Halls and Stransky, "Atlas of Southern Forest Game," Southern Experiment Station, 1971.

RED-COCKADED WOODPECKER

This vanishing woodpecker nests only in shortleaf or loblolly pines suffering from red-heart disease. Present timber harvesting techniques have greatly diminished its nesting habitat. A major forest products firm is modifying its harvesting techniques to protect this woodpecker.

Anderson, Walter C. "Southern Forestry Investments in an Era of Environmental Concern," Forest Products Journal, V. 22, N. 6, June, 1972.

SOUTHERN HARDWOODS WOODPECKERS AND HARDWOOD BORERS

Redbellied, Hairy, Downy, Redheaded, and Pileated Woodpeckers were observed in hardwood stands heavily infested by borers. These birds are less efficient in stands with average or low borer populations. "Borer species that infest small trees, especially those under 6 inches in diameter, are more apt to be captured by woodpeckers than those that attack larger trees."

"Although the holes made by woodpeckers may cause additional windbreakage and disease incidence in infested trees, the benefits from reduced borer populations are far more valuable than the lost timber."

Solomon, J.D. and Morris, R.C., "Woodpeckers in the Ecology of Southern Hardwood Borers," 2nd Tall Timbers Conference on Ecological Animal Control by Habitat Management, Proceedings, 1971.

RACCOON

Raccoons inhabit primarily the hardwood forests along rivers, small streams, and swamps. They are also found in mixed pine-hardwood forests, but seldom far from water.

Lack of den trees may limit populations.

Halls, Lowell K. and Stransky, John J. "Atlas of Southern Forest Game," Southern Forest Experiment Station, Nacogdoches, Texas, 1971.

AMERICAN WOODCOCK

The South is the wintering ground for migratory woodcocks (Philohela minor). The preferred winter range is in wet areas (streams, bayous, marshes) bordered by southern pines or hardwoods. Small clearings are important for mating rituals, which should be near feeding areas and brushy nesting cover.

Halls and Stransky, "Atlas of Southern Forest Game," Southern Forest Experiment Station, USDA, 1971.

QUAIL DEATH BY SEED POISON

A Questioner reported that large numbers of quail and doves have died from eating treated pine seed on direct seeded sites.

The rebuttal said that this was probably due to mis-application of the poison.

Campbell, Robert. "Manipulating Biotic Factors in the Southern Forest," "The Ecology of Southern Forests," Louisiana State. Univ. Press, 1969.

RUFFLED GROUSE

Ruffled grouse is an edge species which requires small openings in the forest. Prime habitat is found in extensive forests with a wide variety of cover types including hardwoods and conifers. Access to drumming logs is essential. Heaviest population in area of national forests in Virginia, Tennessee, and North Carolina.

Halls and Stransky, "Atlas of Southern Forest Game," Southern Forest Experiment Station, 1971.

During timber stand improvement some sportsmen advise halting the removal of den- and mast-bearing trees which are important to wildlife. These trees are the prime targets of timber stand improvement, but only where these trees are very large or in great number will the value lost to timber production be substantial.

Anderson, Walter C. "Southern Forestry Investments in an Era of Environmental Concern." Forest Products Journal, Voy. 22, No. 6. June, 1972.

BLACK BEAR

Only 9,000 black bear live in the South; mainly in areas of national forests, principally George Washington, Chattahoochee, Nantahala, Cherokee, and Osceola. Since the bear requires extensive undisturbed forests, he is now confined to less accessible forested mountains, to thickets along river bottoms, and to large swamps. Areas managed for bear should be kept remote by limiting the extent of year-round roads.

Halls, Lowell K. and Stransky, John J. "Atlas of Southern Forest Game." Southern Forest Experiment Station, F.S., USDA, 1971.

BIOLOGICAL CONTROL

"Woodpeckers are the most important predators of the spruce beetle (*Dendroctonus rufipennis* Kirby). In some areas (of Colorado Engelmann spruce stands) they have destroyed as much as 75% of the bettle population."

". . . woodpecker activity and abundance appear correlated with beetle abundance."

Massey, Calvin L. and Noel D. Wygant. "Woodpeckers: Most Important Predators of the Spruce Bettle." Colorado Field Ornithologist, No. 16, June 1973.

SENATE—*Friday, May 28, 1976*

The Senate met at 9:45 a.m. and was called to order by the Acting President pro tempore (Mr. METCALF).

PRAYER

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

Make ready our hearts, O Lord, for the memorial of those who have valiantly fought and bravely died for this Nation. Bring comfort to those who see again in memory's vista the parade of those who marched away never to return. Be especially near to those who even now bear in their bodies the trauma of war, granting them the assurance of a grateful people.

May our response to their self-giving be purer lives, nobler service, and deeper dedication to the causes for which they gave so much. And may we live worthily in a nation with liberty and justice for all in a world at peace.

As enjoined by the President's proclamation, may we and our fellow citizens on Monday next bow our heads and hearts in suitable memorial for the brave sons of every generation who pledged their lives in the service of others.

We pray in His name who went before us in the way of sacrificial service. Amen.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, May 27, 1976——

Mr. ALLEN. Reserving the right to object, Mr. President, I suggest the absence of a quorum.

Mr. ROBERT C. BYRD. May I complete my motion? The Senator will have plenty of time to object.

Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, May 27, 1976, be dispensed with.

Mr. ALLEN. Mr. President, I object. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Objection is heard. The clerk will read the Journal.

Mr. ALLEN. Mr. President, I object, and I suggested the absence of a quorum.

The ACTING PRESIDENT pro tempore. I did not hear the absence of a quorum part of the Senator's statement. The clerk will call the roll at the request of the Senator from Alabama.

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.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. ALLEN. I object.

The ACTING PRESIDENT pro tempore. Objection is heard. The clerk will call the roll.

The call of the roll was resumed.

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

Mr. ALLEN. I object.

The ACTING PRESIDENT pro tempore. Objection is heard. The clerk will continue.

The second assistant legislative clerk continued with the call of the roll.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded, so that I may make a further unanimous-consent request.

Mr. ALLEN. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. ALLEN. I reserve the right to object. Will the Senator reinstate his request?

Mr. MATHIAS. Yes.

Mr. ALLEN. Mr. President, I withdraw the objection.

Mr. MATHIAS. Mr. President, I renew my request that the order for the quorum call be rescinded.

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

Mr. MATHIAS. I now ask unanimous consent that——

The ACTING PRESIDENT pro tempore. The clerk will read the Journal.

The legislative clerk proceeded to read the Journal of Thursday, May 27, 1976.

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

The ACTING PRESIDENT pro tempore. The reading of the Journal, which has begun, may not be interrupted by a quorum call.

Mr. ALLEN. Very well.

The legislative clerk continued with the reading of the Journal of Thursday, May 27, 1976.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. ROBERT C. BYRD. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

The legislative clerk continued with the reading of the Journal of Thursday, May 27, 1976.

Mr. ALLEN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

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

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, for what reason does the Senator make the request?

Mr. ALLEN. I merely ask that further reading be dispensed with so it will not have to be read.

Mr. ROBERT C. BYRD. Very well. I have no objection.

The ACTING PRESIDENT pro tempore. Without objection, further reading of the Journal is dispensed with.

ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction——

Mr. ALLEN. Point of order, Mr. President, that the distinguished Senator from Virginia be recognized at this time.

The ACTING PRESIDENT pro tempore. The distinguished Senator from Virginia is not on the floor.

Mr. ALLEN. Very well, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. In accordance with the usual procedure and going on to the next order of business that was arrived at by unanimous consent agreement, there will now be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 5 minutes.

QUORUM CALL

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

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

The second assistant legislative clerk proceeded to call the roll.

Mr. ALLEN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. Is there further morning business?

Mr. ALLEN. Mr. President——

Mr. ROBERT C. BYRD. Mr. President——

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I ask that morning business be closed.

Mr. ALLEN. Mr. President, I have morning business to transact. I ask recognition.

The ACTING PRESIDENT pro tempore. The Senator from Alabama is recognized for not to exceed 5 minutes under morning business.

Mr. ALLEN. Mr. President, the distinguished Senator from Virginia is in the Chamber now, and I ask unanimous consent, inasmuch as the Chair canceled the time reserved for him, that he be allowed to use his 15 minutes which were given to him by unanimous consent, and that that time not count against the 30 minutes time for routine morning business.

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

The ACTING PRESIDENT pro tempore. The Senator from Alabama has the floor.

Mr. ROBERT C. BYRD. I object.

Mr. ALLEN. The Senator can object. I made a request.

Mr. ROBERT C. BYRD. The Senator lost the floor when he made the request, and I objected.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I want to see the Senator from Virginia have his 15 minutes, but I insist on its being taken out of the morning business period.

Mr. HARRY F. BYRD, JR. If the Senator will yield for the purpose of clarification——

Mr. ROBERT C. BYRD. Yes.

Mr. HARRY F. BYRD, JR. I appreciate what the Senator from Alabama did. I do not need the full 15 minutes. I could be recognized in the morning hour and take my 5 minutes.

Mr. ROBERT C. BYRD. Mr. President, the Senate is now in the period of morning business, is it not?

The ACTING PRESIDENT pro tempore. The Senate is in morning business for not to exceed 30 minutes.

Mr. ROBERT C. BYRD. So the distinguished Senator from Virginia may be recognized under morning business at this time?

The ACTING PRESIDENT pro tempore. The Senator may be recognized.

The Senator from Virginia is recognized in morning business for not to exceed 5 minutes.

"ISRAELI SHOWCASE '76"

Mr. HARRY F. BYRD, JR. Mr. President, the Richmond Jewish Community did itself proud in its presentation during the past 2 weeks of "Israeli Showcase '76."

"Israeli Showcase '76" was a cross-section of the history, culture, religions, and modern aspects of the State of Israel. The presentation was at the Jewish Community Center in the city of Richmond, Va.

I, along with Gov. Mills E. Godwin, Jr. attended the opening ceremonies on the evening of Saturday, May 15, and was tremendously impressed with the hard, painstaking work which went into the development of "Israeli Showcase '76."

Under the chairmanship of my friend, Neil November, "Showcase" was a continuous parade of performing arts, exhibits, lectures, films, Jerusalem Bazaar, Bibical Garden, and copies of the Western (Wailing) Wall, Jerusalem gates, and Christ's Tomb.

The opening ceremony, termed "A Light Unto Nations—A Ceremony of Dedication," was inspiring.

Indeed, "Israeli Showcase '76" was one of dedication on the part of the entire Jewish community of the city of Richmond.

I am pleased today in the Senate of the United States to salute my friends of the Jewish community—one and all—and the following officials, who played such a prominent part: Neil November, chairman; Jack Kreuter, Richmond Jewish Community Council; Richard November, vice president, Jewish Center of Richmond; Saul Viener, chairman, Cultural Committee, "Israeli Showcase '76"; and Mrs. Hortense Wolf, vice president, Richmond Jewish Community Council.

EVER-GROWING INTRUSION OF BIG GOVERNMENT

Mr. HARRY F. BYRD, JR. Mr. President, the people of the United States are sending many messages to Washington these days, calling for an end to the ever-growing intrusion of big government into every facet of American life.

One such message, stated with simple eloquence, was sent to me this month by the Board of Supervisors of Bedford County, Va. It was signed by the seven members of the board.

Bedford County is located in the mountainous western part of Virginia, between the cities of Lynchburg and Roanoke. Its people are sound thinking and independent minded.

One of Virginia's leading scenic attractions, the Peaks of Otter, is located in Bedford County. These spectacular peaks are not only objects of great natural beauty, but also apt symbols of the sturdy individualism of the people of Bedford.

The message from the Board of Supervisors of Bedford County was characteristically straight to the point: the elected officials of Bedford want to get big government off their backs. In no uncertain terms, they denounced "mandated" programs that impose planning decisions and appropriation of funds at the local level.

The letter of the Bedford supervisors closed with an appeal to State and Federal representatives "to oppose the institution of mandated programs to local government at the local taxpayers' expense and the further establishment of bureaucratic agencies now and forever."

To which I say, "Amen."

I ask unanimous consent that the letter of the Board of Supervisors of Bedford County be printed at this point in the RECORD.

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

BOARD OF SUPERVISORS,
COUNTY OF BEDFORD,
Bedford, Va., May 12, 1976.

Hon. HARRY F. BYRD, Jr.,
U.S. Senate Office Building,
Washington, D.C.

DEAR SENATOR BYRD: The Bedford County Board of Supervisors is becoming increasing-

ly concerned about the rising number of intrusions, by both the Federal and State governments, into the functions of our local government, the free enterprise system and about the effects of those encroachments upon our citizens.

We have, as yet, received no responses to appeals, formally registered with appropriate governmental agencies, in opposition to many "public" programs which they administer. Hence, we appeal to you, as our elected representative, to help us by being especially critical of each piece of legislation presented in light of its immediate and long range effects at the local level. We specifically emphasize objection in the following areas:

1. To State and Federal programs mandated at additional dollar expense to the local taxpayer.

2. To planning and appropriation decisions being made by those people not elected and thus not directly responsible to the citizenry.

3. To the establishment of another layer of bureaucratic agencies. We will oppose any attempt to establish any agencies beyond the scope and area of present planning district concept.

4. To planning not kept as local as possible, taking in jurisdictions other than those in the present planning areas which have similar interest, needs, etc.

5. To "expansion" which usually implies increased costs and locally removed control.

In conclusion, the Bedford County Board of Supervisors respectfully requests its State and Federal representatives to oppose the institution of mandated programs to local government at the local taxpayers' expense and the further establishment of bureaucratic agencies now and forever.

Sincerely yours,

H. L. COOPER,
Chairman.

JOHN H SUBLETT,
Supervisor, District 1.

