporary increase in the size of the deficit.

What the Senate Budget Committee will recommend concerning the Federal budget must await additional study and completion of our hearings, currently underway. However, I believe that the staff report provides a basis for stimulating indepth analysis, rational consideration, and will contribute positively to the efforts of the committee in our search for the right answers concerning the Federal budget. Accordingly, the report seems to provide a good starting point for the committee as well as the witnesses, who are participating in hearings before the Senate Budget Committee over the next 3 weeks.

SOUTHEAST ASIA

Mr. BARTLETT. Mr. President, I ask unanimous consent to have printed in the RECORD an account of my recent trip to Southeast Asia, which I reported to the Armed Services Committee yesterday. I hope it may be of some value to my colleagues in the Senate.

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

SUMMARY—SOUTHEAST ASIA

(By Senator Dewey F. Bartlett)

The U.S. has agonized over the struggle in Southeast Asia for many years. Our sacrifice of 44,305 American lives attests to our involvement, and it is far greater than the huge cost of 140 billion dollars. Yet the struggle continues with the encircled Cambodians fighting for their lives in Phnom Penh and in isolated enclaves; and with the South Vietnamese, after two years of bloody fighting, anticipating a heated and intensified attack from the largest and best equipped North Vietnamese fighting force ever assembled in South Vietnam.

I will discuss separately our problems in South Vietnam and Cambodia. They are quite different.

SOUTH VIETNAM

In South Vietnam, a military victory over the North Vietnamese is not feasible. However, a military balance would be required in order to provide the opportunity for a political solution—one which would provide a free and self-determined government for all the people of South Vietnam, including the Communists. South Vietnam has tried on numerous occasions to meet with North Vietnam to discuss implementing the Paris Accords from A to Z. The North Vietnamese, seeing the opportunity for a military victory, refuse.

But a military balance would not in itself guarantee a political solution being achieved within a short time, or for that matter at all. With a military balance, the war could continue for years as it has in the past, but it is my opinion that such an impasse is

clearly not the desire of the great majority of the people of South Vietnam. The people of South Vietnam are tired of the killing and the war. They want peace—peace in a free society. The North Vietnamese will not negotiate a political solution to establish peace until they convince themselves they can't achieve a total military victory.

The reduced United States military and economic appropriations of the last two years have weakened the military strength of the South Vietnamese. While the strength of South Vietnam has deteriorated, the strength of North Vietnam has increased in every way. It has more men, more tanks, shorter supply routes, more artillery, more expendable provisions and occupies better strategic positions in South Vietnam than ever before.

Unfortunately, the North Vietnamese never intended to abide by the Paris Peace Agreement. Communist strategists from the beginning have emphasized that the agreement represented to them merely a legalistic framework which they could manipulate in order to bring the South Vietnamese to their knees.

Since the Paris Peace Agreement, North Viet Nam has built up its forces in the South from 160,000 main forces to about 230,000 presently. Additionally, there are seven more strategic reserve divisions in the North with about 9,000 men each which can be moved to the South on short notice.

Also, Hanoi has greatly augmented its armor, artillery, and anti-aircraft artillery strength in the South to the extent that it could support an offensive greater than the scale of 1972 for over a year without further imports. An estimated 66,000 tons of ammunition has been moved into South Viet Nam from the North since the ceasefire. All of these actions which have increased the military capability of North Vietnam are blatant violations of the Paris Agreement. The Communists have significantly more conventional military strength than ever before during the war.

Unfortunately, as the North's strength has increased, resources available to the South have sharply decreased. At the height of U.S. involvement in Viet Nam, the United States had 550,000 soldiers there and were spending over $25 billion per year. Now Vietnam is carrying on this same war against a greatly strengthened enemy with no American soldiers and aircraft with military assistance of only $700 million per year. This appropriation might have been adequate if the ceasefire had partially held, but it has not. The results of the drastic cut in military assistance are telling on the South.

While the Paris Peace Agreement permitted a 1 for 1 replacement of weapons on both sides, South Vietnam, because of lack of resources, has fallen far short of this goal. The 700 million dollar aid is less than one half of the 1 for 1 replacement level. Typical South Vietnamese fighting regiments, even after firm conservation control (including the virtual elimination of harassment and interdiction fire) are suffering serious shortages of ammunition.

One regiment which I visited was furnishing its troops with two hand grenades rather than the usual ten. Small arms usage had been cut by 55%. Similar shortages cut across the entire line of ammunitions. Additionally, the Vietnamese Air Force has reduced its monthly flight time by 75% because of lack of fuel. Planes that used to carry six bombs now carry four. This has materially reduced the effectiveness of their air power.

The Vietnamese military has been built on a model of the U.S. They have subscribed to the theory of expending heavy arsenals of artillery to save lives of their own troops. However, as the availability of ammunition and fire power is reduced, casualties have begun to go up.

In 1974, while the ceasefire was supposed to be in effect, the South Vietnamese military lost more men than during any previous year of the war. At the present casualty rate, 1975 will be worse. And while the South's casualties are going up, the North's are coming down. From 1968 through 1972, the North was losing an average of 125,000 men per year. This figure was cut in half in 1974.

As a result of the North's enhanced position, for the first time in the history of the war, the communists recently seized an entire province (Phuoc Long).

Statistics show that in spite of all this, the South still spends more money and has more men in military service than the North. So why can't the South protect themselves?

The simple answer is that for the same reason it takes more money for a police department to guard a city than it costs the criminals who rob it, it costs more for the South to guard the rice fields, every city, province, and bridge than it takes for the North to attack selectively some of those sites.

The question can also be raised: Why is the South not contributing more financially to its own effort? Its GNP is only $3.2 billion annually (compared to $1596 billion in the U.S.) and presently almost 55% of its budget goes for national security (compared to 27% in U.S.)

Vietnamese soldiers are drafted for the duration of the war which has produced adverse morale problems in an apparently never-ending war. I would suggest this be changed.

Vietnamization has worked quite well, but the complete transfer of military responsibility will require more time. The South Vietnamese soldier is now a match for the North Vietnamese, but Vietnamization has developed the South Vietnamese military forces in the image of American forces designed for the big war conducted at great expense in order to reduce casualties. Naturally, Vietnamization has made South Vietnam dependent upon the United States for military and economic aid.

Vietnam has found itself on the horns of a dilemma:—to build the economy with one hand, and to fight a war with the other.

The South Vietnamese have made progress on their education and agricultural programs. They now have twelve universities, and a good high school program throughout the country.

They have increased impressively their production of rice, timber, tea, rubber and other products. Vietnam will be exporting rice within a year or so. Foreign grants and loans are increasing, particularly those from Japan.

The economic ace in the hole is offshore oil potential. Of four wells drilled so far, three have tested oil, and the fourth indicated a show. It's too early to assess the size, but it is clear that Vietnam will soon have significant oil production. An officer of one of the American companies involved said the South oil strike may be another North Sea of 15 years ago. Because of the value of this additional oil, the economy of South Vietnam should receive a definite boost within three years. For the first time, because of our severe energy shortage, we have a compelling economic interest in South Vietnam.

Without U.S. military and economic aid, the killing would not end, but the military advantage would accrue more and more to the North Vietnamese.

Virtually all refugees flee to the South. Intelligence reports indicate the North Vietnamese are guilty of atrocities to both the soldiers and the civilians. A typical answer to my question, "What will happen if no additional aid is voted?", is "We will fight harder." There is ample reason to expect the North Vietnamese would decimate much of the leadership of South Vietnam.

It is difficult to answer whether additional military equipment and supplies will, in the final analysis, result in more or less killing, but it is easy to conclude that more individual rights will be violated by a Communist military victory than with a military balance.

Additional military aid does not guarantee a military balance, but if sufficient United States military aid is given and a military balance does result, there remains an important question. Can the South Vietnamese develop the national strength and consensus to sustain a military balance while continuing to phase out American support and yet achieve a political solution which will guarantee the civil rights of all citizens within a democratic structure? This is a vital question the South Vietnamese leaders failed to answer in the past, but that must be answered quickly by the unified actions of the South Vietnamese people and their leaders if they expect sufficient help from us to enable a complete transition of responsibility for the conduct of the war.

In trying to develop a post-ceasefire national policy for South Vietnam, the first question to answer is:

"Does the United States government have a commitment to the people of South Vietnam and, if so, to what extent?"

It is clear that there is no treaty or legal agreement with South Vietnam, but there is a strong moral obligation.

Military and economic aid have been given to South Vietnam under five Presidents. The Nixon foreign policy called for military and economic aid to friendly nations, but not a commitment of troops.

Vietnamization, consistent with this, and with the strong desire of American citizens to bring back our men from Vietnam, called for a systematic reduction of American forces and a transfer of equipment to the South Vietnamese—obviously with an obligation to furnish the parts, replacement and expendables for its operation.

The withdrawal of troops culminated in the Paris Accord, which was signed because everyone hoped to get something out of it.

USA

1. Complete removal of troops.
2. Return of POW's—a full accounting of MIA's and repatriation of all known bodies.
3. Preserve credibility.

NORTH VIETNAM

1. Bombing stopped in North.
2. USA forces out of Vietnam.
3. Forces in place.

SOUTH VIETNAM

1. Peace.
2. Thieu would stay in power.
3. No infiltration of Communist troops.
4. No Cambodia-Loas staging areas.
5. If the ceasefire would fail—one for one replacement of military hardware.

The ceasefire never really took place. The North Vietnamese, anticipating the ceasefire with a short but intense offensive, took approximately 500 hamlets just before January 28, 1974, the date of the cease-fire; and right afterwards, the South Vietnamese launched a counter offensive which regained those areas and a little more.

The one for one replacement of hardware and the expendables which they allow is a clear commitment by the United States to provide military support. Cutting off all military aid would be inconsistent with this commitment. But the extent of the aid should depend upon various considerations.

There have been several suggestions of aid for three more years including one by our Ambassador to South Vietnam, Graham Martin. His suggested amounts of military aid for the three years beginning with fiscal '76 are: $1.7 million, $1.4 million, and $1.1 million.

Though I realize a precise limit to our responsibilities has appeal, I'm concerned with this proposal for several reasons:

1. It gives the impression, one that has been given continually during our relations with South Vietnam, that peace and security are just around the corner.

2. This could extend the war for three years—encouraging the North Vietnamese to continue the fighting, to continue their military build-up, and then after three years, move toward a military victory.

3. It tends to encourage the South Vietnamese to depend fully on this country for the next three years—not encouraging them to develop a national resolve for self-sufficiency—and a rapid assumption of full responsibility for their military forces.

4. The amount of aid required by South Vietnam depends in large part on the amount of aid received by North Vietnam from Russia and China.