SCOTT A. MAY,
Supervisor, District 4.

HUBERT A. ROBERTS,
Supervisor, District 6.

AUBREY M. WHORLEY,
Supervisor, District 3.

JOHN P. OLIVER,
Supervisor, District 5.

J. EVERETTE FAUBER, III,
Supervisor, District 7.

Mr. ALLEN. Mr. President——

Mr. ROBERT C. BYRD. Mr. President——

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

THE ANTITRUST IMPROVEMENTS ACT OF 1976

Mr. ROBERT C. BYRD. Mr. President, I am going to make a nondebatable motion.

I move that the Senate proceed to the consideration of H.R. 8532.

Mr. ALLEN. Mr. President——

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

Mr. ALLEN. Mr. President——

Mr. ROBERT C. BYRD. Mr. President, the motion is not debatable.

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

Mr. ROBERT C. BYRD. Mr. President, the Senator does not have to be recognized.

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

Mr. ROBERT C. BYRD. Mr. President, I suggest the clerk read the title of the bill.

The ACTING PRESIDENT pro tempore. The motion is not debatable.

The question is on agreeing to the motion.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask that the clerk state——

Mr. ALLEN. Mr. President, I am asking for recognition.

The ACTING PRESIDENT pro tempore. Just a moment.

Mr. ALLEN. Mr. President——

CLOTURE MOTION

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a cloture motion.

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under the rule XXII, the Chair, without objection, directs the clerk to read the motion.

The 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 close debate on the pending Hart/Scott substitute amendment to H.R. 8532, an Act to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes.

Mike Mansfield, Hugh Scott, Lee Metcalf, George McGovern, Hiram L. Fong, Alan Cranston, Edward M. Kennedy, Hubert H. Humphrey, Gaylord Nelson, Dick Clark, Edmund S. Muskie, Henry M. Jackson.

Birch Bayh, Frank E. Moss, Claiborne Pell, Lowell P. Weicker, Warren G. Magnuson, Vance Hartke, Harrison A. Williams, Charles H. Percy, Robert T. Stafford, Thomas F. Eagleton, Adlai E. Stevenson, Stuart Symington.

Philip A. Hart, John V. Tunney, James Abourezk, Gary Hart, Jennings Randolph, Robert C. Byrd, Patrick J. Leahy, John Glenn, John Durkin, William D. Hathaway, Charles McC. Mathias, John Culver.

Thomas J. McIntyre, Dale Bumpers, Walter D. Huddleston, Daniel K. Inouye, Mark O. Hatfield, Joseph R. Biden, Clifford P. Case, Walter F. Mondale, Floyd K. Haskell, William Proxmire, Gale W. McGee.

[During the reading of the cloture motion the following proceedings occurred:]

Mr. ALLEN. Mr. President, I suggest the absence of a quorum. Point of order, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

Mr. ALLEN. Mr. President——

Mr. ROBERT C. BYRD. Mr. President——

Mr. ALLEN. Mr. President, a point of order. The motion is out of order.

Mr. ROBERT C. BYRD. The motion is not out of order. I ask that the clerk continue the reading.

Mr. ALLEN. Mr. President, a point of order. I would like to be heard.

The ACTING PRESIDENT pro tempore. The reading of the motion cannot be interrupted.

Mr. ALLEN. It must be the pending business, Mr. President, as the Presiding Officer knows. I ask for a ruling, Mr. President.

The legislative clerk continued with the reading of the motion.

Mr. ALLEN. Mr. President have the clerk suspend.

The legislative clerk continued with the reading of the motion.

The ACTING PRESIDENT pro tempore. The reading of the motion cannot be interrupted.

Mr. ALLEN. This is not the pending business. I raise the point of order.

The legislative clerk continued with the reading of the motion.

[This concludes the proceedings that occurred during the reading of the cloture motion. Following the reading of the cloture motion the following proceedings occurred:]

Mr. ALLEN. Mr. President, I now suggest the absense of a quorum. When the cloture comes up, I will raise the point of order because it was not properly filed. At this time, I suggest the absence of a quorum. We will discuss that matter later.

The ACTING PRESIDENT pro tempore. The motion to proceed was agreed to.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

PERSONAL STATEMENT

Mr. ALLEN. Mr. President, I wish to express my displeasure at the recent rulings of the Chair.

In the first place, the Chair ruled that in the making of a unanimous-consent request, which I did to try to get the order restored to allow the distinguished Senator from Virginia to speak—the Chair took me off the floor at the request of the distinguished Senator from West Virginia, who made the point of order, which the Chair sustained, that the Senator from Alabama lost the right to the floor when he made that unanimous-consent request.

I also object to the fact that when the distinguished Senator from West Virginia moved to proceed to S. 8532, the Senator from Alabama was on his feet, constantly demanding recognition of the Chair, and the distinguished present occupant of the chair refused to recognize the Senator from Alabama, saying that the motion was not debatable.

The fact that it was not debatable, however, would not prevent or should not have prevented the Senator from Alabama from getting the floor to suggest the absence of a quorum, and, indeed, he did at the top of his voice suggest the absence of a quorum, and the distinguished present occupant of the chair refused to recognize the Senator from Alabama.

This action is reminiscent of action taken here in the Senate last year, when the Senator from Alabama could not get recognition.

I do not know how other Senators feel about it, but I do not believe the rank and file Members of the Senate will approve of these strong-arm tactics. The leadership is supposed to lead, but the leadership is not supposed to ram, and I want to express my deep displeasure at this action of the Presiding Officer and

the leadership in abusing the Senate rules in this fashion.

Fairplay should be a cardinal tenet of the Senate and of the leadership, and of whoever presides in this Chamber.

So with these words, we will await the cloture vote on next Thursday on this issue. I could be wrong, but I do not believe the Senate will approve of this type of strong-arm tactics. With that, I invite the leadership to go ahead with whatever he wishes to say.

Mr. ROBERT C. BYRD. Mr. President, I rise to defend the Presiding Officer. The Presiding Officer was within the rules when he stated that Mr. HARRY F. BYRD, JR., not being present on the floor at the time, the Senate could proceed to routine morning business.

On the question of Mr. ALLEN's losing the floor after he had made a unanimous-consent request, there is a precedent which could support Mr. ALLEN's position. Nevertheless I could, I think, make a good case for a Senator's having lost the floor when he makes a request and it is objected to. But as the precedents now stand, the Senator from Alabama is correct.

As to the Senator's not having been recognized for the purpose of suggesting the absence of a quorum before the vote occurred on the motion to take up H.R. 8532, the Chair was in no position to know, under the extenuating circumstances of the moment, that the Senator from Alabama was not going to attempt to debate it. As a matter of fact, I stated at the time, "This motion is not debatable." The Chair acted under what he thought was a situation in which the Senator from Alabama was going to proceed to debate. The motion was nondebatable, and the Chair directed the clerk that he proceed with the vote.

It is also within the Chair's discretion as to whether or not to recognize a Senator. I can understand how the Chair—in a situation where several Senators are imploring him to be recognized, some Senators urging him to do one thing and others urging him to do something else, and the Parliamentarian trying to advise him—proceeded as he did.

Now, as to strong-arm tactics, Mr. President, I call attention to the fact that the leadership has been forced into a situation today which, in my judgment, fully required the actions that were taken.

First, I go back to remind the readers of the RECORD that the fact that the antitrust legislation was called up by the majority leader some days ago and made the pending business did not give it the status of the unfinished business. The unfinished business is the Foreign Military Sales Act, which means that at any time other business, such as the antitrust bill, is pending before the Senate, a call for the regular order can displace that pending business—which in this case would have been the antitrust bill—and would force up the unfinished business.

The distinguished majority leader made a commitment to the distinguished Senator from Michigan (Mr. PHILIP A. HART) many days ago that the antitrust bill would be made the business of the Senate until disposed of one way or the other.

The distinguished majority leader informed me of that fact and, when the majority leader left to go to London on the mission in reference to the Magna Carta, I was instructed by the distinguished majority leader to carry out that commitment to Senator HART and to proceed with the antitrust legislation the best we could and, if it became necessary from time to time, to lay it aside but to go as far as we could go with that legislation until the Senate reached a judgment thereon.

The fact that it had been made the pending business, rather than the unfinished business, made it extremely difficult to keep the bill before the Senate for reasons that I have already stated. Subsequently, I was able to get an order entered providing that the antitrust legislation not be vulnerable to a call for the regular order on Tuesday, Thursday, and Friday of this week. The distinguished Senator from Alabama graciously acquiesced to that order, thus protecting the antitrust legislation from being called down by a routine procedural motion today, yesterday, or this past Tuesday.

This is the situation we were in. The order protecting the antitrust legislation against a call for the regular order—which would displace that legislation—expired today. On Wednesday, June 2, the antitrust legislation cannot be called up except by unanimous consent or by motion and—except during the morning hour—such a motion would be debatable and, of course, we have seen that Senators are able to work the clock and spin out the morning hour, so that such motion would never come to a vote.

So for all intents and purposes it meant that, after today, the antitrust legislation could not be brought up by unanimous consent because there would be an objection to it; it could not be brought up except by motion which would be debatable; and a cloture motion, if offered, would go only to the motion to proceed, rather than to the bill itself, which means that there would have to be two steps taken, cloture on the motion to proceed and cloture on the measure itself—if and when cloture was invoked on the motion to proceed.

This meant that if a cloture motion were not offered today on this bill, the Senate would not get to the bill for weeks, if ever, because there is a question in my mind as to whether the Senate would have voted to invoke cloture on a motion to proceed, and so it was imperative that this cloture motion be offered today.

On yesterday, I asked the distinguished Senator from Alabama if he would agree to a unanimous-consent order that the leadership offer the cloture motion yesterday with the understanding that it not be voted on until Thursday, June 3, the day following the reconvening of the Senate after the Memorial Day weekend. But prior to that, let me go back to, I believe it was Tuesday of this week, at which time there was an order entered which provided that cloture would not be offered on Tuesday, that only one cloture motion could be offered this week on the antitrust bill, and that if any cloture motion were to be offered this week it would have to be on Thursday or Friday.

That meant just what it said, only one cloture motion could be offered and that cloture motion, if offered, could only be offered Thursday or Friday. So yesterday, when I asked that an attendance check be made as to the attendance of Senators today, I found that only 38 or 39 Senators on my side of the aisle were expected to be here and a considerable number of Senators on the other side of the aisle were to be absent, which meant that the Senate would have a problem with quorums today very likely, which also meant that if those Senators opposed to the bill or opposed to invoking cloture did not want to come in, we would be forced to adjourn for lack of a quorum and thus be prevented the opportunity to offer this cloture motion today, which is our only day under the circumstances I have outlined.

So I asked the distinguished Senator from Alabama on yesterday if he would accede to our offering the cloture motion yesterday with the understanding that it not be voted on until Thursday, June 3. And he said he would object to that. He had no objection to our offering the cloture motion yesterday, without the condition attached, which would mean that the Senate would have had to vote on cloture the first day it comes back—on Wednesday, June 2—but he would not agree to unanimous consent that that vote be delayed until the following day.

I said, "Well now, is it your intention to try to keep us from filing cloture tomorrow?" And he said: "You can go ahead and file cloture when the bill is ready. But," he said, "I would not want to surrender any of my rights under the rules," and he was perfectly within his rights to say that.

That was an indication to me, however, that if we had quorum problems today the rules would be used to prevent the offering of a cloture motion.

That made it virtually impossible to offer a cloture motion today if no quorum were to force an adjournment, because the measure has to be before the Senate before a cloture motion can be offered.

I, therefore, arranged for two rollcall votes today, hoping that that would be an additional incentive for Senators to cancel engagements and be here. The only purpose in arranging those rollcall votes was that we would not be forced to adjourn for lack of a quorum and be thus prevented from offering the cloture motion.

I realized that the distinguished Senator from Alabama could object to dispensing with the reading of the journal. That is a right that is accorded to him. It is not often utilized around here, but I realized that he could do that. I did not think he would do it, but he was within his rights to do so.

If the leadership had really wanted to use strong-arm tactics, let me remind the able Senator from Alabama what the leadership could have done. The leadership could have offered that cloture motion on yesterday and on Wednesday, June 2, when the Senate returns—no orders being entered, except to convene at 11 a.m.—the leadership could have promptly moved to adjourn. I am sure the votes would have been here to move to adjourn the Senate, in which case the vote on the cloture motion would have

been forced into Thursday. But I also recognized yesterday that if the leadership had done that, the leadership would have been subjected to the criticism of having used strong-arm tactics—if the leadership had brought Senators back on Wednesday, June 2, and immediately moved to adjourn.

So, not wanting the leadership to be subjected to the criticism of strong-arm tactics, the leadership, with the approval of Mr. CRANSTON and Mr. HART, decided not to go that route.

An order is not required for the joint meeting in the House of Representatives for the address of the King of Spain. The leadership only needs to inform Senators that Senators will meet and go over to the House. That was no problem. However, not wanting to have the leadership subjected to what then might have been justified criticism of strong-arm tactics, it was decided to take our chances on offering the cloture motion today, and, as we anticipated, we ran into a great deal of difficulty today.

So I make that plea for the consideration of all Senators as to whether strong-arm tactics have been used. I do not believe they have been.

The leadership has the responsibility to press ahead with the business of the Senate. The leadership in this one instance has a very strong moral obligation and commitment to the Senator from Michigan (Mr. PHILIP A. HART) to do the best we can to get his legislation up for a vote and let the Senate work its will on the legislation.

If the Senate wants to vote the legislation down, if it wants to vote to amend it, that is the business of the Senate. I felt it my duty to do what I could to get the matter before the Senate. If the Senate does not want to invoke cloture on the motion, that is up to the Senate. I say what I have said in defense of the Presiding Officer and in defense of the leadership. Of course, Mr. MANSFIELD is away today. I have no hesitation in saying, therefore, that I am defending myself.

I yield the floor.

Mr. ALLEN. Mr. President, I ask unanimous consent that I may proceed irrespective of the rule of germaneness.

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

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, for how long, may I ask?

Mr. ALLEN. I should like to match the 23 minutes that the Senator used in explaining his actions.

Mr. ROBERT C. BYRD. The Senator will have no problem matching any time I might take speaking. I just want to be sure that the Senator does not go beyond 12 o'clock.

Mr. ALLEN. I am sure the Senator will not.

Mr. ROBERT C. BYRD. Very well, I have no objection.

The PRESIDING OFFICER. Unanimous consent is granted for the Senator from Alabama to speak until not later than 12 o'clock.

Mr. ALLEN. Mr. President, I appreciate this explanation by the distinguished assistant majority leader, a man whom I admire very much, a man who, irrespective of our controversy today, will continue to be my very close friend, a man whom I support and will support for the majority leadership.

But the distinguished majority leader, methinks, protesteth too much. I do not believe that if strong-arm tactics had not been used here, it would have been necessary to spend 22 minutes defending the actions that were taken with respect to submitting this cloture motion to the desk.

The Senator said that if they did not file the cloture motion today, we would not get the bill up again for weeks. Well, just this morning we got it up in about 2 minutes. So I do not believe there is a great deal to be said for that contention.

Also, Mr. President, the obligation to others to get up a bill does not impress me too much. It seems to me that if there were an obligation to get up a bill, it would be an obligation to get the bill up under the rules. That is what we are supposed to be governed by—to be governed by the rules.

The Chair took me off the floor when I made a unanimous-consent request to try to get time for the distinguished Senator from Virginia. Then, after this motion was made, even though it was not debatable, I was trying to get recognition to put in a quorum call and so stated. Yet, I was not recognized for that purpose.

Legislation can be important, but I do not think that the zeal to force consideration of legislation should be carried to the extreme point of flouting the Senate rules in order to do so.

That, in the judgment of the Senator from Alabama, is what has taken place.

I say again that the leadership is supposed to lead in this Chamber. We hear and read a great deal about the weak leadership in the Senate. It is hard to pick up a newspaper without finding that charge made. I do not feel that way about it. I think we have a strong leadership. It can carry its will here whenever it wants to; and if we have to kind of skirt the rules a little to get cooperation from the Parliamentarian and the Presiding Officer, that is resorted to. This matter——

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield at that point?

Mr. ALLEN. Yes. I will not only yield; I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROBERT C. BYRD. I do not want the Senator to yield the floor. I did not mean to interrupt the Senator to the point that he would not continue his statement. I simply meant to say that the Senator from Alabama goes to the Parliamentarian quite often and utilizes the advice of the Parliamentarian, which the Senator from Alabama has a right to do, and as other Senators have a right to do.

The leadership does not feel it imperative to go to the Parliamentarian any more than does the Senator from Alabama.

I hope the Senator will continue his statement, and I beg his pardon for the interruption.

Mr. ALLEN. I believe I have said enough to express my views on the subject.

The PRESIDING OFFICER. What is the will of the Senate?

Mr. ALLEN. Let us vote on the pending amendment, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alabama.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Mr. ALLEN. Mr. President, I object.

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

The assistant legislative clerk continued to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to proceed for 1 minute.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations under New Reports.

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

The Senate proceeded to consider nominations under New Reports in the U.S. Army and nominations placed on the Secretary's desk in the Air Force, in the Army, in the Navy, and in the Marine Corps.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the nominations be considered and confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered en bloc and confirmed en bloc.

(The nominations confirmed today are printed at the conclusion of the Senate proceedings).

Mr. ROBERT C. BYRD. Now, Mr. President, if there is a quorum call, which there will be, and if that quorum call cannot be called off and the quorum becomes live and the Senate has to go out for lack of a quorum, this would mean that on Wednesday when the Senate returns following the Memorial Day weekend, the first order of business will be the establishment of a quorum.

Following the establishment of that quorum, the immediate order of business will be for the Senate to go into executive session to consider the two nominations which were ordered for consideration at this time. Rollcall votes have been ordered on those two nominations, and so that will be the order of business on Wednesday when the Senate returns, insofar as I can see it now, if the Senate indeed is forced to go out today because of the lack of a quorum.

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

confirmation of the nominations which the Senate has just confirmed.

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

ORDER OF BUSINESS

Mr. ALLEN. Mr. President, I suggested that this quorum call be called off in order that these confirmations of midshipmen and cadets, who are soon to graduate, might be confirmed, so they would have their commissions at the time of their graduation.

I made the suggestion that we go back to the status quo after that had been done, and the leadership very kindly and courteously acceded to that request.

I do not see any great need for voting on these other two nominations that have rollcalls ordered, because I do not believe that a quorum of the Senate is present.

So I would like, if no one else wishes to comment, to reinstate the quorum call, and we can confirm these other nominations on Wednesday, and then absent Senators would not miss the two votes.

Mr. ROBERT C. BYRD. Mr. President, if the Senator will withhold his suggestion of the absence of a quorum, I wish to express my appreciation to Senator ALLEN for his courtesy in permitting the confirmation of these other nominations, which otherwise would have been held over until after the Memorial Day recess.

EXTENSION OF AUTHORITY FOR FILING OF BILLS AND JOINT RESOLUTIONS, AND PRESENTATION OF STATEMENTS FOR THE RECORD

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Senators may have until 5 p.m. today to introduce bills and joint resolutions and to present statements for the RECORD.

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

NATURAL GAS PIPELINE SAFETY ACT AMENDMENTS OF 1976

Mr. ROBERT C. BYRD. Mr. President, I have cleared this with the distinguished Senator from Alabama, and it has previously been cleared on both sides of the aisle. I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 810.

The PRESIDING OFFICER. As in legislative session?

Mr. ROBERT C. BYRD. As in legislative session.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2042) to amend and strengthen the National Gas Pipeline Safety Act of 1968, and to authorize additional appropriations therefor.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce with an amendment to strike out all after the enacting clause and insert:

That this Act may be cited as the "Natural Gas Pipeline Safety Act Amendments of 1976".

SEC. 2. Section 2 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671) is amended—

(1) by striking out "; and" at the end of paragraph (8) thereof and inserting in lieu thereof the following: ", except that it shall not include any facility which transports gas from an interstate gas pipeline to a direct sales customer purchasing gas for its own consumption;";

(2) by redesignating paragraph (9) thereof as (10) thereof; and

(3) by inserting after paragraph (8) thereof the following new paragraph:

"(9) 'Intrastate pipeline transportation' means pipeline facilities and transportation of gas within a State which are not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act, except that such term shall include pipeline facilities within a State which transport gas from an interstate pipeline to a direct sales customer within such State purchasing gas for its own consumption; and".

SEC. 3. Section 3(b) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1672 (b)), is amended—

(1) by adding before the word "testing," in the second sentence thereof, the following: "emergency plans and procedures,"; and

(2) by amending the last sentence thereof to read as follows: "Any State agency may adopt additional or more stringent standards for intrastate pipeline transportation if such standards are compatible with the Federal standards. No State agency may adopt or continue in force any standards applicable to interstate transmission facilities, after the Federal standards become effective.".

SEC. 4. Section 4(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1673) is amended by adding the following new sentence at the end thereof: "The Committee shall meet at least twice during each calendar year.".

SEC. 5. (a) Section 5(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1674 (a)) is amended—

(1) by striking out "pipeline facilities and the transportation of gas (not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act) within a State" in the first sentence thereof and inserting in lieu thereof "intrastate pipeline transportation";

(2) by striking out "pipeline facilities and transportation of gas" in clause 1 thereof and inserting in lieu thereof "transportation";

(3) by amending clause (2) thereof to read as follows: "has adopted each Federal safety standard established under this Act as of the date of the certification which is applicable to such transportation or, with respect to each such standard which was established less than 120 days before the date of such certification, is taking such steps as are necessary under State law to adopt such standard;";

(4) by striking out "and" at the end of clause (3) thereof;

(5) by redesignating clause (4) thereof as clause (5) thereof; and

(6) by inserting the following new clause immediately after clause (3) thereof:

"(4) is encouraging and promoting programs designed to prevent damage to natural gas pipelines and other subsurface utility equipment as a consequence of any excavation activity; and".

(b) Section 5(b) of such Act (49 U.S.C. 167(b)) is amended by striking out all that begins with "With respect to" and ends with "actions to—" and inserting in lieu thereof the following: "With respect to any intrastate pipeline transportation for which the Secretary does not receive a certification under subsection (a) of this section, the Secretary may, by agreement with a State agency (including a municipality) authorize such agency to assume responsibility for, and carry out on behalf of the Secretary as it relates to intrastate pipeline transportation the necessary actions to—".

1674(c)) is amended—

(1) by redesignating paragraphs (2), (3), and (4) thereof as paragraphs (3), (4), and (5) respectively;

(2) by striking out "section 15(b)" and inserting in lieu thereof "section 17(b)," and by striking out "paragraph (1)" and inserting in lieu thereof "paragraphs (1) and (2)" in newly redesignated paragraph (c) thereof; and

(3) by striking out paragraph (1) thereof and inserting in lieu thereof the following two new paragraphs immediately after "(c)":

"(1) Except as otherwise provided in this section, if an application is submitted not later than September 30 in any calendar year, the Secretary shall pay out of funds appropriated or otherwise made available—

"(A) one hundred percent (but not to exceed $60,000 for each State) of the cost of not more than three full-time inspectors, as determined by regulations issued by the Secretary taking into account the needs of the respective States, and

"(B) up to 50 percent of the cost of such other personnel, equipment, and activities of a State agency reasonably required, during the following calendar year to carry out a safety program under a certification under subsection (a) or an agreement under subsection (b) of this section or to act as agent of the Secretary with respect to interstate transmission facilities.

"(2) The Secretary may, after notice and consultation with a State agency, withhold all or any part of the funds for a particular State agency if he determines that such State agency—

"(A) is not satisfactorily carrying out a safety program under a certification under subsection (a) or an agreement under subsection (b) of this section, or

"(B) is not satisfactorily acting as agent of the Secretary with respect to interstate transmission facilities.

No such payment may be made unless the State agency making application under this subsection gives assurances satisfactory to the Secretary that the State agency will provide the remaining cost of such a safety program and that the aggregate expenditures of funds of the State, exclusive of Federal grants, for gas safety programs will be maintained at a level which does not fall below the average level of expenditures for the last two fiscal years—

"(A) preceding the fiscal year for which the State agency is making application for payments made pursuant to subsection (c)(1)(A) of this section, or

"(B) preceding the date of enactment of this section with respect to payments for which the State agency is making application pursuant to subsection (c)(1)(B) of this section .".

(d) The first sentence of section 5(d) of such Act (49 U.S.C. 1674(d)) is amended to read as follows: "A certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety standards established after the date of such certification for intrastate pipeline transportation pursuant to this Act.".

SEC. 6. Section 7 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1676) is amended by adding at the end thereof the following new sentence: "The Commission may not attach any condition to the issuance of a certificate of public convenience and necessity, or to the exercise of rights granted under such a certificate, if such condition

requires the applicant to comply with any safety standards for pipeline facilities or for the transportation of gas other than safety standards prescribed by the Secretary.".

SEC. 7. The first sentence of section 11 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1680) is amended to read as follows: "Each person who engages in intrastate pipeline transportation shall file with the Secretary or, with the appropriate State agency if a certification or an agreement pursuant to section 5 of this Act is in effect, a plan for inspection and maintenance of each such pipeline facility owned or operated by such person, and any changes in such plan, in accordance with regulations prescribed by the Secretary or appropriate State agency.".

SEC. 8. Section 14(a)(1) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C 1683 (a)(1)) is amended by striking out "accidents" and inserting in lieu thereof "leak repairs, accidents".

SEC. 9. The Natural Gas Pipeline Safety Act of 1968 is amended by redesignating section 15 thereof as section 17 thereof and by inserting the following two new sections after section 14 therof:

"CONSUMER EDUCATION

"SEC. 15. Each person who engages in the transportation of gas shall, in accordance with the regulations prescribed by the Secretary, conduct a program to educate the public on the possible hazards associated with gas leaks and on the importance of reporting gas odors and leaks to appropriate authorities. The Secretary is authorized to develop materials suitable for use in such education programs.

"CITIZEN'S CIVIL ACTION

"SEC. 16. (a) Except as provided in subsection (b), any person may commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, whenever such action constitutes a case or controversy against any person who is alleged to be in violation of a provision of this Act or of an order or regulations issued under this Act. The district courts of the United States shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties.

"(b) No civil action may be commenced (1) prior to 60 days after the moving party have given notice of the alleged violation to the Secretary and to any alleged violator in such manner as the Secretary may by regulation require; or (2) if the Secretary has commenced and is diligently pursuing administrative proceedings or the Attorney General has commenced and is diligently pursuing judicial proceedings with respect to such alleged violation.

"(c) In any action under this section, the Secretary (with the concurrence of the Attorney General) or the Attorney General may intervene as a matter of right.

"(d) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or at common law to seek enforcement of any provision, order, or regulation or to seek any other relief.

"(e) In any action under this section the court may, in the interest of justice, award the costs of suit, including reasonable attorney's fees and reasonable expert witnesses fees to a prevailing plaintiff. Such court may, in the interest of justice, award such costs to a prevailing defendant whenever such action is unreasonable, frivolous, or meritless. For purposes of this subsection a reasonable attorney's fee is a fee (1) which is based upon (A) the actual time expended by an attorney in providing advice and other legal services in connection with represesting a person in an action brought under this subsection, and (B) such reasonable expenses as may be incurred by the attorney in the provision of such services, and (2) which is computed at the rate prevailing for the provision of similar services with respect to actions brought in the court which is awarding such fee.