Some people have suggested an open-ended commitment to South Vietnam. The South Vietnamese do not favor this—because they favor self-determination. I certainly agree with them.

In developing a policy for South Vietnam, let's remember that the enemy we were fighting was Hanoi and not Saigon.

Let's remember that the North Vietnamese Communists are forcing an elevated level of military activity against the South Vietnamese who are defending their homeland and their free institutions. From many conversations in South Vietnam, I'm convinced that most citizens are ideologically opposed to Communism and favor democratic institutions.

My confrontation with Col. Boah of North Vietnam over the MIA's convinced me that he and his nation's leaders have no respect for humanity, logic, and reason—only military force.

Sufficient time is needed for the South Vietnamese to adjust their military forces to their economy which currently is $3.5 billion Gross National Product.

The Congress in voting sharp reductions in appropriations to our friends in Southeast Asia during the last two years, has created doubts about our willingness to provide sufficient aid, and, at the same time, it did not establish a foreign policy for Southeast Asia. It is vital that the current debate result in a clear policy.

I suggest we furnish adequate assistance to South Vietnam in order to establish a military balance between North and South Vietnam. When the Communists are convinced of this reality, as they were in December, 1972, the negotiation table will be their only alternative. Negotiations within the framework of the Paris Accord is the sensible solution to the war in Viet Nam.

Our policy should be flexible and take into consideration the amount of military and economic aid provided by the Soviet Union and China. It should be on a parity with it; however, this aid should be increased by a factor that recognizes the need for a larger army to protect the cities and the rice fields of South Vietnam as well as to engage the enemy forces of North Vietnam.

The negotiating efforts of President Ford and Secretary Kissinger should continue at the highest level to bring about a tri-lateral reduction of military aid to North and South Vietnam respectively, and to influence both North and South Vietnam to abide by the Paris Accords.

Vietnamization should continue as rapidly as the economy and leadership of South Vietnam will permit in order to enable an assumption of complete responsibility for their military force at the earliest possible moment. But, Vietnamization can only operate efficiently if the government is strengthened.

Our flexible policy must insist on the following collective commitment by President Thieu, his government and the leaders of the non-communist groups of South Vietnam:

1. Provide a broad political base involving representation of all significant and cooperative non-communist groups to bring about a unified national commitment to peace.

2. Assure honest elections which also have the appearance of being honest.

3. Ferret out corruption at every level of the military and government.

4. Make assurances that criticism of the government would not fall under an umbrella of national security censorship of the press.

5. Enable prisoners to have free access to lawyers and the courts, then charges of political imprisonment can not be made.

Americans for several years have wanted our obligation to South Vietnam to end, but it has not.

Is the resolve of this nation to continue adequate military support to another which is defending its home land from Communist aggression as great as the resolve of China and the Soviet Union to escalate their support of North Vietnam to win a total military victory of aggression? I believe it is.

Though the fulfillment of our responsibility is painful, particularly at this time of severe economic recession, our credibility as a nation is clearly on the line. If the United States does not fulfill its responsibility to South Vietnam, there may be a domino effect of our lack of credibility throughout the world.

MAINE LEGISLATURE URGES HEW TO RESTORE MEDICARE-MEDICAID FUNDS TO HOSPITALS IN THE TOWNS OF DEXTER AND MILO

Mr. MUSKIE. Mr. President, on behalf of Senator HATHAWAY and myself, I ask unanimous consent that this joint resolution adopted by the Maine Legislature urging HEW Secretary Caspar Weinberger to restore medicare-medicaid payments to hospitals in the towns of Dexter and Milo, Maine, be printed in the RECORD.

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

JOINT RESOLUTION MEMORIALIZING THE HONORABLE CASPAR W. WEINBERGER, SECRETARY OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE OF THE UNITED STATES TO RESTORE MEDICARE-MEDICAID FUNDS TO THE LOCAL HOSPITALS OF THE TOWNS OF DEXTER, MILO AND SIMILAR COMMUNITIES

We, your Memorialists, the Senate and House of Representatives of the State of Maine now assembled in Regular Session of the One Hundred and Seventh Legislative Session, most respectfuly present and petition the Secretary of the Department of Health, Education and Welfare and the United States Congress as follows:

Whereas, the Plummer Memorial Hospital has served the medical needs of Dexter, Maine continuously and well since its opening in 1920; and

Whereas, the townspeople of Dexter have aided and supported this hospital, and have provided an ambulance service for this hospital, serviced by the volunteer fire department; and

Whereas, the Plummer Memorial Hospital has been licensed by the State of Maine for the year 1975 to serve the people of Dexter, a license recognized by all major medical insurance companies, including Blue Cross-Blue Shield; and

Whereas, the Department of Health, Education and Welfare has decided, contrary to the almost unanimous vote of the March, 1974 Dexter town meeting, that the Plummer Memorial Hospital shall be closed and that the people of Dexter shall be forced to use a regional hospital to be built in Dover-Foxcroft, 13 miles to the north; and

Whereas, the department has decided, based upon a technical and controversial interpretation of one regulation of the Federal Fire Code, that the hospital, in existence since 1920, is in violation of that fire code and must be closed; and

Whereas, the Department of Health, Education and Welfare has, therefore, cut off all but emergency Medicare-Medicaid funds to the Plummer Memorial Hospital, an action intended to close that facility; and

Whereas, the people of Dexter have received little cooperation from the regional director of the Department of Health, Education and Welfare, who seems unconcerned about the welfare of the people of Dexter when that welfare conflicts with a regionalization plan previously decided upon; and

Whereas, the situation in Dexter is too often repeated in other areas of Maine; and

Whereas, the Legislature of this State sympathizes with the struggle of all people who desire to preserve their own hospital facilities and their independence from the dictates of a huge federal agency; now, therefore, be it

Resolved: That We, your Memorialists, hereby record our dissatisfaction with the actions of the Department of Health, Education and Welfare and with the actions and uncooperative attitude of certain of its regional representatives, and respectfully urge and petition the Secretary of Health, Education and Welfare and the Congress of the United States to take appropriate action to help the people of Dexter, Milo and similar communities to maintain their own hospital facilities as active and useful hospitals serving the local needs of rural areas by restoring the use of all Medicare-Medicaid funds; and be it further

Resolved: That a copy of this Memorial, duly authenticated by the Secretary of State, be immediately transmitted by the Secretary of State to the Secretary of the Department of Health, Education and Welfare of the United States, and to the Members of the Senate and House of Representatives of the United States Congress from this State.

MARYLANDERS POLLED ON NATIONAL ISSUES

Mr. BEALL. Mr. President, recently, I polled nearly 700,000 Marylanders to obtain their views on many of the issues facing the Congress and the Nation today. The results have been interesting, and sometimes surprising, and I would like to take this opportunity to share them with my colleagues in the Senate.

The questionnaire covered several major areas of legislative activity. Questions appeared on economy, energy, busing, national health insurance, defense spending, campaign financing and transportation. One of the most interesting, and at the same time disturbing, results was on the question of public confidence in Congress. When asked "Do you have confidence in the ability of the Congress to deal effectively with today's problems?" nearly two-thirds of Marylanders replying to my survey answered in the negative. To me, this means that Congress has not fulfilled its responsibilities, in the public eye, and we need desperately to begin movement on many of the questions now before us.

Almost 120,000 individual Marylanders replied to my questionnaire, and although I do not claim our efforts to be

as scientific as certain professional polls, I believe they do represent a cross section of our State's, and our Nation's population.

Mr. President, I ask unanimous consent that the statewide results of my questionnaire be printed in the RECORD.

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

QUESTIONNAIRE: STATEWIDE RESULTS

(Based on total of 119,520 individual responses)

[In percent]

1. Are you in favor of a tax cut, even though it might lead to a greater federal deficit?

Yes	57
No	43

2. Do you favor the imposition of wage and price controls?

Yes	59
No	41

3. During a period of high unemployment, do you favor the federal government providing jobs for those temporarily unemployed?

Yes	70
No	30

4. In order to reduce our dependency on foreign oil, do you favor (check one):

a. Gasoline rationing	59
b. or increased prices?	41

5. Do you favor off-shore oil exploration along the Atlantic Coast?

Yes	85.5
No	14.5

6. Do you favor the temporary delay of environmental controls on automobiles and industry to help ease our energy problems?

Yes	78
No	22

7. Do you favor the forced busing of children to achieve racial balance in our schools?

Yes	4
No	96

8. Do you favor a National Health Insurance Program that (check one):

a. Is financed with federal taxes or is federally operated	33.0
b. Or is privately financed and privately operated?	24.5
c. Or provides only for catastrophic illnesses	20.0
d. Or none of the above	22.5

9. In view of the current Soviet military strength, do you favor an increase in the U.S. defense budget?

Yes	56
No	44

10. Should federal tax dollars be used to finance Congressional elections?

Yes	21.5
No	78.5

11. Do you believe a greater portion of the Highway Trust Fund should be used for mass transit?

Yes	58
No	42

12. Do you have confidence in the ability of the Congress to deal effectively with today's problems?

Yes	36.5
No	63.5

MAINE LEGISLATURE OPPOSES LIMITATIONS ON COST-OF-LIVING INCREASES IN FEDERAL INCOME MAINTENANCE PROGRAMS

Mr. MUSKIE. Mr. President, on behalf of Senator Hathaway and myself, I ask unanimous consent that a joint resolution adopted by the Maine Legislature, urging Congress to oppose the administration's proposed 5 percent limitation on cost-of-living increases in Federal income tax maintenance programs, be printed in the RECORD.

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

JOINT RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO OPPOSE THE PROPOSED LIMITATION ON COST OF LIVING INCREASES IN FEDERAL INCOME MAINTENANCE PROGRAMS

We, your Memorialists, the House of Representatives and Senate of the State of Maine in the One Hundred and Seventh Legislature, now assembled, most respectfully present and petition your Honorable Body as follows:

Whereas, Social Security, SSI, and Federal Retirement Benefits are currently increased automatically as the Consumer Price Index rises; and

Whereas, this system has allowed retirees and other persons who live on fixed incomes to cope with the staggering ratio of inflation; and

Whereas, President Ford has proposed placing a ceiling of 5% on annual cost-of-living increases in Social Security, Railroad Retirement, Supplemental Security Income and Civil Service and Military Retirement programs; and

Whereas, such a limitation is only slightly more than ⅓ of last year's annual rate of inflation; and

Whereas, more than 150,000 Maine citizens depend wholly or in part on these programs for their income; and

Whereas, it is wrong to allow inflation to ravage the small means of persons who because of age or infirmity are less able to fend for themselves; now, therefore, be it

Resolved: That We, your Memorialists, respectfully urge the Congress of the United States to retain full cost-of-living increases to Social Security, Supplemental Security Income, Railroad Retirement and Civil Service and Military Retirement recipients, and to oppose efforts to place a ceiling on cost-of-living increases to these recipients; and be it further

Resolved: That a copy of this resolution, duly authenticated by the Secretary of State, be transmitted by the Secretary of State to the Honorable Gerald R. Ford, President of the United States, to the Senate and House of Representatives in Congress and to the Members of the United States Congress from the State of Maine.