"(f) As used in this section the term 'person' includes a governmental entity.".

SEC. 10. Section 17 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1684), as redesignated under section 9 of this Act, is amended to read as follows:

"AUTHORIZATION FOR APPROPRIATIONS

"SEC. 17. (a) There are authorized to be appropriated for purposes of carrying out this Act (other than section 5(c) of this Act) not to exceed $2,850,000 for the fiscal year ending June 30, 1976; not to exceed $650,000 for the transitional fiscal period ending September 30, 1976; not to exceed $4,500,000 for the fiscal year ending September 30, 1977; and not to exceed $5,000,000 for the fiscal year ending September 30, 1978.

"(b) There are authorized to be appropriated for purposes of carrying out section 5(c) of this Act, not to exceed $2,500,000 for the fiscal year ending June 30, 1976, and the transitional fiscal period ending September 30, 1976; not to exceed $4,500,000 for the fiscal year ending September 30, 1977; and not to exceed $4,500,000 for the fiscal year ending September 30, 1978.".

Mr. GRIFFIN. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the Senator from Maryland (Mr. BEALL) in support of this measure, together with an attachment thereto.

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

STATEMENT OF SENATOR BEALL

As the author of S. 2042, the "Natural Gas Pipeline Safety Act Amendments of 1976," I urge the enactment of this measure.

S. 2042 was introduced by me on June 27, 1975. The measure is a product of my continued concern with respect to pipeline safety and my determination to make certain that the federal safety standards are both adequate and enforced.

My initial interest in this important subject grew out of a series of residential gas explosions which rocked the Baltimore-Maryland areas. Alarmed in particular over the natural gas explosions which occurred in Annandale, Virginia, and Columbia and Bowie, Maryland, I authored a floor amendment to the Department of Transportation (DOT) Appropriation bill earmarking $257,000 for research effort into the then growing problem of natural gas explosions in residential areas, with particular reference to a number of potential problem areas identified. Pursuant to my amendment, contracts were let by DOT to examine the following problem areas: plastic pipes; odorization; in-place evaluation of pipeline systems; and the overall safety of gas distribution systems. These studies have now been completed, and I received a copy of the last report on April 12th. DOT has distributed copies to appropriate parties in this field and has made them available to the public as well. They are being evaluated by DOT and they are expected to assist the Department in its regulatory safety responsibilities.

Then in 1974, I introduced one of the major bills providing for independence and additional authority in the surface transportation area, which includes pipelines, for the National Transportation Safety Board (NTSB). Legislation along these lines was enacted, and is now Public Law 93-633. At the time the NTSB legislation was advanced, they had only two indiviuals in the pipeline safety area, and although the work of these two gentlemen—Mr. Barry Sweedler and Mr. Henry Shepherd—were outstanding and their reports invaluable, staffing patterns at NTSB were clearly shortchanging and neglecting the surface transportation area. Since the enactment of Public Law 93-633, and with the good support of Senator Byrd of West Virginia, the surface transportation staffing has improved, increasing from two to five professionals this year. And relevant to today's discussion, pipeline safety staffing of DOT increased to 39 in the same period.

My studies of a number of years of the NTSB reports, plus a study prepared by the Library of Congress at my direction by Jean S. March, Analyst in Environmental Policy, and some additional work by Robert Anderson from the same division of the Library, led to my making recommendations in a 1974 Floor speech calling for specific regulatory change.

In this statement, I urged the Labor Department and DOT to adopt six needed regulatory changes which I felt were needed to strengthen and improve pipeline safety. In 1975, I also called upon the Department of Housing and Urban Development to implement the NTSB's recommendation relating to gas migration.

Dissatisfied with the overall response and the safety efforts at DOT, I introduced S. 2042 in June of 1975. S. 2042, along with S. 2183, an Administration bill, were the subject of hearings in September of last year. These hearings were chaired by Senator Hartke and me. I believe the hearings and the written questions and answers produced a good record for those interested in and involved in the natural gas field.

S. 2042, as reported unanimously by the Commerce Committee, combines the features of my bill—S. 2042—the Administration's proposal—S. 2183—and some committee proposals. I am particularly grateful to Senator Hartke, the Chairman of the Subcommittee on Surface Transportation, for his interest and leadership, and to Edward B. Cohen of the Majority Staff, and to Mel Sterrett, Minority Staff Director, for their excellent work and assistance in bringing this bill to the Floor.

S. 2042, as reported, contains a number of significant provisions, which I would like to discuss.

First, S. 2042 would assure that states have at least a minimum number of employees by authorizing federal assistance to finance 100 per cent of the cost of from one to three full-time inspectors, the actual number depending on the need in the various states. In the DOT report, entitled, "Federal-State Relations in Gas Pipeline Safety", it was pointed out that at least sixteen states did not have an employee working full time on pipeline safety. Our hearing record disclosed that as the result of DOT efforts, three additional states acquired a full-time employee.

Mr. President, we must keep in mind the original Pipeline Safety Act of 1968 envisioned a federal-state partnership, and I endorse that approach. We must keep in mind that the DOT, however, has the responsibility of issuing standards. Although we want the states to assume responsibility for administering and enforcing the standards, DOT has an important and continuing responsibility not only to make certain that the standards are adequate to assure the public safety, but also that they are enforced. Thus, it is the Senator's position that if the states are going to administer the Act—and I want them to do so—they must have manpower to carry out their safety responsibilities. If they do not, their citizens may be exposed to the catastrophe of a natural gas explosion; if DOT does not insist that the states do so, they are derelict in their duty and responsibilities under the Act.

This provision, in recognition of the budget problems of the states, is designed to

make certain that minimum manpower and inspection are available. Eight years after the original Act and still inadequate staffing is inexcusable.

Second, S. 2042 amends the list of items delineated as appropriate for standards to include "emergency plans and procedures". S. 2042, as introduced, would in addition have required pipeline operators to file with the Secretary of Transportation a plan for "emergencies and procedures".

In 1974, when I made specific recommendations to DOT to tighten safety regulations, emergency procedures were one area addressed. Adequate emergency plans and procedures by operators are critical.

In a number of accidents, pipeline operator personnel have been on the scene in sufficient time before the accident. The National Transportation Safety Board in its 1974 report on a pipeline accident in Clinton, Missouri, stated:

"In at least 5 recent pipeline accidents (including this accident) on which the Safety Board has issued reports, the pipeline operator's personnel were at the leak site from ten minutes to more than ninety minutes before any explosions occurred. In each case, there should have been sufficient opportunity to prevent an accident. In none of the cases, however, was the flow of gas turned off, and in four, nearby buildings were not checked for the presence of gas before the explosions. As a result of these accidents, 19 persons died."

Locally, in the 1972 Annandale, Virginia, explosion, personnel of the Gas Company were on the scene some 20 to 25 minutes prior to the explosion and in its Annandale, Virginia, report the NTSB observed:

"It appears reasonable that Washington Gas Light personnel could have taken steps prior to the explosion to stop the flow of leaking gas or to reduce hazards to the public."

Last year, in Stroudsburg, Pennsylvania, it appeared that company personnel were alerted two days prior to an explosion which resulted in destruction of a home and the death of a man. To me, these reports reveal inadequate leak searches and emergency procedures and operator plans should clarify the requirements for emergency procedures. To prevent explosions, when personnel arrive on the scene in sufficient time, management has to give its personnel in the field proper training and practice for actual emergencies and appropriate guidance. It is often "ingrained" in personnel not to shut-off services. Indeed, one can understand the reluctance of companies to interrupt service to its customers. Yet, it seems we should insist that gas operators have certain emergency procedures. For example, the emergency practices should cover pipeline cut-off procedures. Further, when a leak or break in the lines occurs, the company should not have to examine maps to determine what valves to close. This should all be preplanned and programed ahead of time so that when emergencies occur the information on which valves to close is readily at hand. I am convinced that we can, with proper planning, improve emergency procedures and that management can provide clear directions to its personnel in the field.

The Department of Transportation, in response to my question with respect to gas personnel being on the scene in time to prevent an accident, but not doing so, stated:

"We believe the most likely reason is that some operators do not have adequate plans to be followed in response to an emergency or that operators with adequate plans do not implement them well on the scene."

DOT has promulgated proposed rulemaking in this area and public comments have been received. DOT should move forthwith to not only finalize their regulations but also should, with the states, make certain that operator plans are adequate and that they are implemented on the scene of any accidents. This is one of those critical areas of concern where action is required. The listing of "emergency plans and procedures" services to underscore their importance and the need for regulations and their enforcement.

Third, S. 2042 requires the Technical Pipeline Safety Standards Committee to meet at least twice yearly. This was placed in the statute in view of the rather sporadic meeting of the Committee. At the time of the hearing in September 1975, the Committee had last met in 1973 and since 1972, they had only met twice. Congress, I believe, intended this Committee to be more active. It is my position that this Committee should either be made an effective, functioning entity or be abolished. Certainly, two meetings a year would be the minimum to "evaluate pipeline safety standards." I, for one, believe they should be examining the recommendations of NTSB pipeline safety reports and the various research recommendations of the various contractors. In any event, their performance, like DOT in the pipeline safety area, can and must be improved.

Fourth, S. 2042 would require pipeline operators to conduct consumer education programs. Natural gas is a clean and safe source of fuel. Its overall good safety record can lull us into ignoring deeper signs, identifying leaks and promptly reporting them. The Washington Gas Light Company has been sending its customers a sample of the odor of natural gas (the chemical added to it since natural gas is odorless) to educate their consumers on the smell and to alert them to the necessity of reporting potential problems. Section 9 of the bill would require operators to conduct education programs, and further directs the Secretary to assist in the development of materials suitable for education efforts.

Fifth, S. 2042 requires the states to encourage and promote programs designed to prevent damage to pipelines resulting from excavation.

The Federal Power Commission in a survey of interstate gas transmission lines indicated that from 1950 to 1965, "carelessness in the operation of farming, road building, and excavation equipment caused the largest number of gas failures, accounting for 26 per cent of such failures reported."

By 1972, according to the National Transportation Safety Board, 52 percent of the gas transmission accidents were caused by outside forces; 41 per cent involved excavation damage and in 85 per cent of the excavation accidents, the pipeline operator was not notified before excavation was done. The NTSB also found that of the 70 per cent gas distribution line failures caused by outside force accidents, 42 per cent related to excavation damage. In 62 per cent of these excavation-related accidents, the pipeline operators had been given prior notice. A 1975 study of gas distribution systems showed outside forces responsible for 68 per cent of the significant leaks.

The NTSB on a number of occasions has strongly recommended programs for the prevention of excavation damage. There is also a broad consensus of support by various authorities.

As I stated when I urged regulation in 1974 on this subject:

"First, a contractor preparing to excavate should be made aware of the need to exercise care in the vicinity of underground facilities and must have an incentive to do so. Second, he should have a simple and timely way of determining all underground facilities in proximity to the proposed earthmoving activities. Third, contractor representatives, including the field crew, should be able to recognize easily the exact locations, depths, alinements, and special relationships of all affected facilities.

"To satisfy all three criteria could require that a variety of operations be performed and that the activities of multiple parties be coordinated. These include advertising, to alert the contractor to the dangers and/or penalties for violation of safety standards; simple notification system for contacting operators of affected facilities; effective facility marking systems; and followup measures when accidents do occur."

Sixth, S. 2042 would allow for private enforcement or citizen suits of pipeline standards against any persons in violation of the Act or regulations thereunder. While this was not in my proposal, and was added in Committee, it can serve a useful purpose. However, I do have one major concern. Namely, given the general inadequate staffing of DOT in the pipeline safety area, I am concerned that the staff not spend an inordinate amount of time and expend too large an effort in responding to such suits—time which must come from regulating, monitoring, and evaluation functions. I am hopeful that our Committee, in its oversight responsibilities, and the Appropriations Committee, in funding DOT will be mindful *and respond* accordingly if so required.

Seventh, S. 2042 would amend the section of the Act dealing with state certification to make it clear that certification is allowed notwithstanding the fact that a state has not adopted a standard which has been issued within 120 days of certification. This provision merely provides states with some time to implement the federal standards.

Eighth, S. 2042 would clarify the relationship between the Federal Power Commission (FPC) and the Department of Transportation with respect to pipeline safety. The FPC would not be allowed to attach additional safety conditions, other than those standards of DOT, to its certificates of public conveniences. This provision was not in my proposal. While FPC is not intended to supersede or duplicate DOT, it is our intent that FPC in granting permission to contract pipelines should instruct and require compliance with DOT's standards before issue of its certificate. This will require the highest safety standards for pipeline during construction.

Ninth, S. 2042 amends the annual report to require DOT to include a full report of gas pipeline leaks. It does this by adding the requirement that the Secretary submit a thorough compilation of "leak reports" as well as "casualties" and "accidents" under current law. This will provide the Congress and the country with a clearer understanding of the pipeline safety picture in the Nation. Under present DOT practices, only major accidents are reported. For example, in the 1973 annual report DOT reported 1,393 pipeline failures or accidents, but there were actually 770,000 leaks requiring repairs by the pipeline operators. The new section will require full reporting and reveal the total picture.

Tenth, S. 2042 substantially, although prudently, in view of the seriousness of the safety problem and the need, increases the authorizations' level for both the federal administration and grants-in-aid to the states. In view of the research needs, the training requirement, particularly for emergencies and response thereto, and the need for improved monitoring of the states and the evaluation of their performance these sums are the minimum needed to meet our responsibilities to the public.

I might add that the Committee deleted the specific delineation of research efforts, feeling it was better not to spell such effort out with such specificity in the statute. However, the Committee did agree that I had spelled out priority areas. Because such listing can serve as a useful point of inquiry when we review DOT research undertaking, I ask unanimous consent that such section from S. 2042, as introduced, be listed at this point in my remarks. (See exhibit 1.)

The Nation's gas distribution system con-

sists of over 1.1 million miles of buried pipelines. Such systems serve some 44 million residential customers. With an average family size of approximately 3.5, this would mean that there is a population-at-risk of some 150 million citizens.

When one looks at deaths from pipelines compared to other transportation accidents, it is true that the number of pipeline fatalities is relatively small. In 1973, for example, while 61,000 Americans lost their lives in transportation accidents, only 70 of these deaths resulted from pipeline accidents.

Mr. President, while natural gas is a safe, clean and until recently, a very inexpensive form of energy, it is also potent. Its potency and its potential for catastrophe, as well as existing problems, underscore safety concerns.

Gas distribution systems are plagued with leaks, an estimated 900,000 such leaks according to the 1975 study of gas distribution systems by AMF, Inc., or an average of approximately one leak per mile. The Washington Gas and Light Company in 1973 estimated that it checked 80,000 residential leaks and that one quarter, if left unattended, were serious enough to cause an explosion. Projecting this local experience nationwide would mean that some 225,000 of the 900,000 leaks might be potentially explosive.

Fortunately, very few of these leaks produce the spectacular blasts that grab headlines, such as Bowie, Maryland, and Annandale, Virginia, explosions. However, while citizen concern is high in the wake of such disasters, such concern recedes with the passage of time, that is until another disaster occurs. We are, I fear, experiencing such a period of complacency now. And in this business, complacency—when the potential for catastrophe looms so large—has no place.

As the Washington Post concluded in a 1974 editorial following the rash of explosions in this region:

"Meanwhile, when and where will the next blowup occur? Until federal and state officials, not to mention the gas companies themselves, take the problem with more seriousness, the accident rate is not likely to go down. It may even go up, like the homes and buildings in the blasts."

It is true that compared to our modes of transportation, the number of fatalities from natural gas is low. Gas pipeline fatalities from 1968 to 1973 increased from sixteen to fifty-nine. In 1974, fatalities dropped to twenty-four. In 1975, they fell by one to twenty-three.

Although we welcome these improvements, one has to be careful not to relax in this area where the potential for a large scale catastrophe is even present. 1976 began with one—maybe the worst—pipeline accident in the history of the Nation. At Freemont, Nebraska, twenty individuals were killed and this drives home the danger and need for action in the pipeline area. Thus far in 1976, we have had thirty-seven.

As Barry Sweedler of the NTSB, and one of the foremost experts in the Nation, has warned:

"It's difficult to say if we're having more accidents each year or not. In some recent accidents we've been extremely lucky. If they'd happened a few miles down the line, or at another time of the day, the death rate would be very much higher. I don't foresee a drastic reduction in the number of serious accidents unless action is taken in the number of areas. . . . So far we have been lucky."

We have been lucky. One shudders to contemplate, for example, the catastrophe that could have resulted in the April, 1974, New York City twenty-four story office building explosion, if the accident had occurred at 9:30 A.M., rather than prior to working hours. The time of the explosion saved us. No one was killed although seventy individuals were injured and damaged approximated $10 million. We cannot count on or rely on luck.

I am hopeful that the new authority and funding authorized by S. 2042 will result in a new sense of urgency by the federal government and the states and give direction and impetus to improvements in pipeline safety for the American public.

EXHIBIT 1

"(a) The Secretary shall conduct, through grants or contracts, or both, with individuals, States, and nonprofit institutions, research, testing, and development in—

"(1) methods to detect leaks and the methods of repair of such leaks;

"(2) the development of monitoring devices, both automatic and manual;

"(3) improved procedures for accident control;

"(4) component reliability of gas pipelines and facilities and the development of safe service life prediction for the various components;

"(5) gas odorization and migration into buildings;

"(6) the development of safety or quality assurance programs or systems;

"(7) the development of tools and procedures for inplace evaluation;

"(8) excavation damage accidents and their prevention;

"(9) offshore and Arctic pipeline safety problems; and

"(10) other appropriate areas which will promote the purposes of this Act.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

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

The title was amended so as to read: "A bill to amend the Natural Gas Pipeline Safety Act of 1968, to authorize additional appropriations, and for other purposes."

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, under the circumstances as I have outlined them, if the Senate should have to go out for lack of a quorum, have I correctly stated the program for next Wednesday? I will not have another opportunity to state it. Have I correctly stated the scenario for the program then?

The PRESIDING OFFICER. The Senator was correct.

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

CHANGE OF REFERENCE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of S. 3414, and that the bill be referred to the Committee on Labor and Public Welfare.

The PRESIDING OFFICER. As in legislative session, without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank the Senator from Alabama for his courtesy.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. I ask unanimous consent to proceed for not to exceed 2 minutes.

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

ANGELA GARZA

Mr. ROBERT C. BYRD. Mr. President, as in legislative session, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 223.

The PRESIDING OFFICER (Mr. GLENN) laid before the Senate the amendments of the House of Representatives to the bill (S. 223) for the relief of Angela Garza, as follows:

Strike out all after the enacting clause, and insert: That, in the administration of the Immigration and Nationality Act, Angela Garza, the widow of a citizen of the United States, and her son, Manuel Aguilar (also known as Manuel Garza), shall be held and considered to be within the purview of section 201(b) of that Act and the provisions of section 204 of such Act shall not be applicable in their cases.

Amend the title so as to read: "An Act for the relief of Angela Garza and her son Manuel Aguilar (aka Manuel Garza).".

Mr. ROBERT C. BYRD. On June 26, 1975, the Senate passed S. 223, a bill to grant the status of permanent residence in the United States to Angela Garza.

On May 18, 1976, the House of Representatives passed S. 223 with amendments to restore immediate relative status to the beneficiary, a widow of a citizen of the United States, and her minor son. A further amendment includes the name of the beneficiary's minor son in the title of the bill.

I move that the Senate concur in the House amendments to S. 223.

The motion was agreed to.

MISS ROSARIO Y. QUIJANO, ET AL.

Mr. ROBERT C. BYRD. Mr. President, as in legislative session, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 52.

The PRESIDING OFFICER (Mr. GLENN) laid before the Senate the amendment of the House of Representatives to the bill (S. 52) for the relief of Miss Rosario Y. Quijano, Walter York Quijano, Ramon York Quijano, Tarcisus York Quijano, Denis York Quijano, and Paul York Quijano, as follows:

Page 1, line 4, strike out all after "Act," over to and including line 3, on page 2, and insert:

Rosario Y. Quijano and Walter Y. Quijano shall be held and considered to be entitled to preference status within the purview of section 230(a)(1) of that Act, and Ramon Quijano, Tarcisus Quijano, Denis Quijano, and Paul Quijano shall be held and considered to be immediate relatives within the purview of section 201(b) of that Act, and the provisions of section 204 of such Act shall not be applicable in these cases.

Mr. ROBERT C. BYRD. On June 26, 1975, the Senate passed S. 52, a bill to preserve first preference status in behalf of a daughter and five sons of a deceased citizen of the United States. The bill would also have exempted Walter York Quijano from the 2-year foreign residence requirement applicable to exchange visitors.

On April 6, 1976, the House of Representatives passed S. 52 with an amendment in the nature of a substitute to preserve first preference status in behalf of the daughter and eldest son, Walter York Quijano, and to restore immediate relative status to the four minor sons of a deceased citizen of the United States, to which status the beneficiaries would have been entitled were it not for the death of their mother. The bill S. 52, as passed by the House of Representatives, deletes reference to the waiver of the 2-year foreign residence requirement applicable in the case of Walter York Quijano, since the waiver is being resolved administratively.

I move that the Senate concur in the House amendment to S. 52.

The motion was agreed to.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Roddy, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore (Mr. METCALF) laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. METCALF) laid before the Senate the following letters, which were referred as indicated:

REVIEW OF CERTAIN DEFERRALS

A letter from the Comptroller General of the United States, reporting, pursuant to law, on review of deferrals which the President submitted to the Congress on April 26, 1976, in his 14th special message for fiscal year 1976 pursuant to the Impoundment Control Act of 1974; to the Committee on Appropriations, the Committee on the Budget, the Committee on Labor and Public Welfare, and the Committee on Finance, jointly, pursuant to order of January 30, 1975.

REVIEW OF CERTAIN DEFERRALS

A letter from the Comptroller General of the United States, reporting, pursuant to law, on review of deferrals which the President submitted to the Congress on May 13, 1976, in his 15th special message for fiscal year 1976 pursuant to the Impoundment Control Act of 1974; to the Committee on Appropriations, the Committee on the Budget, the Committee on Interior and Insular Affairs, and the Committee on the Judiciary, jointly, pursuant to order of January 30, 1975.

PROPOSED CONSTRUCTION PROJECTS BY THE ARMY NATIONAL GUARD

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), transmitting, pursuant to law, proposed construction projects to be undertaken by the Army National Guard (with accompanying papers); to the Committee on Armed Services.

COST ACCOUNTING STANDARD—COST OF MONEY AS AN ELEMENT OF THE COST OF FACILITIES CAPITAL

A letter from the Chairman, Cost Accounting Standards Board, transmitting, pursuant to law, a proposed cost accounting standard—cost of money as an element of the cost of facilities capital—promulgated by the Cost Accounting Standards Board (with accompanying papers); to the Committee on Banking, Housing and Urban Affairs.

UNINCORPORATED BUSINESS FRANCHISE SURTAX ACT OF 1976

A letter from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, an act entitled Unincorporated Business Franchise Surtax Act of 1976, adopted by the Council on April 20, 1976, and signed by the Mayor on May 18, 1976 (with accompanying papers); to the Committee on the District of Columbia.

INTERNATIONAL AGREEMENTS ENTERED INTO BY THE UNITED STATES

A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements other than treaties entered into by the United States (with accompanying papers); to the Committee on Foreign Relations.

INDEX MODIFICATION BY THE DEPARTMENT OF JUSTICE

A letter from the Attorney General, transmitting, pursuant to law, a report on modification of an index to existing systems of records (with an accompanying report); to the Committee on Government Operations.

REPORT OF THE GENERAL SERVICES ADMINISTRATION

A letter from the Administrator, General Services Administration, transmitting, pursuant to law, the annual report of the General Services Administration for 1975 (with an accompanying report); to the Committee on Government Operations.

REPORTS OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on changes needed in the Revenue Sharing Act for Indian Tribes and Alaskan Native villages, Department of the Treasury (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on examination of financial statements of the Panama Canal Company and the Canal Zone Government for fiscal years 1975 and 1974 (with an accompanying report); to the Committee on Government Operations.

REPORTS OF THE DEPARTMENT OF INTERIOR

Three letters from the Deputy Assistant Secretary of the Interior transmitting, pursuant to law, three applications for loans under the Small Reclamation Projects Act (with accompanying reports); to the Committee on Interior and Insular Affairs.

URANIUM ENRICHMENT SERVICES ACTIVITY

A letter from Controller of the Energy Research and Development Administration transmitting the Energy Research and Development Administration's fiscal year 1975 Financial Statements for its Uranium Enrichment Services Activity (with an accompanying report); to the Joint Committee on Atomic Energy.

PROPOSED LEGISLATION FOR THE USE OF VOTER REGISTRATION LISTS

A letter from the Deputy Director of the Administrative Office of the U.S. Courts transmitting proposed legislation amending the Jury Selection and Services Act of 1968 to establish a presumption that the use of voter registration lists as the source of names to be selected for jury service is consistent with the policies of the act (with accompanying papers); to the Committee on the Judiciary.

REPORT OF THE IMMIGRATION AND NATURALIZATION SERVICE

A letter from the Commissioner of the Immigration and Naturalization Service transmitting, pursuant to law, reports concerning visa petitions covering the period April 16 through April 29, 1976 (with accompanying papers); to the Committee on the Judiciary.

PROPOSED LEGISLATION BY THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

A letter from the Under Secretary of Health, Education, and Welfare transmitting a draft of proposed legislation to amend the Federal Food, Drug, and Cosmetic Act (with accompanying papers); to the Committee on Labor and Public Welfare.

REPORT OF THE NATIONAL COMMISSION FOR MANPOWER POLICY

A letter from the Director of the National Commission for Manpower Policy transmitting a report entitled "Current Issues in the Relationship Between Manpower Research and Policy" (with an accompanying report); to the Committee on Labor and Public Welfare.

REPORT OF THE LIBRARIAN OF CONGRESS

A letter from the Librarian of Congress transmitting, pursuant to law, a report on the activities of the Library of Congress during the fiscal year ending June 30, 1975; the Quarterly Journal of the Library of Congress; and the annual report of the Library of Congress Trust Fund Board (with accompanying reports); to the Committee on Rules and Administration.

REPORTS OF THE ASSISTANT SECRETARY OF DEFENSE

A letter from the Deputy Assistant Secretary of Defense transmitting, pursuant to law, a list of names of persons who have filed reports for fiscal year 1975 required by section 210(b) of Public Law 91-121 (with accompanying papers); to the Committee on Armed Services.

INTERNATIONAL AGREEMENTS OTHER THAN TREATIES

A letter from the Assistant Legal Adviser for Treaty Affairs of the Department of State transmitting, pursuant to law, copies of international agreements other than treaties entered into within the past 60 days (with accompanying papers); to the Committee on Foreign Relations.