CAMBODIA

Mr. BARTLETT. Mr. President, the situation in Cambodia is decidedly different from that in Vietnam. Our involvement there has been for just 5 years as compared to almost 20 in Vietnam. There are few, if any, outside troops involved in the war. The Khmer Rouge, the Cambodian Communists who are attempting to overthrow the American supported Lon Nol government, are entirely supported by the Communist bloc of nations—China, Russia, and North Vietnam.

The Cambodian Government will fall in a few weeks if additional American support is not forthcoming. The capital of Phnom Penh is surrounded by Communist troops; and supply routes, including the vital Mekong River system, are cut off.

If the fall of the Lon Nol government would simply involve a transition from one government to the next and would stop the killing, we would probably be wise to get out.

However, simple humanitarian instincts demand that we provide these people the opportunity through military aid to fight against sheer butchery at the hands of the Communists who receive military aid from China and Russia.

The Cambodian people are deathly frightened by the Communists, and with good cause because the Communist record of atrocities in Cambodia is unsurpassed. The Communist takeover of areas of Cambodia has created over a million refugees fleeing their vengeance. I personally interviewed numerous refugees who had fled from the Khmer Rouge through the perimeter to safety in Phnom Penh to avoid the savagery of the Cambodian Communists.

Additional military, medicine, and food supplies will buy for Cambodia much needed time during which diplomatic talks can continue and, hopefully, would lead to a controlled political solution.

President Lon Nol's indication of a willingness to step down could have a decisive diplomatic impact if the Cambodian Communists are interested in negotiating a settlement. But so far, the Communists have refused to negotiate or permit Prince Sihanouk to enter negotiations with the government or discussions with our State Department. The United States should play no part in requiring President Lon Nol to step aside, which could leave a vacuum—which might be filled by someone completely incompetent. He is part of the legitimate government and we should not meddle in the internal affairs of any country. Although his government is far from perfect, it certainly is far better than the alternative Communist Khmer Rouge.

Secretary Kissinger and the State Department have made, and are continuing to make, every effort to bring about a negotiated settlement in Cambodia. Urgently needed military aid will, according to the military experts, enable the Cambodian Government to hold the perimeter around Phnom Penh.

Thus, military balance, if achieved through military aid, offers the hope of a controlled solution.

No U.S. military aid at this time to Cambodia will certainly assure a total Communist victory—most likely a blood bath of unparalleled proportions.

There is virtual unanimous support and great compassion for medicine and food aid to Cambodia. However, if we do not give military aid our opportunity to give food and medicine will be lost and the entire nation will be subject to

starvation and disease. Obviously, the Khmer Rouge is not providing food and medicine for the millions of refugees they have created, even though they occupy the agricultural areas of Cambodia where the food is grown. There is no reason to assume the Khmer Rouge will be any different after taking power.

We must carve out of the military aid a sufficient amount for medical aid adequate to meet the needs of the military and the civilians.

To deny the non-Communist Cambodians our support is to deny them the chance to avoid massacre and the decimation of their social, government, and economic structure.

This is a moral question involving the resolve of the United States to continue to provide this chance and hope for a controlled solution.

We are facing a test of the will of this nation to provide a people the military aid they seek and need to defend their lives and freedom against aggression and anihilation by Communists supported with military aid from Russia and China.

Is our will to support the resistance to force by free people as strong as the will of Russia and China to support the use of force by Communists?

Our answer is important now and in the future.

MAINE LEGISLATURE SUPPORTS EXTENSION OF U.S. FISHING ZONE TO 200 MILES

Mr. MUSKIE. Mr. President, on behalf of Senator HATHAWAY and myself, I ask unanimous consent that a joint resolution adopted by the Maine Legislature, urging Congress to approve the extension of the U.S. fishing management jurisdiction to 200 miles, be printed in the RECORD.

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

STATE OF MAINE—JOINT RESOLUTION

Joint resolution memorializing the Congress of the United States to extend the United States fisheries management jurisdiction 200 miles seaward from its boundaries

We, your Memorialists, the House of Representatives and Senate of the State of Maine in the One Hundred and Seventh Legislature, now assembled, most respectfully present and petition your Honorable Body as follows:

Whereas, Maine fishermen are currently losing the livelihood of generations through failure of the Federal Government to control excessive foreign fishing off the coast; and

Whereas, Federal negotiations at the "law of the sea" conference even if successful will take 6 to 10 years to ratify and implement leaving little or no protection during the interim; and

Whereas, this inaction has prompted the Maine Legislature to declare Maine's fisheries management jurisdiction 200 miles seaward from its boundaries or to the edge of the continental shelf; and

Whereas, the Congress of the United States must act now to extend United States fisheries management jurisdiction beyond 12 miles to the 200-mile limit before fishing stocks are exhausted; now, therefore, be it

Resolved: That We, your Memorialists, respectfully recommend and urge the Congress of the United States to use every possible means at its command to pass legislation which will extend the fisheries management jurisdiction of the United States without interfering with Canada 200 miles seaward or to the edge of the continental shelf and thus reduce the chances of further depletion of fishing stocks by overfishing; and be it further

Resolved: That a duly authenticated copy of this Memorial be immediately submitted by the Secretary of State to The Honorable Gerald R. Ford, President of the United States, to the President of the Senate and Speaker of the House of Representatives of the Congress of the United States and to each Member of the Senate and House of Representatives in the Congress of the United States from this State.

FALSE HOPES CAN REST ON NEW UNEMPLOYMENT FIGURES

Mr. WILLIAMS. Mr. President, if we have learned anything from recent experience, we have learned that statistics are inevitably used to puncture and let the air out of vital issues of public concern.

It can be predicted that this will happen again in the next few days, as one Government spokesman after another points with dismal pride to the fact that the rate of unemployment did not rise in February.

Officially, it did not. The bare statistic tells us that 8.2 percent of the active, job-seeking work force is out of work, just as in January.

On the surface, it appears that there has been no change in the past month.

But to believe that is to be just as wrong as can be.

Profound and disheartening changes did, in fact, take place.

Most important was the drop in the number of persons employed by 540,000 in February, bringing the total decline in employment over the last 5 months to 2.4 million, the largest 5-month cutback recorded in the postwar period.

These thousands upon thousands were out of work, but not counted as unemployed, simply because an equivalent number stopped looking for work. They stopped coming to the employment offices in hopes of finding something. They stopped coming around to see if there were any unemployment benefits available to them.

They stopped hoping. And they dropped out of the work force in abysmal discouragement with their prospects for the future.

One other figure stands out in the February statistical report of the Bureau of Labor Statistics—the number of those who lost their jobs in February.

Nearly 200,000 persons lost their last jobs. Nearly 200,000 new clients for the unemployment insurance system or for the public assistance rolls.

Fortunately, this appears to have been balanced by a similar number of persons going back to work after having been laid off.

Fortunately, for the job force as a whole, but what comfort is that to the human individuals who were given their pink slips—nearly 200,000 of them—last month.

Mr. President, the lack of change in the unemployment rate is not to be taken as a reason for complacency.

Over a half-million persons became so discouraged—so overwhelmed with a sense of hopelessness—that they stopped looking for work.

The real measure of our plight is not the bare unemployment percentage, but the widening despair among the jobless.

With this fresh evidence of expanding discouragement, we must not relax our efforts to turn the economy around, to provide jobs for every able American, and to evoke new hope that our future as a nation is on the rise.

Mr. President, the Committee on Labor and Public Welfare, which I have the privilege to chair, is addressing the urgent needs of our current economic condition. In cooperation with other committees of the Congress, we are developing comprehensive recommendations to deal with our national plight.

Since our top priority is the human impact of the recession, our primary focus is on expanding jobs and alleviating the adversities of unemployment.

The committee is holding hearings at the full committee level on legislation that would provide extended health insurance coverage for those who have been laid off and who would otherwise lose insured hospital and doctor care within a matter of a few weeks.

We are preparing to move at the earliest possible time on extension and expansion of the public service jobs program, with a goal of 1 million public service jobs in fiscal 1976. This legislation is under consideration by the Subcommittee on Employment, Poverty, and Migratory Labor, under the able chairmanship of the Senator from Wisconsin (Mr. NELSON).

The committee will also act with dispatch on a 13-week extension of unemployment compensation benefits, so that thousands of Americans unemployed for long periods of time will not see their sole means of support exhausted beginning in April.

Beyond that, Mr. President, we are studying ideas for legislation that would authorize additional temporary jobs in conservation works, urban problems, and rural development. As these proposals are refined and considered by the committee, the best of them will be brought before the Senate for action.

In truth, it can be said that our committee seeks to look through the bare unemployment rate statistic so that we can see how human individuals are victimized by the economic downturn. The reality that we have brought into view does not permit complacency over an unemployment rate that is no worse than last month's, for we know, Mr. President, that the human impact of unemployment is no better.

So that my colleagues may read of the other distressing figures reported today by the Bureau of Labor Statistics—an 11-percent unemployment rate in manufacturing; 15.9 percent in construction; a 1-week increase in the average duration of unemployment, bringing it to 11.7 weeks; 3.7 million persons forced by economic conditions to work only part time—I ask unanimous consent that the press release issued by BLS be printed in the RECORD.

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

THE EMPLOYMENT SITUATION: FEBRUARY 1975

The Nation's rate of unemployment was unchanged in February, following a sharp uptrend in recent months, but employment declined for the fifth straight month, it was announced today by the Bureau of Labor Statistics of the U.S. Department of Labor. The unemployment rate remained at the January level of 8.2 percent, after climbing at the most rapid pace of the entire post-World War II period between August and January.

Total employment (as measured by the monthly survey of households) declined by nearly 540,000 in February to 84.0 million. Since September 1974, employment has dropped by 2.4 million, the largest 5-month cutback recorded in the postwar period. The civilian labor force decreased by 580,000 over the month.

Total nonagricultural payroll employment (as measured by the monthly survey of establishments) declined 600,000 from January for the fourth straight monthly decrease. At 76.6 million, the number of payroll jobs was 2.3 million lower than last October. There was also a further decline in hours of work. Consequently, total man-hours, the most comprehensive measure of labor activity, continued to drop sharply.

UNEMPLOYMENT

Both the number of unemployed persons and the unemployment rate held steady in February, after increasing sharply in January. Since August 1974, when joblessness began its rapid upsurge, the number of unemployed persons has increased by 2.6 million to 7.5 million, and the jobless rate has risen 2.8 percentage points to 8.2 percent. (See table A-1.)