PETITION

The ACTING PRESIDENT pro tempore (Mr. METCALF) laid before the Senate the following petition, which was referred as indicated:

Joint Resolution No. 48 adopted by the Legislature of the State of New York; to the Committee on Commerce:

"JOINT RESOLUTION No. 48

"Joint resolution of the Senate and Assembly of the State of New York memorializing the Congress and the United States Department of Transportation to facilitate the construction of a rapid transit system for the Buffalo-Amherst 'Corridor' of Erie County

"Whereas, Since 1967 the people and governmental jurisdictions of the City of Buf-

falo, Town of Amherst, and County of Erie have demonstrated their strong desire for the construction of a rapid transit system in that portion of the state; and

"Whereas, In 1971 and again in 1975 this Legislature has demonstrated its support for rapid transit serving the Buffalo-Amherst 'Corridor' through its appropriation of a total of $102,000,000 to be used for mass transit by the Niagara Frontier Transportation Authority; and

"Whereas, The Niagara Frontier Transportation Authority, in full cooperation with, and enjoying the total support of, the New York State Department of Transportation has proceeded to fulfill every requirement for funding assistance for such a line imposed by the Federal government; and

"Whereas, Officials of the Federal government have publicly commented that there was not, 'one thing which NFTA should be doing that it is not doing,' and that the 'community spirit and the solidarity of support shown for the Buffalo rail project' was widespread and impressive; and

"Whereas, Despite all of this support, the Federal government has still required further detailed studies of the feasibility of this line, as well as of suggested 'alternatives,' all of which have caused delay, leading to greatly increased costs; and

"Whereas, On February 17, 1976 the Board of the Niagara Frontier Transportation Authority unanimously approved a final application for two hundred sixty-nine million dollars in Federal capital funding to construct 6.4 mile light-rail line serving the Buffalo-Amherst "Corridor"; and

"Whereas, The people of Erie County and the entire state, as represented in this Legislature and in the Congress of the United States, have strongly demonstrated their support for a rapid transit line in this area many times over; now, therefore, be it

"Resolved, That the Legislature fully supports the construction of a rapid transit line in the Buffalo-Amherst "Corridor" and currently desires that the actual construction of such a line commence at the earliest possible date; and be it further

"Resolved, That the Legislature commends the action taken by the representatives in the Congress of the United States of this State in support of such a rapid transit line; and be it further

"Resolved, That the Legislature urges the Federal government, acting through the United States Department of Transportation, and the Urban Mass Transportation Administration, to add their support to this rapid transit line by approving the recent application for Federal funds for the construction of this line as endorsed by the Niagara Frontier Transportation Authority on February 17, 1976; and be it further

"Resolved, That the Legislature respectfully memorializes the Congress of the United States to facilitate the construction of the Buffalo-Amherst Line by appropriating funds sufficient for its construction; and be it further

"Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the House of Representatives, the Secretary of the United States Department of Transportation, the Urban Mass Transportation Administrator, and to each member of the Congress of the United States from the State of New York."

FINAL REPORT OF THE SPECIAL COMMITTEE ON NATIONAL EMERGENCIES AND DELEGATED EMERGENCY POWERS—REPT. NO. 94-922

Mr. MATHIAS submitted the final report of the Special Committee on National Emergencies and Delegated Emergency Powers, which was ordered to be printed.

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. MONDALE (for himself, Mr. HUMPHREY, and Mr. MCGOVERN):

S. 3506. A bill to authorize the construction of a lock and dam project on the Mississippi River near Alton, Ill., to revoke authority for 12-foot channel studies on the upper Mississippi River and its tributaries and for other purposes. Referred to the Committee on Public Works.

By Mr. MOSS:

S. 3507. A bill for the relief of Adela A. Nación. Referred to the Committee on the Judiciary.

STATEMENT ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MONDALE (for himself, Mr. HUMPHREY, and Mr. MCGOVERN):

S. 3506. A bill to authorize the construction of a lock and dam project on the Mississippi River near Alton, Ill., to revoke authority for 12-foot channel studies on the upper Mississippi River and its tributaries, and for other purposes. Referred to the Committee on Public Works.

Mr. MONDALE. Mr. President, I am today introducing a bill, cosponsored by Senators HUMPHREY and MCGOVERN to correct several of the most serious deficiencies in the management of the Upper Mississippi River System.

The bill would authorize construction of a single new lock and dam at Alton, Ill. It would preclude by law a 12-foot channel on the Mississippi River. It would establish a long overdue planning process to reconcile the various Federal management objectives on the river, with guidelines for channel maintenance, protection of environmental and recreational values and mechanisms for enforcement. Finally it would put a ceiling on existing traffic capacity of the Upper Mississippi River and freeze all other new construction projects that might increase the capacity of the system until the master plan and guidelines had been approved by the Congress.

Our proposal recognizes that there are currently several competing and often conflicting objectives of the Federal Government on the Mississippi—maintenance of commercial navigation, environmental protection and provision of public recreational opportunities. All of these objectives are legitimate but, in my opinion, none are being adequately achieved. Traffic delays on the Upper Mississippi are resulting in millions of dollars each year in unnecessary costs that must ultimately be borne by shippers and consumers of farm commodities, coal, fertilizer, and petroleum products. At the same time significant and, to a great extent, avoidable damage to the environment is occurring as a result of present channel operation and maintenance activities.

Methods must be found to prevent destruction of wildlife habitat and water quality, without closing down the river to further navigation. The Upper Mississippi transportation system is simply too important to the economy of the Upper Midwest to be crippled by neglect or inefficiency.

Let us look at the facts. Agricultural commodities, including grain and fertilizer, comprise nearly half of the total cargoes shipped by river. Another 35 percent is composed of energy products such as coal, gasoline and residual fuels. The remainder is divided among a variety of other bulk commodities—steel, and sand gravel, salt and molasses.

A major share of the agricultural commodities transported on the river system are corn, soybeans and wheat destined for export from the Louisiana Gulf ports. In 1973, Minnesota's shipments alone had an export value of more than $500 million, representing roughly half of the State's total agricultural exports. Barge shipments from the region served by the Upper Mississippi River, represent more than 40 percent of America's total corn exports, 30 percent of all soybeans exports and about 10 percent of the Nation's wheat exports.

Even assuming that adequate capacity existed to move these commodities to market by alternate modes of transportation, the loss of commercial navigation would cost farmers in Minnesota alone a minimum of $45 million per year in increased freight charges for transportation of grain. A typical farmer in Lake Crystal, Minn., with 200 acres of corn for export, would lose over $3,000 in net income per year, if deprived of the opportunity for barge transportation. Lake Crystal is one of the 40 Minnesota communities out of more than 700 with grain elevators that has unit train loading facilities. If a farmer with a comparable crop from Tracy, Minn., were denied the opportunity for barge transportation, he would lose over $4,000 in annual income. The farmer's losses would be substantially higher because Tracy—like most Minnesota farm communities—is not served by unit rail.

The Mississippi River is nearly as important to the energy supply of the Upper Midwest region as it is to agriculture. Barge shipments of coal provide the electrical energy for over 3 million residents of the Upper Mississippi River basin area. In addition, 30 percent of the primary movement of petroleum products in the region is dependent upon barge transportation.

There is no question but that the river and the system of locks and dams for operation of the channel are a vital transportation link for farmers and communities in the Upper Midwest. The efficiency and cost of this system in turn have direct bearing on fuel bills paid by homeowners.

Unfortunately, conflicts are becoming more and more apparent between commercial and other uses of the riverway. Degradation of environmental values has all too frequently occurred as a result of poorly conceived off-channel fleeting, dredging and spoil disposal practices. These problems are not inevitable, given more adequate planning, research and

funding to deal with the environmental needs of the river system. Bu there is no question that they will become more severe as traffic expands unless better management techniques are adopted.

The focal point of the controversy over management of the Upper Mississippi River is the future of lock and dam 26 at Alton, Ill. River users rightly complain that the present facility at Alton is outmoded, inefficient and structurally unsound. They point to average delays of up to 9 hours per tow at lock and dam 26 costing millions of dollars each year.

Only a few weeks ago a shutdown of the locks at Alton, Ill. led to a 10-day backup of traffic while repairs were carried out. During this period barge transportation rates increased by almost 20 percent, with total costs to farmers estimated at tens of millions of dollars.

Originally the Corps of Engineers sought to replace the existing structure at lock and dam 26 with two 110 by 1,200 foot locks. This proposal was heavily criticized by environmental leaders and other Federal agencies and construction was ultimately enjoined by the courts.

In opposing construction of the new lock and dam, environmental leaders raised two primary concerns—first that building the facility would be the opening wedge in an alleged corps' effort to build a 12-foot channel on the upper Mississippi, and second, that operation and maintenance activities, even at current traffic levels are resulting in significant environmental damage. They maintain that the existing lock and dam should be repaired rather than replaced.

Two years ago, I joined with Senator NELSON in urging that any authorization of the lock and dam 26 project be deferred until there had been an opportunity for congressional review and public hearings. Since then, there has been sufficient time to evaluate the various aspects of this issue. The corps has also greatly scaled down its original proposal, by eliminating one of the proposed new locks.

In my judgment there are now three critical questions that must be answered: First, is the new structure needed; second, could it be a first step toward a 12-foot channel on the river; and third, would traffic levels exceed the point where environmental quality and a balance transportation system in the river region could be sustained?

The threshold question is whether the new facility is needed. I believe that there is ample evidence to show that it is. Studies reveal that the original facility at Alton was constructed in an area of extremely unstable bottom material. The result is a constant shifting in the foundation of the structure that causes periodic cracking of the dam and wreaching of the locks. No amount of repair, short of building a deep, permanently cemented pool, could prevent these problems from recurring. In the interim a duplicate lock would have to be constructed to handle traffic while repairs were being carried out. Thus the cost for repair of the existing lock and dam 26 would be nearly equal to that of building an entirely new facility, but the resulting lock and dam would be far less efficient and more costly to operate.

The second question is whether a new lock and dam would be the first step toward a 12-foot channel on the Upper Mississippi. Given the degradation resulting from operation and maintenance of the existing channel, I believe a 12-foot channel would be an ecological disaster for the Upper Midwest. But with or without a new lock and dam at Alton, there is only one way to make sure that there will be no 12-foot channel on the Upper Mississippi, and that is to repeal all existing authority for feasibility studies leading toward a 12-foot channel and to provide that such authority may not be reinstated except by act of Congress. That is what this bill proposes to do and, short of a constitutional amendment, it is the best protection available against a 12-foot channel on the river.

Third, there is the question of traffic levels on the Upper Mississippi, and what tonnage volumes can be permitted consistent with the need to protect environmental quality and to promote a balanced transportation system in the region. There are no easy answers to this question. In part, the solution will depend upon what rules and guidelines are in effect to protect fish and wildlife, water quality and related values. In part, it will also depend upon projected transportation demands and the ability of all transportation modes to serve the region in an economical and efficient fashion. If thorough studies are conducted, up to 5 years might be required to collect and analyze the necessary data, prepared the rules and recommend an appropriate management strategy.

Environmental spokesmen have suggested that replacement of lock and dam 26 be postponed until all of this systemwide analysis has been completed. In my judgment, such a delay is neither necessary nor consistent with the environmental and economic interests of the region. Delay would not alter the natural bottom conditions that are responsible for structural problems at lock and dam 26. Instead, it would merely add to the costs of the new facility that will have to be built, an increase of an estimated $130 million in inflation costs alone over the 5-year period.

There is a much more reasonable way to meet the concern over future traffic levels on the Mississippi River. This could be done by placing a statutory ceiling on navigation tonnage equal to the present maximum capacity of 73 million tons until the necessary studies and planning had been carried out. In addition, a freeze would be in effect on any other new construction that would add to system capacity until a master plan with appropriate guidelines and mechanisms for enforcemnt had been approved by the Congress.

It has been alleged that construction of a new lock and dam would result in the loss of 25,000 jobs in the railroad industry and the demise of the rail system of the Upper Midwest. These allegations are totally misleading. They are based upon the assumption of duplicate locks extending up and down the river—a step specifically prohibited by the bill we are offering today. Only after studies had been carried out by the Department of Transportation and a master plan was prepared and approved by the Congress could there be any increase whatsoever in the maximum present capacity of the navigation channel.

The Midwest region must have an efficient and competitive transportation network. The best way to promote such a system is not to mandate an inefficient navigation channel. In fact, the presence of commercial navigation on the Mississippi has encouraged greater efficiencies in our rail service, including the use of unit trains and jumbo hoppers.

To a large extent the future of lock and dam 26 has become a symbolic issue. Spokesmen for commercial navigation have sought to define the issues in terms of transportation efficiency, regardless of potential environmental impacts. Spokesmen for environmental interests have sought to define the issue in terms of possible environmental impacts, even if it means permanently mandating an inefficient transportation system.

I believe that it is possible to have a navigation system on the Upper Mississippi that is both efficient economically and responsive environmentally. In fact, by applying funding that would otherwise be absorbed in delay costs, it is possible to purchase improved equipment for dredging and spoil disposal that could better protect water quality and avoid destruction of wildlife habitat. A computerized resource inventory and analysis system could also be developed to weigh the effects of alternative management strategies on the river environment. These are among the principal objectives of the bill we introduce today.

I believe it is long past the time that we recognize that navigation and fish and wildlife and recreational interests must coexist on the riverway even though they do not always coincide. Until now the Congress has never really addressed conflicts that are so clearly apparent in the mandates we have given to the Corps of Engineers, the Fish and Wildlife Service, and the Environmental Protection Agency. The result has been chaos. Frustrated citizens and State agencies have thus been increasingly turning to the courts for an interpretation of congressional intent.

Court injunctions can highlight management problems on the Mississippi River. They can provide time so that a reasonable solution can be achieved. But court injunctions cannot solve the basic problems of the river system, either environmental or economic. Solutions to these problems must come from the Congress.

The proposal we offer today is intended to address an immediate problem of commercial navigation on the riverway. But it does much more than that. It establishes a framework wherein a balanced plan, taking into account the commercial environmental and recreational objectives of the Federal Government on the Mississippi River system can be implemented. Our goal is to ensure that this river is used in a manner

that is consistent with the economic needs of the Upper Midwest, but in a manner that also insure protection for fish and wildlife and for the recreational advantages of this magnificent resource. The Mississippi River is an economic and environmental asset of unsurpassed value to the Upper Midwest. I believe this bill can help assure that it remains so.

Mr. President, I ask unanimous consent that the full text of my bill and a section-by-section analysis be printed at this point in the RECORD.

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

S. 3506

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Army, acting through the Chief of Engineers, is authorized to commence replacement of Locks and Dam 26, Mississippi River, Alton, Illinois, by constructing a new dam and 110 foot by 1,200 foot main lock at a location approximately two miles downstream from the existing dam, substantially in accordance with the recommendations of the Chief of Engineers in his report on such project dated March 15, 1976.

SEC. 2. The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to replace, at Federal expense as a part of project costs authorized in the first section, terrestrial wildlife habitat inundated as a result of the construction of the project on an acre for acre basis in the respective States of Missouri and Illinois and to manage such lands as are thus acquired by the Corps for wildlife mitigation purposes. The Secretary is further authorized to provide project-related recreation development on or in the vicinity of Ellis Island, Missouri, that requires no separable project lands and includes facilities such as roads, parking lots, walks, picnic areas, a boat launching ramp and a beach, at an estimated first cost of $2,750,000.00 to be cost shared with the State of Missouri and administered in accordance with the provisions of the Federal Water Project Recreation Act (P.L. 89-72) and undertaken independently of the navigation features of the project.

SEC. 3. Nothing in this Act shall be construed as authorizing a twelve-foot channel above Alton, Illinois. Any authority for the Secretary of the Army to study the feasibility of deepening the navigation channels in the Minnesota River, Minnesota; Black River, Wisconsin; St. Croix River, Minnesota and Wisconsin; and in the Mississippi River north of its juncture with the Illinois River, Illinois, beyond their present limits is hereby withdrawn and may be reinstated only if specifically authorized by a future Act of Congress.

SEC. 4. (a) The Congress hereby authorizes and directs the preparation of a master plan for the management of the Upper Mississippi River to be prepared by the Upper Mississippi River Basin Commission in cooperation with appropriate Federal, State and local government agencies. A preliminary plan shall be prepared by January 1, 1981, and shall be subject to public hearings in each affected State. The Commission shall review all comments presented at such hearings, shall make any appropriate revisions in the preliminary plan and shall, by July 1, 1981, submit a final master plan to Congress for approval. Approval of the final master plan shall be granted only by enactment of a joint resolution of the Congress.

(b) The master plan authorized under subsection (a) of this section, shall identify the various economic, recreational and environmental objectives of Federal, State and local agencies responsible for administration of the Upper Mississippi River, recommend guidelines to achieve such objectives and propose methods to ensure compliance with such guidelines and coordination of future management decisions affecting the Upper Mississippi River, and include any legislative proposals which may be necessary to carry out such recommendations and objectives.

(c) The Commission is authorized to carry out such studies, including the acquisition and testing of equipment for improved dredging and spoil disposal, as it deems necessary to carry out its responsibilities under this section, and may request appropriate Federal, State or local agencies to prepare such studies, and any Federal agency so requested is authorized to carry out any such study for the purpose of this section. With respect to economic studies and intermodal transportation analysis carried out under this section, the Department of Transportation shall be considered the primary agency for such a study, with the cooperation of the Department of the Army, the Department of Agriculture and any other agencies that the Commission deems appropriate. Studies carried out pursuant to this section shall include, but not be limited to, the following:

(1) studies concerning the environmental effects of present and projected traffic levels, including the impact of any new navigation-related construction activities upon fish and wildlife, water quality, wilderness and public recreational opportunities, including a specific analysis of the environmental effects of construction of a second lock and dam at Alton, Illinois.

(2) studies concerning the economic impacts of present and projected traffic levels, including an analysis of alternative methods for meeting future intermodal bulk commodity transportation needs of the regions served by the Upper Mississippi and Illinois Rivers and a specific evaluation of the economic effects and demand for a second lock and dam at Alton, Illinois;

(3) studies and demonstration programs including acquisition of a new dredge and spoil disposal to evaluate the equipment effectiveness of improved dredging and other equipment in minimizing the environmental effects of channel operation and maintenance activities;

(4) development of a computerized analytical inventory and analysis system by the United States Fish and Wildlife Service for the Upper Mississippi River, to facilitate evaluation of the comparative environmental effects of alternative management proposals; and

(5) such other studies as the Commission deems necessary.

(d) The Commission shall, in preparation of the master plan, utilize to the fullest extent possible the resources and results of the Upper Mississippi River Resource Management (GREAT) Study. Such study shall hereafter be funded in accordance with the provisions of subsection (h) of this section.

(e) Guidelines developed pursuant to this section shall include, but not be limited to, guidelines for channel maintenance, minimization of dredging volumes, barge fleeting, protection of water quality, fish and wildlife protection and enhancement, wilderness preservation and management of the Upper Mississippi Wildlife and Fish Refuge and the Mark Twain National Wildlife Refuge.

(f) Except for the provisions of the first section of this Act, and necessary operation and maintenance activities, no rehabilitation, replacement or construction of duplicate locks and dams shall be undertaken by the Secretary of the Army that will increase the present traffic capacity of the Upper Mississippi River System, until the master plan prepared pursuant to this section has been approved by Congress and the President. Following approval of the master plan, construction of a second lock and dam at Alton, Illinois, shall be initiated only by Act of Congress and all other construction activities of the Secretary on such system shall be initiated only in accordance with the guidelines set forth in the master plan.

(g) Until such time as the master plan provided for in this section receives final approval by the Congress and the President, there shall be a maximum annual ceiling on navigation tonnage at lock and dam 26 of 73 million tons.

(h) To carry out the provisions of this section, there are authorized to be appropriated to the Commission $20,000,000, of which $4.4 million shall be reserved for expansion and completion of the Upper Mississippi River Resource Management Study. The Commission is authorized to transfer funds to such Federal, State or local government agencies as it deems necessary to carry out the studies and analysis authorized in this section.

SEC. 5. There is authorized to be appropriated to the Secretary of the Army such sums as are necessary to carry out the provisions of Sections 1 and 2 of this Act. Any funds which have been allocated to a replacement project for Lock and Dam No. 26 prior to the enactment of this Act shall be available for the project authorized in the first section of this Act and shall remain available until expended.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Authorizes replacement of lock and dam 26 at Alton, Illinois with a new dam and a single 110 by 1200 foot main lock.

Sec. 2. Directs replacement on an acre-for-acre basis of wildlife habitat innundated as a result of the project, with public access and recreational facilities to be provided by the Corps of Engineers on a cost-sharing basis with the State of Missouri.

Sec. 3. Repeals all existing authority for studies by the Secretary of the Army of the feasibility of deepening the navigation channels on the Upper Mississippi, Minnesota, Black and St. Croix Rivers and provides that any such authority may be reinstated only by specific Act of Congress.

Sec. 4. Requires preparation by July 1981 of a master plan for the Upper Mississippi River by the Upper Mississippi River Basin Commission in cooperation with appropriate federal, state and local government agencies. The plan would—

Identify the economic, environmental and public recreational objectives of all government agencies with management responsibilities on the Mississippi River;

Recommend guidelines to ensure that such objectives are achieved, including guidelines for channel maintenance, minimization of dredging volumes, barge fleeting, protection of water quality, fish and wildlife protection and enhancement and wilderness protection;

Propose methods to ensure enforcement of the guidelines and coordination of future management policies affecting the Upper Mississippi; and

Recommend any new legislation that may be necessary to carry out the objectives and recommendations of the master plan.

Authorizes studies to be undertaken by the Commission in cooperation with appropriate government agencies and with the ongoing Upper Mississippi Resource Management (GREAT River) Study, including—

Environmental analyses of present and projected traffic levels, including the impact of a second lock and dam at Alton, Illinois;

Economic and intermodal bulk commodity transportation analyses of the impacts of present and projected traffic levels, to be directed by the Secretary of Transportation in cooperation with the Secretary of the Army, Secretary of Agriculture and other appropriate agencies (such analyses to include

an evaluation of the impact of a second lock and dam at Alton, Illinois);

Acquisition and demonstration of advanced equipment for dredging and deposit of spoil material so as to minimize the environmental effects of routine operation and maintenance activities; and

Develop, by the Fish and Wildlife Service, of a computerized analytical inventory and analysis system to facilitate evaluation of the comparative environmental effects of alternative management strategies.

Forbids any additional new construction (other than the 110 by 1200 foot lock and dam at Alton authorized in Section 1) that would increase the traffic capacity of the Upper Mississippi River System until the master plan has been approved by Act of Congress, and prohibits such construction thereafter except in accordance with the master plan. Provides that construction of a second lock and dam at Alton, Illinois could be initiated only by Act of Congress. Establishes a maximum annual ceiling on navigation tonnage at lock and dam 26 of 73 million tons (present capacity of the Upper Mississippi River System) pending Congressional approval of the master plan.

Authorizes $20 million for the studies, planning and acquisition and demonstration of equipment authorized by this section.

Sec. 5. Authorizes funds necessary for construction of the new lock and dam at Alton, Illinois pursuant to section 1 of this Act.

ADDITIONAL COSPONSORS

S. 2387

At the request of Mr. BAYH, the Senator from New Hampshire (Mr. MCINTYRE) was added as a cosponsor of S. 2387, the Petroleum Industry Competition Act, as amended.

S. 3222

At the request of Mr. DURKIN, the Senator from South Dakota (Mr. ABOUREZK), the Senator from Mississippi (Mr. EASTLAND), the Senator from Kentucky (Mr. HUDDLESTON), and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of S. 3222, to amend the Veterans Readjustment Benefits Act.

AMENDMENT NO. 1639

At the request of Mr. FORD, the Senator from Mississippi (Mr. EASTLAND), the Senator from West Virginia (Mr. RANDOLPH), the Senator from South Carolina (Mr. THURMOND), and the Senator from Wyoming (Mr. MCGEE) were added as cosponsors of amendment No. 1639, intended to be proposed to H.R. 10612, the Tax Reform Act of 1976.

SENATE RESOLUTION 454—SUBMISSION OF A RESOLUTION AUTHORIZING THE PRINTING OF ADDITIONAL COPIES OF THE SENATE REPORT ENTITLED "FRAUD AND ABUSE AMONG CLINICAL LABORATORIES"

(Referred to the Committee on Rules and Administration.)

Mr. MOSS (for himself, Mr. PERCY, Mr. WILLIAMS, Mr. CHURCH, Mr. MUSKIE, Mr. KENNEDY, Mr. PELL, Mr. EAGLETON, Mr. TUNNEY, Mr. MONDALE, Mr. CHILES, Mr. CLARK, Mr. BROOKE, Mr. BEALL, Mr. DOMENICI, Mr. BROCK, and Mr. BARTLETT) submitted the following resolution:

S. RES. 454

Resolved, That there be printed for the use of the Special Committee on Aging 4,500 additional copies of its report to the Senate entitled "Fraud and Abuse Among Clinical Laboratories" (Senate Report 94——).

Mr. MOSS. Mr. President, I submit a resolution which would authorize the printing of additional copies of the report "Fraud and Abuse Among Clinical Laboratories" prepared by my Subcommittee on Long-Term Care of the Senate Special Committee on Aging.

Mr. President, this report is the result of a 6-month investigation by the staff of the Committee on Aging and Chicago's Better Government Association. Senator CHARLES PERCY, Senator PETE V. DOMENICI, and I were directly involved in this effort. The report documents that kickbacks are widespread among the medical laboratories and that the quality of testing can be far from adequate.

As a result of this investigation, those who offered us illegal kickbacks have been brought to the bar of justice and new tougher laws have been enacted by the Congress. The Clinical Laboratories Improvement Act of 1976, passed the Senate on April 29 by a wide margin incorporating new Federal standards for medical labs, providing Federal inspectors with access to the financial data of labs and making the offering or receiving of lab kickbacks a felony punishable by 3 years in jail and a $10,000 fine.

I am pleased to make copies of this report available to the Members of the Senate and House and intend personally to send a copy to each State Governor. I think we should all be alerted to the possibilities for defrauding the medicaid program. The public is looking to us to protect the integrity of public funds.

AMENDMENTS SUBMITTED FOR PRINTING

ANTITRUST IMPROVEMENTS ACT—H.R. 8532

AMENDMENT NO. 1727

(Ordered to be printed and to lie on the table.)

Mr. PHILIP A. HART. Mr. President, this amendment is purely technical. It would conform the title of the act passed by the House (H.R. 8532) to the title of S. 1284 as reported by the Senate Judiciary Committee if the pending Hart-Scott substitute amendment is adopted. I hope it can be accepted.

AMENDMENT NO. 1728

(Ordered to be printed and to lie on the table.)

Mr. PHILIP A. HART. Mr. President, a number of my colleagues have expressed concern over the lack of an express exemption from the Freedom of Information Act for material and information furnished the Department of Justice pursuant to its civil investigative authority under title II.

The point was raised in committee, and the committee concluded that existing law already contains such an exemption. The question has persisted, however, and my distinguished colleagues have asked me to allay their fears be expressly providing such an exemption.

This amendment expressly provides such exemption.

AMENDMENT NO. 1729

(Ordered to be printed and to lie on the table.)

Mr. PHILIP A. HART. Mr. President, this amendment is in the nature of a committee perfecting amendment, and I hope we can consider it en bloc. It has three parts.