Despite the February stability in total unemployment, there was a further rise (nearly 200,000) in the number of persons who lost their last jobs. (See table A-5.) This was balanced by a reduction among unemployed labor force re-entrants. Since last August, job loss has accounted for four-fifths of the overall increase in joblessness, and job losers now comprise 55 percent of the unemployed total (compared with 41 percent in August).

TABLE A.—HIGHLIGHTS OF THE EMPLOYMENT SITUATION

[Seasonally adjusted data]

Selected categories	Quarterly averages					Monthly data		
	1973	1974						
	IV	I	II	III	IV	December 1974	January 1975	February 1975
Civilian labor force (millions of persons)	89.8	90.5	90.6	91.4	91.8	91.8	92.1	91.0
Total employment	85.6	85.8	86.0	86.4	85.7	85.2	84.6	84.5
Adult men	48.4	48.5	48.5	48.5	48.3	48.0	47.5	47.3
Adult women	29.7	29.8	30.1	30.5	30.1	30.0	29.9	29.7
Teenagers	7.5	7.5	7.4	7.4	7.4	7.2	7.1	7.0
Unemployment	4.3	4.7	4.7	5.0	6.1	6.6	7.5	7.5
Unemploy ment rates (percent of labor force):								
All workers	4.7	5.1	5.1	5.5	6.6	7.2	8.2	8.2
Adult men	3.1	3.4	3.5	3.7	4.8	5.3	6.0	6.2
Adult women	4.7	5.1	5.1	5.4	6.5	7.2	8.1	8.1
Teenagers	14.3	15.2	15.1	16.1	17.5	18.1	20.8	19.9
White	4.3	4.6	4.6	5.0	5.9	6.4	7.5	7.4
Negro and other races	8.6	9.2	9.1	9.6	11.7	12.5	13.4	13.5
Household heads	2.8	2.9	3.0	3.2	4.1	4.6	5.2	5.4
Married men	2.2	2.4	2.4	2.7	3.3	3.8	4.5	4.7
Full-time workers	4.3	4.6	4.6	5.0	6.2	6.8	7.7	7.5
State insured	2.7	3.2	3.3	3.4	4.3	4.8	5.5	5.9
Average duration of unemployment (weeks)	9.8	9.5	9.7	9.9	9.9	10.0	10.7	11.7
Nonfarm payroll employment (millions of persons)	77.8	78.0	78.3	78.7	78.3	77.7	[1] 77.2	[1] 76.6
Goods-producing industries	25.0	24.9	24.9	24.8	24.1	23.6	[1] 23.2	[1] 22.6
Service-producing industries	52.8	53.1	53.5	53.9	54.2	54.1	[1] 54.0	[1] 54.0
Average weekly hours (hours of work):								
Total private nonfarm	36.9	36.7	36.7	36.7	36.4	36.4	[1] 36.2	[1] 36.1
Manufacturing	40.6	40.4	39.9	40.1	39.7	19.4	[1] 39.2	[1] 38.8
Manufacturing overtime	3.7	3.5	3.2	3.4	2.9	2.7	[1] 2.3	[1] 2.2
Hourly Earnings Index, private nonfarm (1967=100):								
In current dollars	150.3	152.7	156.2	160.3	164.2	165.3	[1] 166.1	[1] 167.3
In constant dollars	109.3	107.8	107.5	107.1	106.5	106.4	[1] 106.2	NA

[1] Preliminary.

Unemployment rates for most labor force groups were essentially unchanged in February. While there was little or no change in the jobless rates for white workers (7.4 percent), blacks (13.5 percent), adult women (8.1 percent), or teenagers (19.9 percent), all were at or near record levels. (See table A-2). On the other hand, rates for married men and all adult men rose slightly but remained well below the peak levels reached during the 1949 and 1958 recessions.

Jobless rates for most occupations and industries were also little changed from January levels. However, the unemployment rate for manufacturing workers posted its ninth consecutive monthly increase and in February stood at a record 11.0 percent. The rate for construction workers was 15.9 percent, an indication of the severe problems the industry is experiencing.

The jobless rate for workers covered by State unemployment insurance programs was 5.9 percent in February, up from 5.5 percent in January. At 3.9 million, the number of workers claiming State unemployment insurance benefits now constitutes 52 percent of the jobless total, compared with 44 percent a year earlier.

The unemployment rate for Vietnam-era veterans aged 20-34 years, at 8.8 percent, showed little change from January but was below the rate for nonveterans, which increased to 9.5 percent. (See table A-2). The jobless rate for the youngest veterans (20-24 years old) was 17.3 percent, slightly below the previous month's high mark and well above that for nonveterans of the same ages (12.6 percent).

The average (mean) duration of unemployment moved up to 11.7 weeks in February, a full week above the January level and nearly 2 weeks higher than December. This pattern is typical during business downturns, as increases in the duration of unemployment always lag those in the overall level and rate of unemployment. In line with the lengthening in mean duration, the number of long-term unemployed—persons unemployed 15 weeks or more—increased by nearly 300,000 to 1.8 million in February. Of this number, 700,000 had been unemployed 27 weeks or more. (See table A-4).

The number of persons working part time but wanting full-time jobs was relatively stable at 3.7 million in February; however, this followed jumps of 460,000 and 200,000 in the 2 previous months. (See table A-3).

CIVILIAN LABOR FORCE AND TOTAL EMPLOYMENT

The civilian labor force, which had continued to expand, albeit slowly, throughout most of the current economic downturn, dropped by 580,000 in February to 91.5 million (seasonally adjusted). Most of this unusually large decline occurred among adult women and teenagers. (See table A-1.) The labor force gain over the past 12 months was less than half the expansion of the prior year.

Employment fell by 540,000 in February to 84.0 million, a continuation of the substantial monthly declines from last autumn's peak of 86.4 million. The February reduction was spread among the three major age-sex groups; occupationally, employment contractions were most severe among clerical workers, managers and administrators, and operatives. (See tables A-1 and A-3.)

INDUSTRY PAYROLL EMPLOYMENT

Total nonagricultural payroll employment dropped 600,000 in February to 76.6 million (seasonally adjusted), the lowest level since May 1973. The number of payroll jobs has declined 2.3 million from last October's peak, the largest 4-month decreases since the post-World War II readjustment period. Reductions in employment occurred in about 80 percent of all industries from January to February and in 87 percent of all industries over the October-February span. (See tables B-1 and B-6.)

As in recent months, the decline in February was largely concentrated in manufacturing—425,000—with each of the 21 industries posting decreases. The largest cutbacks occurred in the five major metals and metal-using industries of the durable goods sector and in textiles, apparel, and rubber and plastic products in nondurable goods. The February decline in manufacturing jobs brought the employment total down to 18.3 million, the lowest level since September 1965.

Contract construction employment was down by nearly 200,000 from January. Since its alltime high in February a year ago, construction employment has declined by half a million jobs.

In the service-producing industries, the number of payroll jobs was unchanged in February, as a 50,000 increase in State and local government and a small pickup in services countered declines elsewhere in the

sector. Employment in the service-producing industries has fallen 300,000 from the alltime high recorded in October 1974. Since February a year ago, however, employment in the sector has increased by nearly 900,000, in marked contrast to an employment decline of 2.3 million in the goods-producing industries.

HOURS OF WORK

The average workweek for all production or nonsupervisory workers on nonfarm payrolls declined 0.1 hour in February to 36.1 hours, seasonally adjusted. Compared with February 1974, the average workweek was down 0.7 hour. (See table B-2.)

Average hours in manufacturing, which have trended downward since the spring of 1973, fell 0.4 hour in February to 38.8 hours. Factory overtime also continued to show weakness, declining to 2.2 hours. Since April 1973, overtime in manufacturing has dropped 1.9 hours. In February, both the factory workweek and overtime hours were at their lowest levels since the 1960-61 recession.

The aggregate man-hours of private nonfarm production or nonsupervisory workers fell by 1.8 percent in February, following declines in the previous 4 months. Since last September, total man-hours have decreased by 6.0 percent. (See table B-5.) Factory man-hours were down 4.0 percent over the month, 15.6 percent from a year ago, and 17.2 percent from their alltime high reached in late 1973.

HOURLY AND WEEKLY EARNINGS

Average hourly earnings of production or nonsupervisory workers on nonfarm payrolls rose 0.5 percent in February and 8.3 percent from a year ago (seasonally adjusted). Average weekly earnings increased by 0.2 percent in February and 6.3 percent compared with February 1974.

Before adjustment for seasonality, hourly earnings rose 1 cent in February to $4.41. Earnings have increased 34 cents from a year ago. Weekly earnings on average were up 36 cents over the month and $9.32 over the year. (See table B-3.)

THE HOURLY EARNINGS INDEX

The Hourly Earnings Index—earnings adjusted for overtime in manufacturing, seasonality, and the effects of changes in the proportion of workers in high wage and low-wage industries—was 167.3 (1967=100) in February, 0.7 percent higher than in January. The index was 9.6 percent above February a year ago. During the 12-month period ending in January, the Hourly Earnings Index in dollars of constant purchasing power declined 2.0 percent. (See table B-4.)

EXTENSION OF APPALACHIAN REGIONAL PROGRAM

Mr. BAKER. Mr. President, a decade ago the Nation recognized, and the Congress responded to, the severe problems of Appalachia—a vast region stretching along the backbone of the Apppalachian Mountains. At the very heart of this region lies central Appalachia—eastern Tennessee and Kentucky, West Virginia, and southwestern Virginia.

Here in these mountains existed a hard life and depressed conditions that may have shocked many Americans, but came as no surprise to those of us who knew the region—and who share as well the pride of Appalachians.

Accepting as the basis for legislation the report of a study group appointed by President Kennedy, the Congress in 1965 enacted the Appalachian regional development program.

Next Monday, March 10, 1975, the Senate Commitee on Public Works will begin hearings on an extension of that program. I strongly support, and will work for that extension. As a Tennessean deeply concerned about the future of Appalachia, and as the ranking Republican member of the Senate Committee on Public Works, I am proud of my association with what I consider one of the most successful programs we have.

The problems that confronted Appalachia in the early 1960's were deep-seated and intractable. Why had this resource-rich region not progressed with the rest of the Nation? How could this happen to a people known for their independence and strength of character?

The President's study commission confirmed what we had known: Appalachia's isolation cut it off from the rest of the Nation physically, economically, and socially. The mountains form a natural barrier which discouraged road building and free movement of people and goods. Major highways skirted the region, or followed traditional routes that ignored many areas. Air transportation systems shied away from the small, ill-equipped airports.

The States, with their low tax bases, could not afford to construct mountain highways that cost twice the national per-mile average to build. Nor could they provide the wide range of social services found elsewhere in the country. Appalachia's sparse and often outdated hospitals had little to attract doctors. The predominately rural and financially poor school systems had similar problems attracting teachers. Vocational education and adult training were practically nonexistent.

Coal production, the economic lifeblood of the region, was down. Mechanization multiplied the loss of jobs caused by the closing of many mines. Region-wide unemployment was almost twice the national average; per capita income was 65 percent of the national average; one out of every three families existed on an annual income of less than $3,000; and in central Appalachia the situation was far more severe.

Discouraged by problems clearly beyond local capabilities, Appalachia by the early 1960's was lagging further and further behind a growing nation. What made this situation even more appalling, however, was the great untapped potential of the region, with its wealth of natural resources; its key location between the eastern and midwestern markets; and its characteristically independent people.

With few job opportunities and no way to learn new skills, millions of Appalachians found it necessary to leave the region in search of work and better futures for their families. Outmigration was steadily sapping it of a most valuable resource—its young people.

The Appalachian Regional Development program was a carefully designed plan to help Appalachia—one that acknowledged its isolation; its economic and social problems; and, perhaps most importantly, the nature of its people.

The major goal was to bring Appalachia back into the mainstream of the Nation's economy. This was not to be accomplished simply by soliciting industry; Appalachia's situation was far too complex and desperate for a public relations effort.

It was to be accomplished, instead, by helping the region build those facilities and services that are the foundation for a sound economy—transportation systems; community infrastructure such as sewage and water systems; health care facilities and delivery programs; vocational-technical schools and training programs; decent housing; and programs to clean up and protect a neglected and often abused environment, and to encourage wise use of Appalachia's abundant natural resources.

Top priority among these was highways. The Interstate System, when completed, would provide major arteries through the region; however, they would not serve many of the more populated and potentially productive areas. The Appalachian Regional Development Highway System was designed as a series of "corridors" to link the Interstates and to provide for the free flow of people, raw materials and products throughout Appalachia and its adjacent markets.

Dependence upon the coal industry was to be supplemented by creating an atmosphere conducive to the development of a broader-based economy. This meant building the facilities and services necessary to support new and diverse economic interests—the sewage and water systems, access roads, and housing so desperately needed throughout the region. Equally important, it mean too, of course, providing people with the education, skills, and health care they needed to lead more productive lives.

Another key problem addresed by the Congress was the fact that the Appalachian area often missed out in Federal programs for lack of the local matching money required by many line agencies. Moreover, local governments could not afford to hire the technical expertise so often needed to put together increasingly complex program requests. The Appalachian "supplemental funding" helped make up the difference between what other Federal agencies required in matching money and what local areas could afford. To this was later added the flexibility to grant "seed money" where no other Federal dollars were available.

The 1965 legislation created the Appalachian Regional Commission to administer the program. The ARC was established as a Federal-State partnership—consisting of a Federal Co-Chairman appointed by the President with the consent of the Senate; and of the Appalachian governors who elect a States' Co-Chairman from among their number. It also authorized a small technical support staff to be headed by an Executive Director.

Since Appalachian funds were very small compared to the region's needs, a "rifle"—as opposed to a "shotgun"—investment approach was selected. The Appalachian program proposed to concentrate funds in areas of greatest potential for economic growth, instead of scattering investments and diluting their impact.

Today, almost 10 years later, it is fair—and indeed necessary—for the Congress to ask whether or not this program is suceeding. I am informed that 1,345—or about half—of the Appalachian highway system is completed, or under construction.

Construction is almost complete on a region-wide system of vocational-tech-

nical schools. The system currently serves 39 percent of Appalachia's eligible high school juniors and seniors, with a goal of serving 50 percent of this group.

The Commission has funded 443 sewer and water projects; 114 libraries; and 99 mine reclamation and subsidence projects.

Appalachian dollars have been invested in 846 health facilities, equipment, operations, and services projects and, of the 396 counties in the region, 389 now have comprehensive health planning agencies.

The ARC housing program has stimulated construction of low- and moderate-income housing units for over 12,000 families. It also has been influential in helping the States create housing finance authorities: eight States now have active housing finance agencies; three other States have passed, and the remaining two are considering creation of such agencies.

Appalachian funds also have been spent to build access roads to sites for industrial complexes, hospitals, and schools; to rid the countryside of junk cars; to provide technical and planning assistance on the State and local levels; and to research and recommend actions on such critical regional issues as surface mining regulations and reclamation.

Although it has been referred to as a "bricks and mortar" program, the Appalachian regional development program is much more.

Multicounty health programs are underway in 12 States, developing and deliverying a wide spectrum of health care services. As an example, one such seven-county demonstration project serves over 213,000 people, or the entire population of this predominantly rural area.

My own State of Tennessee has taken advantage of its Appalachian experience. In 1974, it passed a Comprehensive Child Development Act, establishing a State child development office with responsibility for a Statewide program based upon the concept and organization of the Appalachian Tennessee Child Development Program. On a region-wide basis, the ARC has over 200 active child development projects serving more than 100,000 children and their families.

Multicounty educational service programs are operating throughout the region. These agencies enable school systems to combine their resources and share equipment and services none could afford alone. The success of this program is reflected in Maryland, as well as in Chairman RANDOLPH's State, which have both adopted the systems statewide. Tennessee, with four education service agencies operating in its Appalachian area, recently passed legislation permitting school districts throughout the State to organize along the same lines.

The Appalachian program serves not only the region, but the Nation. Appalachia is, in an important sense, a laboratory where new ideas are born. And many of these new concepts can, and are, having impact outside the region.

An illustration of the program's impact however, can perhaps best be seen on the local level. Within the First Tennessee Local Development District, for example, the Appalachian program has participiated in funding four comprehensive vocational secondary schools credited with reducing the school dropout rate and providing key support for new industrial growth.

Supplemental funds have made possible several sewer and water projects that are supporting both industrial and residential growth. Health investments, including both planning and construction grants, also have helped improve services. For example, the Johnson County Hospital today serves not only the needs of the county residents, but also those of families from nearby Virginia and North Carolina.

Including eight counties in Tennessee and one in Virginia, this local development district demonstrates how the Appalachian States cooperate on the local as well as the State level to solve mutual problems.

Over 14 million ARC dollars have been invested in a total of 71 projects ranging from long-term health care to airport safety projects. It do not believe it coincidental that the First Tennessee Local Development District is one of the fastest growing industrial areas in the State of Tennessee. I emphasize, too, that the local ARC planning district, in cooperation with the Governor's office, was responsible for setting these investment priorities and for developing and implementing the projects.

This story has been repeated many times throughout Appalachia: local initiative coupled with State planning, under priorities determined by the Governor who, as a member of the Commission, shares regionwide policy responsibility with his fellow Governors and the Federal representative.

It is a process of communication and negotiation in which all parties must be both responsive and responsible to achieve their goals.

This process is, in itself, a great and important achievement. It permits local, State, and Federal officials to work in tandem toward agreed-upon goals. This constructive institutional structure, in my opinion, is reason enough to extend the Appalachian regional development program. It is a problem-solving mechanism that I consider might well set an example of a better way of doing the people's business.

I have reviewed a bit of the history, goals, and some of the accomplishments of our Appalachian program. During hearings before the Senate and the House, the Appalachian Commission will, of course, make its own case for extension. However, as I look to the future, I see a changing region and a new set of problems.

It is critical that we now examine not only what the program has so far accomplished, but also the new challenges Appalachia faces in a changing world and a time of changing goals.

The world and the Nation have changed over the past decade—and these changes have affected Appalachia. People—weary of air pollution, overcrowding, and the impersonal attitudes of the city—have helped reverse the outmigration that cost the region so many of its most talented and capable people. Environmental pollution, a major concern in the region for years, has become a national issue. The energy crisis that has made us all too aware of our finite natural resources, has stimulated the coal industry and made Appalachian coal production critical to the Nation's energy survival.

Today we, as a nation, are faced with the need to revitalize our economy; to adapt to a quality of life based upon limitations of energy and other natural resources; and to accommodate the growing trend toward deurbanization. These changes in national attitudes and needs are having increasing impact upon Appalachia.

The influx of new residents, second-home seekers and tourists, along with the coal boom, make it imperative, I believe, that Appalachia reappraise its goals and adapt its strategy.

Historically, Appalachian coal production has been cyclical, boom followed by bust. To insure that the region—the central Appalachia coal fields in particular—does not suffer in the same way again, constructive steps must be taken promptly. This period of increased prosperity must be used to help develop the facilities and services so that the region can become, and remain, economically self-sustaining.

The influx of new residents and the growing tourism and recreation appeal of the region place added burdens on local and State planning and development institutions. Strong efforts must be continued to organize and guide new development in a way that protects our environment and avoids chaotic growth.

The simple fact is that Appalachia, although well on its way to achieving its original goals, finds itself faced with a new set of problems. And while the region has come a long way in a short time, it still lags significantly behind the rest of the Nation. Its institutions are still fragile, its fiscal resources limited, and its social services inadequate.

Since the Congress originally authorized the Appalachian program in 1965, we have had an opportunity from time to time to evaluate its progress and help determine its future. As we near the end of the program's current authorization, it is time to again exercise those responsibilities.

Considering the past success of the Appalachian program and the region's new relationship to the Nation, I know that to abandon this program now would be to leave a very necessary task unfinished. It would mean, moreover, failure to address the new challenges to a struggling regional economy.

Now is the time for Appalachia to focus its goals, improve its institutions, and order its priorities—to continue the building of community infrastructure, and to increase and raise the quality of still sadly inadequate human services.

Early completion of the interstate and regional highway systems is still the cornerstone for Appalachian development, and continued support for the regional corridor and access road system is imperative. This is a time also, however, to develop rural transportation systems that make fuller use of those new miles of road and increase access to jobs, health services, and educational facilities.

With a system of vocational-technical

schools and education service agencies largely established, the Appalachian program might well consider expanding that system through programs of adult literacy, career education, manpower training and early childhood education.

The health facilities program is also nearing the end of its building phase. The program needs now to turn more strongly to comprehensive health and child care services, especially in rural areas.

Continued support is critical in building the housing and community infrastructure that serve both the needs of people and industry. Inadequate sewage, water and solid waste disposal, as well as rundown housing, are a threat to the health and a barrier to growth.

Never before has the vital complex of energy, environment, and natural resource development been more important to a region and the Nation. Appalachian coal is today a major domestic energy source. Gasification and liquefaction must be explored.

Continued support of the young local development districts is essential to regional development. These ARC multicounty planning agencies now blanket the region, giving local people a direct link to the State and the Commission.

Continued refinement of the decision-sharing process that serves the region so well, and demonstrates to the rest of the Nation that Federal, State, and local governments can work together, is of equal importance. I trust the Commission will continue to serve as advocate and honest broker for the region. The talents and experience of its creative staff are needed as urgently as ever.

When this program began 10 years ago, the Commission could not afford to be timid in its approach to problem solving. The needs were too urgent and usable precedents too few and far between. So the Appalachian program innovated from the beginning, and continues to do so, serving the Nation as a laboratory where new ideas are born and tested.

In those early days, several scholars of government flatly state that such a program could not and would not work.

It has had its share of criticism and setbacks, I am sure. But measured by almost any standard—its original goals, the impact of its dollar investments, or the numbers of people who are benefiting—I consider that the Appalachian regional development program works and works well.

The Appalachian program's achievements are as sophisticated as a communications satellite providing inservice training for 900 teachers; as basic as a home health nurse attending the needs of residents in a mountain hollow. Its task today is to complete the work so well begun, and to meet—with the dedication and creativity we have come to expect—the great new challenges thrust upon the region by a changing world.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene at 12 o'clock noon on Monday.

There will be a period for routine morning business with statements therein limited to 5 minutes each, after which the Senate will resume consideration of S. 7, the surface mining bill. Rollcall votes may occur on amendments thereto. However, no rollcall votes will occur before the hour of 3:30 p.m.

ORDER FOR ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock noon on Monday next.

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

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. ROBERT C. BYRD). Without objection, it is so ordered.

ADJOURNMENT

Mr. HUDDLESTON. Mr. President, I move, in accordance with the previous order, that the Senate stand in adjournment until 12 noon on Monday next.

The motion was agreed to; and at 9:03 p.m. the Senate adjourned until Monday, March 10, 1975, at 12 noon.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 7, 1975:

DEPARTMENT OF DEFENSE

Victor V. Veysey, of California, to be an Assistant Secretary of the Army.

Donald G. Brotzman, of Colorado, to be an Assistant Secretary of the Army.

(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.)

IN THE AIR FORCE

The following officers for appointment in the Reserve of the Air Force to the grade indicated, under the provisions of chapters 35 and 837, title 10, United States Code:

To be major general

Brig. Gen. Richard Bodycombe, [redacted] FV, Air Force Reserve.

Brig. Gen. Vincent S. Haneman, Jr., [redacted] FV, Air Force Reserve.

Brig. Gen. Gilbert O. Herman, [redacted] FV, Air Force Reserve.

Brig. Gen. Edwin R. Johnston, [redacted] FV, Air Force Reserve.

Brig. Gen. David Waxman, [redacted] FV, Air Force Reserve.

To be brigadier general

Col. Charles E. Corcilius, [redacted] FV, Air Force Reserve.

Col. Thomas A. Diab, [redacted] FV, Air Force Reserve.

Col. Donald P. Dressler, [redacted] FV, Air Force Reserve.

Col. Robert K. Elliott [redacted] FV, Air Force Reserve.

Col. Joseph W. Kovarick, [redacted] FV, Air Force Reserve.

Col. Jack N. Kraras [redacted] FV, Air Force Reserve.

Col. John E. Lacy [redacted] FV, Air Force Reserve.

Col. Walter R. Longanecker, Jr. [redacted] FV, Air Force Reserve.

Col. John E. Taylor, Jr [redacted] FV, Air Force Reserve.

Col. Justin L. Townsley, [redacted] FV, Air Force Reserve.

Col. James L. Wade, [redacted] FV, Air Force Reserve.

Col. Edwin D. Woellner, Jr., [redacted] FV, Air Force Reserve.

IN THE ARMY

The following-named officers to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

To be general

Gen. Michael Shannon Davison, [redacted] Army of the United States (major general, U.S. Army).

To be lieutenant general

Lt. Gen. Elvy Benton Roberts, [redacted] Army of the United States (major general, U.S. Army).

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. Robert Morin Shoemaker, [redacted] Army of the United States (brigadier general, U.S. Army).

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. Howard Harrison Cooksey, [redacted], U.S. Army.

IN THE NAVY

Rear Adm. Stanley S. Fine, U.S. Navy, for appointment as Director of Budget and Reports in the Department of the Navy for a term of 3 years pursuant to title 10, United States Code, section 5064.

The following-named captains of the line of the Navy for temporary promotion to the grade of rear admiral, subject to qualification therefor as provided by law:

Samuel H. Packer II	Mark P. Frudden
William L. Hinkle	Stanley J. Anderson
Cabell S. Davis, Jr.	Gordon J. Schuller
Bruce Keener III	James A. Sagerholm
Thomas W. McNamara	William H. Rowden
Robert M. Collins	Ross N. Williams
James B. Morin	Wayne E. Meyer
Henry D. Arnold	William Nivison
John V. Josephson	Francis F. Manganaro
William M. Callaghan, Jr.	Edward F. Welch, Jr.
	Charles J. Youngblade
James H. Scott	John C. Barrow
Lee Baggett, Jr.	Thomas J. Kilcline
Paul C. Gibbons, Jr.	Paul H. Engel

Edward S. Briggs
Robert L. Walters
Allen E. Hill
William A. Gureck
William B. Warwick
Thomas H. Replogle
William R. Smedberg IV
Robert E. Morris
Ernest R. Seymour
Thomas L. Malone, Jr.

Captain Maxine Conder, Nurse Corps, U.S. Navy, for appointment to the grade of rear admiral pursuant to title 10, United States Code, section 5767(c) while serving as Director of the Nurse Corps.

MARINE CORPS

The following-named officers of the Marine Corps for temporary appointment to the grade of major general:

Andrew W. O'Donnell
Adolph G. Schwenk
Herbert L. Wilkerson
Clarence H. Schmid
Arthur J. Poillon
Kenneth McLennan
Joseph Koler, Jr.

The following-named officers of the Marine Corps for temporary appointment to the grade of brigadier general:

Francis W. Tief
Calhoun J. Killeen
Edward J. Megarr
William B. Fleming
Charles G. Cooper
John K. Davis
Darrel E. Bjorklund
George L. Bartlett
Richard C. Schulze
William R. Maloney
Charles D. Roberts, Jr.

The following-named officers of the Marine Corps Reserve for temporary appointment to the grade of major general:

Harold Chase
Robert E. Friedrich

IN THE AIR FORCE

Air Force nominations beginning Maj. Kenneth D. Anderson, to be lieutenant colonel, and ending Maj. Thomas L. Winans, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on February 20, 1975.

IN THE ARMY

Army nominations beginning James M. Jackson, to be major, Regular Army, and lieutenant colonel, Army of the United States, and ending Thomas J. Shandera, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on February 3, 1975.

Army nominations beginning Roger E. Alberts, to be second lieutenant, and ending Gregory G. Zimmer, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on February 18, 1975.

Army nominations beginning James W. Abbott, to be second lieutenant, and ending Thomas Zigoris, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on February 25, 1975.

IN THE NAVY

Navy nominations beginning Honorato M. Aguila, to be commander, and ending Edward William Morris, to be lieutenant commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on February 7, 1975.

Navy nominations beginning Charles Ervin Aaker, to be lieutenant commander, and ending Marie Louise McElligott, to be lieutenant commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on February 7, 1975.

Navy nominations beginning Richard F. Acquavella, to be lieutenant commander, and ending John C. Lessel, to be lieutenant (j.g.), which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on February 7, 1975.

Navy nominations beginning Paul Robert Abretski, to be chief warrant officer, W-3, and ending George Dean Zeitler, to be chief warrant officer, W-3, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on February 7, 1975.

IN THE MARINE CORPS

Thomas A. Silvear, U.S. Marine Corps, for reappointment to the grade of major in the Marine Corps, which nomination was received by the Senate and appeared in the CONGRESSIONAL RECORD on February 3, 1975.

Marine Corps nominations beginning Leon N. Angelo, to be colonel, and ending Billie Young, to be chief warrant officer, W-2, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on February 3, 1975.

Marine Corps nominations beginning Joseph A. Alexander, to be second lieutenant, and ending James J. Seward, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on February 7, 1975.

EXTENSIONS OF REMARKS

PRINCIPLES IN EVALUATING ECONOMIC PROGRAMS

HON. JAKE GARN

OF UTAH

IN THE SENATE OF THE UNITED STATES

Friday, March 7, 1975

Mr. GARN. Mr. President, shortly after the President made his state of the Union address, and there began to be significant reaction to it here in Congress, I made a statement of the general principles I would apply in evaluating economic programs. In view of the proposals now surfacing on a comprehensive energy plan, I feel that it might be useful to make a similar statement in this area. In evaluating energy proposals, then, I will apply the following general principles:

First. Any proposal must address both sides of the equation: Production and consumption. The majority of the proposals I have seen to date employ various techniques to limit consumption, but very few will do anything to encourage the production of new oil supplies within the United States. It is a fact that consumption will react to higher prices and taxation, but except in the area of gasoline, most of the savings in consumption that can be effected without massive capital investments have already been made.

Second. The capital investment so necessary to increased exploration, drilling, and refining must not be discouraged. To some extent, the very fact of massive budget deficits will dry up capital markets, and limit the borrowing of needed capital. Such deficits must be opposed. In addition, such measures as investment tax credits and plowback provisions of profits taxes will stimulate production while the elimination of the oil depletion allowance will discourage it. Elimination of the allowance will be especially hard on the independent producers, who account for the great bulk of new exploration.

Third. The free market provides the best tool available to accomplish the allocation of resources and to permit the individual to make judgments as to the best source of energy to use. At present, it is impossible for anyone to know whether gas heat, oil heat, or electric heat is the best buy. That is because natural gas is regulated, domestic oil is regulated, and the Government is heavily involved in all energy markets. The effects of this involvement are higher prices and illogical decisions about energy development. We must move swiftly to a free market in energy. Nevertheless, we must avoid the shock of instant deregulation. As the regulatory distortions have been built up over time, so the deregulation must be accomplished over time. I favor phasing out of controls to allow smaller firms time to adjust to the needed conditions of freedom.

Fourth. Rationing of commodities is wasteful at virtually every level of activity. Above all this statement is true of gasoline, which is so essential to every individual in the Nation, and whose pattern of use varies so widely. As practically every economist will admit, rationing systems cannot be fair and simple. They require an army of bureaucrats involving themselves in every aspect of our lives—making judgments, allocating petroleum. No man-devised system is capable of coping with the complexities of a society such as ours; the sensitivity of a free market is our only hope.

Fifth. We must avoid a temptation to create new agencies to oversee energy use and production. We have had enough experiences with Federal agencies to know that the results of their creation will not be the bed of roses expected. In every case, the results have been greater complexity, rules, and regulations in infinite variety, and more control over the lives of individual citizens. We must resist. The need to resist is particularly important in the field of energy, which is the lifeblood of the Nation. An agency which controls energy would control the country down to the minutest detail.

Sixth. Declining availability of petroleum requires development of alternative energy sources. In most cases, the incentives will come with the rising price of petroleum products, though there is an obvious case for governmental involvement in such areas as nuclear power and geothermal energy. The choice among such alternatives is coal, tar sands, oil shale, solar, and other forms of energy should be left to the market, insofar as possible. Artificial impediments placed in the way of using some alternatives, such as coal, must be reduced, consistent with the health and safety of the people. Local officials are more qualified to evaluate the ability of a given area to tolerate coal-burning electric facilities, or the need to subsidize oil shale extraction than are distant bureaucrats.

In the long run, the more esoteric sources, such as nuclear fusion and magnetohydrodynamics will deliver nonpolluting energy. Fossil fuels are finite, but their importance in the short and medium run must be recognized, and must be used.

Mr. President, these are the standards by which I will measure all proposals

which come before this body. It is my hope that we will be able to work together, in partnership with the President, to fashion a policy which will allow for a quick economic recovery, and which will decrease our dependence on foreign petroleum. I believe the principles I have outlined will accomplish these goals.

POTENTIAL SOURCES OF U.S. MINERAL SUPPLIES

HON. LEE METCALF

OF MONTANA

IN THE SENATE OF THE UNITED STATES

Friday, March 7, 1975

Mr. METCALF. Mr. President, the current issue of the Mining Congress Journal, published by the American Mining Congress, includes an article on our Nation's problems in acquiring the minerals basic to our economy.

Headed "Potential Sources of U.S. Mineral Supplies," it was written by Dr. A. Brobst, Deputy Chief of the Office of Mineral Resources, and Dr. Edwin W. Tooker, Chief of the Office of Mineral Resources, both of the U.S. Geological Survey.

As they discuss the decline in commercial grade copper ore, they ask the question: How much lower can the tenor of the ore go without running into the problem of having the cost of the energy to recover this material exceed the value of the expected copper?

The authors point out that while the 92 naturally occurring elements are present in the Earth's crust, concentration of many metals in a deposit which can be mined commercially is rare.

Exploration to find commercial deposits costs a lot of money and, in the opinion of Dr. Brobst and Dr. Tooker, "new means of finding the great amounts of capital necessary to mount large exploration and development programs will have to be generated somehow."

I commend this article to those interested in this vital subject and I ask unanimous consent that it be printed in the Extensions of Remarks.

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

POTENTIAL SOURCES OF U.S. MINERAL SUPPLIES

(By Donald A. Brobst and Edwin W. Tooker)

There are problems in the area of mineral resources. We can make no mistake about that. There are real ones to deal with and then there are some that are simply being created quite artificially and that too is part of the problem. In discussing capital and the U.S. resources crunch in the September 1974 issue of Engineering and Mining Journal, Wallace Macgregor and Edward L. Vickers thoughtfully stated.

"One of the great paradoxes of our time is that the intellectual and political debate over the natural resource position of the United States—instead of clarifying the problem—has added to the confusion by eroding public confidence in the natural resources industry at a time when the development of such resources is sorely needed."

The confusion referred to by Macgregor and Vickers is commonly added to by misunderstanding of our oral and written communications. Thus, in a penetrating discussion of the economic problems of today in the September 14 issue of Business Week, the writers dismissed the problem of the geologic availability of mineral commodities as a mere detail.

The Business Week writers dismissed as pure nonsense the idea that we are running out of basic materials such as iron ore, copper, zinc and bauxite. As geologists are fond of pointing out, they went on to say, the planet itself is made of minerals and a single average cubic kilometer of the earth's crust contains hundreds of thousands to millions of tons of such metals as aluminum, iron, zinc and copper.

The Business Week writers also believe that, with the exception of fuels, most minerals are not lost when they are used because they can be recovered from scrap. They believe "The real question relates not to potential mineral resources, which may be prohibitively expensive to mine in the foreseeable future, but to mineral reserves—identifiable deposits of minerals that are exploitable at current levels of technology and prices." To quote, "and here again the evidence is reassuring. The history of the past century indicates that as the result of price hikes, improved exploration, and technological advances, the known reserves of most minerals have been constantly increasing at a pace in line with consumption." This is indeed a creed for the complacent that had some validity at a time when mineral supplies were abundant, easy to find, and technologically available with low cost energy.

CIVILIZATION DEPENDENT ON MINERALS

Our civilization is dependent upon minerals. In 1927 our $1.1 trillion economy was based on $32 billion worth of raw materials and fuels produced domestically and an additional $4 billion worth of imported crude materials. The $32 billion of domestic products included about $22 billion worth of fuels and $10 billion worth of industrial minerals and metals. In constant dollars, that year's production was another point along the way in the development of an ever-expanding economy.

As a matter of fact, consumption has been rising exponentially all over the world by its exponentially rising population, and that brings us to a critical factor in understanding our mineral resource problems. Mining has been going on in the world for several thousand years, but how many times have we stopped to think about the fact that about 75 percent of all the minerals and fuels produced in the history of mankind have been consumed in the 30 years since World War II. We are already noticing the more rapid rise of world demands at higher rates than in the United States. The population of the world is expected to double again by the end of this century. A major question before us now is how long exponential growth in the use of non-renewable resources can be expected to continue, even with conservation, substitution and recycling.

HUGE SUPPLY EXHAUSTIBLE WITH EXPONENTIAL GROWTH

Exponential growth pertains to geometric increase—that old doubling of numbers. After a few doublings, the requirements become burdensome and then impossible. For example, a 1 billion year supply of anything at the present rates of consumption would be exhausted in 582 years with a 3 percent rate of expanded use annually, the general recent rate of U.S. economic growth. A $2 billion year supply will only last 23.5 years longer because it is equal to only one more doubling time of the use of 1 billion year supply. Of course, consumption of a finite supply would not follow such a pattern of increase to its final exhaustion, but the point is that the level of consumption is just as significant an element in the life of a supply as the magnitude of the resource. Exponential growth in consumption can quickly exhaust even a huge supply.

The writers agree with many economists that many of the current problems with shortages of energy and some other minerals are in large part a result of demand overtaking our abilities to develop supply. The prognosis of exponential growth and its implications, however, make it time to seek other means than simply growth and material consumption to advance the welfare of man.

JOB OF EXPLORATIONISTS IS ENORMOUS

An enormous task is placed upon the exploration departments of the mining industry at home and abroad in view of the world's uncontrolled exponentially growing demands for minerals. New ore deposits must be sought. In the short term, in the next 25 and 30 years, efforts will have to be intensified in the search for the undiscovered ore deposits of the types that we currently know how to process. During this same time, efforts will have to be made to develop the technology to convert identified subeconomic resources into reserves. More effort should be put into the study of the processes of ore formation and the geologic environments of deposition of conventional and new types of ore deposits. These studies will form the nucleus of a body of knowledge that will supply the criteria with which to hunt for the commercial ore deposits needed in the more distant future. Geologic studies to date seem to make it quite clear that there are geologic environments in which certain needed minerals may be concentrated—environments in which we have not yet sought commercial deposits. We must find them, they won't come to us.

USE OF TECHNOLOGY NEEDS TO BE SPEEDED UP

The success of the long and short term search for ore deposits also will have to depend on the development of new technology. Starr and Rudman of the Electric Power Research Institute recently pointed out in Science magazine that the application of technology is generally 10 years behind the drawing boards in research departments. They postulate an annual growth rate of technology at about 2.3 percent. This is a reservoir of information from which we shall have to draw more at faster rates in the future.

Difficult problems lie ahead in technology. We shall have to overcome several things that are holding back the utilization of today's so-called subeconomic resources. We are all well aware that in this century the commercial grade of copper ores has declined considerably and now stands at an average of 0.6 percent of contained metal. How much lower can the tenor of the ore go without running into the problem of having the cost of the energy to recover this material exceed the value of the expected copper? In an energy study in progress, it is estimated that a 300-fold increase in energy would be needed to recover the metal from copper ore in a 10-fold reduction of grade from 0.1 to 0.01 percent. With a four-fold increase in the price of energy in the last year, a 300-fold increase in energy required to recover that copper from the very lowest grade materials would appear to make such operations highly impractical on a commercial scale.

To state all of this in another way, it becomes patently clear that we cannot depend on the metal contents of the average cubic kilometer of the earth's crust as a near-term source for metals, unless energy becomes more abundant and cheaper than now, or even than it was a few years ago.

BETTER USE MUST BE MADE OF COPRODUCTS

Among other things that we can do for the short-term is attempt to make better use of co-products from the mines, the mills and the smelters. The recovery and use of co-products has been on the rise in industry for some time. There will be improvement in these areas not only because of a need for

conservation, but also economies will make it desirable to do so. If there is a product of economic value, it certainly should be able to find its way to market.

Substitution is also another means by which we can extend and better utilize some of the products of our ore deposits. Engineers will be paying much more attention to deciding the best use of given material. It is certainly debatable, for example, whether we want to consume platinum group metals, among the world's rarest commodities, in exhaust systems for automobiles. There may be considerable substitution in the future for some of the rarer materials with some of those that occur more abundantly in the earth's crust.

80 OF 92 NATURAL ELEMENTS IN COMMERCIAL USE

There are now commercial uses for about 80 of the 92 naturally occurring elements in the earth's crust. Ten elements of the 92 make up more than 99 percent of the crust (table 1) and many of the metals and elements that we use in commerce and industry today are not among those 10 (table 2). As a matter of fact, many of these metals are so rare that their crustal abundance is only a few grams per metric ton.

For example, if we consider the consumption of the individual metric tons in that rich-sounding cubic kilometer of crust referred to in Business Week, we would hope to find 200 grams of chromium, 80 grams of nickel, 65 grams of zinc, 45 grams of copper, 3 grams of tin, 2 grams of uranium and 1 gram each of molybdenum and tungsten. Indeed, we should help more people realize just how much of a rare phenomenon a concentration of some of these metals is that currently can be mined commercially.

TABLE 1.—USES AND AVERAGE ABUNDANCE OF MAJOR ELEMENTS IN THE LITHOSPHERE

Rank and element	Weight (percent)[1]	Major use
1. Oxygen	46.60	(None from lithosphere).
2. Silicon	27.72	Metallurgy.
3. Aluminum	8.13	Metal.
4. Iron	5.00	Steel.
5. Calcium	3.63	Chemicals, construction.
6. Sodium	2.83	Chemicals.
7. Potassium	2.59	Chemicals, fertilizer.
8. Magnesium	2.09	Refractories, chemicals.
9. Titanium	.44	Metallurgy, chemicals.
10. Hydrogen	.14	Fuel, chemicals (H_2O).
Tota	99.17	

[1] From Mason (1958).

TABLE 2.—AVERAGE ABUNDANCE OF SOME MINOR ELEMENTS IN THE LITHOSPHERE

Rank and element	Weight (percent)[1]
11. Phosphorus	0.118
12. Manganese	.100
16. Barium	.040
17. Carbon	.032
19. Chromium	.020
22. Vanadium	.011
23. Nickel	.008
24. Zinc	.0065
27. Copper	.0045
32. Cobalt	.0023
35. Lead	.0015
45. Tin	.0003
42. Uranium	.0002
53. Molybdenum	.0001
57. Tungsten	.0001

[1] From Mason (1958).

PRICE NOT GOVERNING FACTOR IN RECYCLING

Another extension of currently available supplies of materials involves recycling. Very little recycling has been done in past years mostly because it has been considered uneconomic. Data provided by the U.S. Bureau of Mines about the recycling of 18 metals in the United States in 1972 is shown in fig. 1. With the exception of antimony, recycling of no metal provided more than about 35 percent of the year's needs for that metal. The price of the new material is not the governing factor now in recycling.

The material currently recycled comes generally from only a few of the largest users of the material because these recycle systems are easiest to set up on a paying basis. It is also indeed unfortunate that many uses of these non-renewable materials result in the dispersal of the material to such a degree that it would be very difficult to recycle them under any economic system. Without the development of some improved, low energy technology and better channels for the direction of recycling, the record may not be much improved for some time. Recycling is not the total answer, but a better record here could indeed reduce some of the need for finding new deposits at an accelerated rate to keep up with rising demand. As professionals we cannot in good conscience condone continued waste. Better understanding and cooperation of the public in recognizing the need for recycling of materials from nonrenewable resources would be of tremendous help.

Old scrap recycled in the United States is significant but improvement is possible

	Short tons
Major:	
Iron	[1] 46,400,000
Lead	506,000
Copper	473,000
Aluminum	250,000
Zinc	81,000
Chromium	60,000
Nickel	73,900
Tin	13,000
Antimony	17,600
Magnesium	2,700
Minor:	
Mercury	494
Tungsten	250
Tantalum	62
Cobalt	65
Selenium	15
Precious:	
Silver	1,049
Gold	82
Platinum group	10

[1] Includes exports

LEAD TIME ON ORE DEPOSIT DEVELOPMENT RISING

Several other factors should be mentioned. Two especially important ones are the lag-time between exploration and production of an ore deposit and the very intense need for capital. The public and some of the economic policy makers commonly overlook that the lag time between the discovery of a target worth exploring for a commercial deposit and the development of it, if you are lucky enough to have found one, is growing longer each year as ore deposits become harder and more expensive to find.

Geologists realize that most of the easy to find ore deposits, at least in the U.S., already have been found. The amount of work to find hidden ore deposits is staggering and not at all well understood by the public. The period of exploration and development nowadays in many metals stretches from 5 to 15 years. Unless there are soon some tremendous technological breakthroughs, this lag-time is not likely to be reduced substantially in the near future. Anyone who expects mineral reserves to continue to be developed as easily in the future as they have been in the past does not grasp the twin concepts of geologic and economic availability. These factors are critical to successful mineral exploration.

PROJECTS CAN TIE VAST AMOUNTS OF CAPITAL

On the matter of capital, the long period of exploration and development can require investment of as much as several hundred million dollars between exploration, development and the time of first production. Return on these costs comes only after production begins. These factors of time-lag between exploration and production and the capital intensity of such programs must be put into terms that are understandable by the public.

Let us turn to copper deposits again for example. Our annual consumption of copper in 1973 reached nearly 2 million tons. Therefore, if we are going to maintain our copper reserves at current levels, we must find annually deposits containing 2 million tons of copper, discounting improvements in recycling. A number of our currently operated porphyry copper deposits in the southwest are estimated to contain about 1 million tons of copper. If it takes approximately 10 years to bring a deposit into production, then we must be finding equal to at least a 2-million ton deposit per year and have 10 others in various stages of development. This example, of course, assumes that we maintain a status quo in the level of reserves, and not increase it, as would be desirable to meet an exponentially growing need.

1973 AND 1974 USHERED IN PERIOD OF HISTORIC CHANGE

It is quite clear to those of us well immersed daily in the problems of mineral resources that we not only have many geological, technical, and economic problems, but also that we have a problem in communication. We have not yet been able to communicate the depth and the seriousness of the mineral resource problems, both short and long term.

As consumers we also belong to the great public to whom we constantly refer as having to face up to the realities of today. Fundamentally, the years 1973 and 1974 have ushered in a period of change in the history of the industrialized part of the world. We have passed from an era of general abundance of mineral and fuel supplies into an era of scarcity. World demand is rising. There is a greater competition among the nations for the available supplies as the developing nations attempt to raise their standard of living to that of the old established industrialized countries.

The awakening of nationalism in many parts of the world is not helping to solve the world's economic problems. In the past 30 years, the efforts of the industrialized countries have been so successful that basically we have created a one world economy. When there is an economic problem in one part of it, everyone has a problem. It is a new era. New solutions must be found for today's problems. If there is one thing that should have been learned from history, it is that yesterday's actions may not answer tomorrow's questions.

POTENTIAL IS FAVORABLE FOR FINDING NEW MINERAL DEPOSITS

What is the prognosis? From our knowledge of geologic availability, the potential for finding new deposits of many minerals, of both conventional and unconventional types, throughout the world is favorable. The U.S. Geological Survey has presented its understanding of this issue in Professional Paper 820 titled, "United States Mineral Resources" published in 1973. Although great parts of the United States already have been examined for minerals, much of it has been examined only by surface means. Much of the subsurface remains to be searched for minerals. In other parts of the world, geological exploration has hardly scratched the surface. Mineral explorationists will continue to find ore deposits. Whether they will find enough to supply the burgeoning demands in the years ahead is another matter.

Mineral exploration is a capital-intensive endeavor. New means of finding the great amounts of capital necessary to mount large exploration and development programs will have to be generated somehow. We shall have

to muster all of the scientific, technological and financial ingenuity possible in order to meet the challenges. There is no time to waste.

SUCCESS DEPENDS ON PUBLIC UNDERSTANDING

One ingredient that is absolutely necessary for success in meeting mineral demands by industry is public understanding and support. Success in the matter of mineral resources—their discovery and utilization—will require an informed public. The public must thoroughly understand what it may mean to be permanently withdrawing land from development of mineral resources. The public must understand the possible economic, political and social consequences of great dependence on foreign sources of minerals and even capital. It is absolutely essential that the facts be brought out as soon as possible.

It is through the public and their elected representatives that public policy is formulated. The future will require tremendous cooperation between the public, industry, academia and the government. Each will have to make its unique contribution in order for us not only to succeed in solving our problems, but to survive.

One final thought on the subject of cooperation. The Geological Survey and Bureau of Mines have been examining wilderness-type areas to determine whether they contain potential mineral or energy resources prior to Congressional decisions about removing them from mineral entry. This work has been greatly aided by the mining industry, which has made relevant information available to the USGS at the request of the American Mining Congress. This cooperation is appreciated and deserves a thank you for public spirited help in providing the Nation with vital surface and subsurface data needed for sound, credible appraisal. We are equally grateful for the comparable information from individual geologists and engineers with environmental persuasions.

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SENATE—*Monday, March 10, 1975*

The Senate met at 12 noon and was called to order by Hon. JAMES ABOUREZK, a Senator from the State of South Dakota.

PRAYER

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

If any of you lack wisdom, let him ask of God, that giveth to all men liberally, and upbraideth not; and it shall be given him.—James 1: 5.

Almighty God, Ruler of men and nations, grant to our anxious groping hearts the assurance that amid all our perplexities and anxieties there standeth One who slumbers not nor sleeps. Show us once more that though our needs are many, our greatest need is of Thee, and that Thou art always present to those who call upon Thee in spirit and in truth. May we know the peace of Thy presence and the power of Thy love, transforming our jarring discords into the music of Thy will, and lifting all that is temporal into the light of the eternal.

We pray in the Redeemer's name. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 10, 1975.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. JAMES ABOUREZK, a Senator from the State of South Dakota, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

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

PRIVILEGE OF THE FLOOR—S. 7

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized.

Mr. MANSFIELD. Mr. President, I yield to my colleague, the Senator from Montana.

Mr. METCALF. Mr. President, I ask unanimous consent that the following members of the Committee on Interior and Insular Affairs staff be allowed the privilege of the floor during consideration of and voting on S. 7: Michael Harvey, William Van Ness, Lucille Langlois, Mary Flanagan, Harrison Loesch, Fred Craft, and Mary Adele Shute.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, March 7, 1975, be dispensed with.

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

WAIVER OF CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the Legislative Calendar, under rule VIII, 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.

SENATE MEMBERS OF THE JOINT COMMITTEE ON PRINTING AND THE JOINT COMMITTEE OF CONGRESS ON THE LIBRARY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 31, Senate Resolution 103.

The ACTING PRESIDENT pro tempore. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 103) relating to members on the part of the Senate of the Joint Committee on Printing and the Joint Committee of Congress on the Library.

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

There being no objection, the resolution was considered and agreed to, as follows:

Resolved, That the following-named Members be, and they are hereby, elected members of the following committees of Congress:

JOINT COMMITTEE ON PRINTING: Mr. Hatfield of Oregon vice Mr. Hugh Scott of Pennsylvania, resigned.

JOINT COMMITTEE OF CONGRESS ON THE LIBRARY: Mr. Hugh Scott of Pennsylvania vice Mr. Hatfield of Oregon, resigned.

SECRETARY OF STATE KISSINGER'S PEACE-SEEKING EFFORTS

Mr. MANSFIELD. Mr. President, the distinguished Secretary of State, Dr. Henry Kissinger, is visiting Ankara today, after having met with the Greek Foreign Minister a few days ago in Brussels. That, I think, is most encouraging, because, for the first time, the Secretary of State has been able to make a breakthrough and establish some kind of contact with both the Greek and Turkish Governments.

I point out that the situation in the Middle East, which in a sense includes Turkey, Greece, and Cyprus, is a most difficult one. I am fearful that if a solution is not found to the difficulties covering the island of Cyprus and the differences between the Greeks and the Turks, the situation there will become profoundly endangered so far as NATO is concerned and so far as peace in the Middle East is concerned.

The Greek colonels were the ones who started the eruption in Cyprus and the Turks, in turn, overreacted. Out of this difficulty can come a shifting of the latter toward the Soviet Union; it can also bring a more active participation on the part of the Turks in the affairs of the Middle East, as we understand that term; It can hold back the long-range solution to the problem of Cyprus, and, in the end, it may react adversely against the best interests of Greece.