The first part of the amendment is purely technical and adds a new section 307 to the bill.

For years and years, the antitrust bar has been referring to the antitrust laws by short titles: the Clayton Act, the Sherman Act, the Webb-Pomerene Act, the Wilson Tariff Act, the Robinson-Patman Act, and the Federal Trade Commission Act. The 93d Congress enacted legislation adopting short titles for the Robinson-Patman and Federal Trade Commission Acts. This amendment adopts the other four commonly used short titles and gives them the force of law by inserting them in the appropriate statutes.

The second part of the amendment is purely technical. It conforms one provision of the bill—a provision adopted in committee by amendment—to the requirements of the Congressional Budget Act of 1974. In accordance with section 401(b)(1) of that act, the amendment merely sets the commencement of the new fiscal year—October 1, 1976—as the earliest date upon which the Department of Justice is authorized to incur new obligations to carry out new section 3(k)(5) of the Antitrust Civil Process Act, as amended by section 201(k) of this bill. I thank the distinguished chairman of the Budget Committee (Mr. MUSKIE) and his staff for calling this oversight to our attention.

The third part of the amendment addresses a technical inconsistency in subsection (f) of title V's premerger penalty provisions. Subsection (f)(1) limits the penalty for failing to comply with title V's premerger provisions to violations of subsection (a) only. Application of the penalty provision for failure to comply with the notification provisions of subsection (b) was inadvertently omitted, and the penalties for failing to comply with subsection (c) is referenced to the penalties set forth in the Antitrust Civil Process Act and the Federal Trade Commission Act.

This part of the amendment clarifies these seeming inconsistencies by deleting the reference in subsection (f)(2) to the Antitrust Civil Process Act and the Federal Trade Commission Act, and by making clear that the penalty provision of subsection (f)(1) applies to all violations of section 7A. That the inherent equity power of a court to prevent or remedy violations of section 7A is not being restricted is also made clear by the addition of a new subsection (f)(2).

AMENDMENT NO. 1730

(Ordered to be printed and to lie on the table.)

Mr. PHILIP A. HART. Mr. President, this amendment limits the provisions of the bill affording access to grand jury documents and transcripts.

It limits such access to cases in which the Government has filed a criminal case and a defendant has entered a plea of guilty or of nolo contendere. Even in such

cases, under the amendment, access will be possible only with respect to the documents and testimony of such defendant and its officers, directors, employees, and agents.

Mr. President, if a defendant went to trial and was convicted the grand jury evidence so vital to private plaintiffs would be publicly available on the record of the criminal trial. If a defendant pleads guilty or nolo, such defendant is just as guilty as one who stands trial and is convicted. There is no justification in such cases for private plaintiffs to be denied access to such vital information.

Under the amendment, documents and testimony from third parties would not be available under the standards set forth in title II. Thus, informers and competitors would be protected. But, as to the defendant, no justification exists to use the grand jury as a shield to cover up and protect such defendant's illegal activities.

I believe this amendment strikes an appropriate balance, and hope it will be accepted.

CRIME CONTROL ACT OF 1976—S. 2212

AMENDMENT NO. 1731

(Ordered to be printed and to lie on the table.)

BAYH URGES SENATE TO REJECT FORD ATTEMPT TO STIFLE JUVENILE CRIME PREVENTION PROGRAM

Mr. BAYH. Mr. President, today I am introducing an amendment to President Ford's Crime Control Act of 1976, S. 212. The purpose of the amendment is to assure that the long ignored area of juvenile crime prevention remains the priority of the Federal anti-crime programs.

Mr. President, I am not able to support the reported version of President Ford's "Crime Control Act of 1976," S. 2212, because it (sections 26(b) and 28) repeals significant provisions of the Juvenile Justice and Delinquency Prevention Act of 1974 (P.L. 93-415).

The Juvenile Justice and Delinquency Prevention Act is a product of a bipartisan effort of groups of dedicated citizens and of strong bipartisan majorities in both the Senate (88-1) and House (329-20) to specifically address this Nation's juvenile crime problem, which finds more than one-half of all serious crimes committed by young people who have the highest recidivism rate of any age group.

This measure was designed specifically to prevent young people from entering our failing juvenile justice system and to assist communities in developing more sensible and economic approaches for youngsters already in the juvenile justice system. Its cornerstone is the acknowledgement of the vital role private nonprofit organizations must play in the fight against crime. Involvement of the millions of citizens represented by such groups, will help assure that we avoid the wasteful duplication inherent in past Federal crime policy. Under its provisions the Law Enforcement Assistance Administration (LEAA) must assist those public and private agencies who use prevention methods in dealing with juvenile offenders to help assure that those youth who should be incarcerated are and that the thousands of youth who have committed no criminal act (status offenders, such as runaways) are not jailed, but dealt with in a healthy and more appropriate manner.

Mr. President, I ask unanimous consent that a list of the groups to which I have just referred be printed in the RECORD.

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

ORGANIZATIONS ENDORSING THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974 (PUBLIC LAW 93-415)

American Federation of State, County and Municipal Employees.
American Institute of Family Relations.
American Legion, National Executive Committee.
American Parents Committee.
American Psychological Association.
B'nai B'rith Women.
Children's Defense Fund.
Child Study Association of America.
Chinese Development Council.
Christian Prison Ministries.
Emergency Task Force on Juvenile Delinquency Prevention.
John Howard Association.
Juvenile Protective Association.
National Alliance on Shaping Safer Cities.
National Association of Counties.
National Association of Social Workers.
National Association of State Juvenile Delinquency Program Administrators.
National Collaboration for Youth; Boys' Clubs of America, Boy Scouts of America, Camp Fire Girls, Inc., Future Homemakers of America, Girls' Clubs, Girl Scouts of U.S.A., National Federation of Settlements and Neighborhood Centers, Red Cross Youth Service Programs, 4-H Clubs, Federal Executive Service, National Jewish Welfare Board, National Board of YWCAs, and National Council of YMCAs.
National Commission on the Observance of International Women's Year Committee on Child Development Audrey Rowe Colom, Chairperson Committee Jill Ruckelshaus, Presiding Officer of Commission.
National Conference of Criminal Justice Planning Administrators.
National Conference of State Legislatures.
National Council on Crime and Delinquency.
National Council of Jewish Women.
National Council of Juvenile Court Judges.
National Council of Organizations of Children and Youth.
National Council of Organizations of Children and Youth, Youth Development Cluster; members:
AFL-CIO, Department of Community Services.
AFL-CIO, Department of Social Security.
American Association of Psychiatric Services for Children.
American Association of University Women.
American Camping Association.
American Federation of State, County and Municipal Employees.
American Federation of Teachers.
American Occupational Therapy Association.
American Optometric Association.
American Parents Committee.
American Psychological Association.
American Public Welfare Association.
American School Counselor Association.
American Society for Adolescent Psychiatry.
Association for Childhood Education International.
Association of Junior Leagues.
Big Brothers of America.
Big Sisters International.
B'nai B'rith Women.
Boys' Clubs of America.
Boy Scouts of the USA.
National Council of Organization of Children and Youth, Development Cluster; members, continued:
Child Welfare League of America.
Family Impact Seminar.
Family Service Association of America.
Four-C of Bergen County.
Girls Clubs of America.
Home and School Institute.
Lutheran Council in the USA.
Maryland Committee for Day Care.
Massachusetts Committee for Children and Youth.
Mental Health Film Board.
National Alliance Concerned With School-Age Parents.
National Association of Social Workers.
National Child Day Care Association.
National Conference of Christians and Jews.
National Council for Black Child Development.
National Council of Churches.
National Council of Jewish Women.
National Council of Juvenile Court Judges.
National Council of State Committees for Children and Youth.
National Jewish Welfare Board.
National Urban League.
National Youth Alternatives Project.
New York State Division for Youth.
Odyssey.
Palo Alto Community Child Care.
Philadelphia Community Coordinated Child Care Council.
The Salvation Army.
School Days, Inc.
Society of St. Vincent Paul.
United Auto Workers.
United Cerebral Palsy Association.
United Church of Christ—Board for Homeland Ministries, Division of Health and Welfare.
United Methodist Church—Board of Global Ministries.
United Neighborhood Houses of New York, Inc.
United Presbyterian Church, USA.
Van der Does, William.
Westchester Children's Association.
Wooden, Kenneth.
National Federation of State Youth Service Bureau Associations.
National Governors Conference.
National Information Center on Volunteers in Courts.
National League of Cities.
National Legal Aid and Defender Association.
National Network of Runaway and Youth Services.
National Urban Coalition.
Public Affairs Committee, National Association for Mental Health, Inc.
Robert F. Kennedy Action Corps.
U.S. Conference of Mayors.

Mr. BAYH. An essential aspect of the 1974 act is the "maintenance of effort" provision—section 261(b) and section 544. It requires LEAA to continue at least the fiscal year 1972—$112 million—of support for a wide range of juvenile programs. This provision assured that the 1974 act's aim, to focus on prevention, would not be the victim of a "shell game" whereby LEAA shifted traditions juvenile programs to the new act and thus guarantee that juvenile crime prevention will be a priority.

Fiscal year 1972 was selected only because it was the most recent year in which current and reportedly accurate data were available. Witnesses from LEAA represented to the Subcommittee to Investigate Juvenile Delinquency in

June 1973 that nearly $140 million had been awarded by the agency during that year to a wide range of traditional juvenile delinquency problems. Unfortunately, the actual expenditure as revealed in testimony before the subcommittee last year was $111,851,054. It was these provisions, when coupled with the new prevention thrust of the substantive program authorized by the 1971 act, which represented a commitment by the Congress to make the prevention of juvenile crime a national priority—not one of several competing programs administered by LEAA but the national crime-fighting priority.

The subcommittee has worked for years to persuade LEAA to make an effort in the delinquency field commensurate with the fact that youths under the age of 20 are responsible for half the crime in this country. In fiscal year 1970, LEAA spent an unimpressive 12 percent; in fiscal year 1971, 14 percent; and in fiscal year 1972, 20 percent of its funds in this vital area. In 1973 the Senate approved the Bayh-Cook amendment to the LEAA extension bill which required LEAA to allocate 30 percent of its dollars to juvenile crime prevention. Some who had not objected to its Senate passage opposed it in the House-Senate conference where it was deleted.

Thus, the passage of the 1974 act, which was opposed by the Nixon administration—LEAA, HEW, and OMB—was truly a turning point in Federal crime prevention policy. It was unmistakably clear that we had finally responded to the reality that juveniles commit more than half the serious crime.

Despite stiff Ford administration opposition to this congressional crime prevention program, $25 million was obtained in the fiscal year 1975 supplemental. The act authorized $125 million for fiscal year 1976; the President requested zero funding; the Senate appropriated $75 million; and the Congress approved $40 million. In January President Ford proposed to defer $15 million from fiscal year 1976 to fiscal year 1977 and requested a paltry $10 million of the $150 million authorized for fiscal year 1977, or a $30 million reduction over fiscal year 1976. On March 4, 1976, the House, on a voice vote, rejected the Ford deferral by approving a resolution offered by the chairman of the State, Justice, Commerce, and Judiciary Appropriation Subcommittee.

It is interesting to note that the primary basis for the administration's opposition to funding of the 1974 act was ostensibly the availability of the very "maintenance of effort" provision which the administration sought to repeal in S. 2212.

Mr. President, just last week the same forked-tongue approach was again articulated by Deputy Attorney General Harold Tyler before the Senate Appropriations Subcommittee. He again cited the availability of the maintenance of effort requirement in urging the Appropriations Committee to reduce by 75 percent to $10 million current funding for the new prevention program or in other words kill it.

The Ford administration was unable to persuade the Judiciary Committee to fully repeal this key section of the 1974 act, but they were able to persuade a close majority to except a substitute percentage formula for the present law, the effect of which could substantially reduce the total Federal effort for juvenile crime prevention. But what the President seeks and what his supporters will diligently pursue is the full emasculation of the program. This intent is clearly evidenced in the original version of S. 2212 and even more importantly in the President's proposal to extend the 1974 act, for 1 year, which was submitted to Congress on May 15, after the compromise version was reported from the Judiciary Committee. This new proposal again incorporates sections repealing the key maintenance of effort provisions. My subcommittee heard testimony on this measure last Thursday and it was clear to me that rather than an extension bill it is an extinction bill.

It is this type of double-talk for the better part of a decade which is in part responsible for the annual record-breaking double-digit escalation of serious crime in this country.

While I am unable to support the bill which has been reported to the Senate, I am by no means opposed entirely to the LEAA program. The LEEP program for example, has been very effective and necessary in assuring the availability of well-trained law enforcement personnel. Coincidentally, however, the Ford administration also opposes this aspect of the LEAA program. Additional programs have likewise had a positive impact. But the compromise provisions in the reported measure—the measure was defeated by a vote of 7–5—voting "yea" Senators BAYH, HART, KENNEDY, ABOUREZK, and MATHIAS and voting "nay" Senators MCCLELLAN, BURDICK, EASTLAND, HRUSKA, FONG, THURMOND, and SCOTT of Virginia—represents a clear erosion of a congressional priority for juvenile crime prevention and at best proposes that we trade current legal requirements that retain this priority for the prospect of perhaps comparable requirements.

The Ford administration has responded at best with marked indifference to the 1974 act. The President has repeatedly opposed its implementation and funding and now is working to repeal its significant provisions. This dismal record of performance is graphically documented in the subcommittee's new 526 page volume, the "Ford Administration Stifles Juvenile Justice Program." I find this and similar approaches unacceptable and will endeavor to persuade a majority of our colleagues, through sound argument and any available parliamentary tool, to reject these provisions of S. 2212 and to retain the priority placed on juvenile crime prevention in the 1974 act which has been accepted by the House Judiciary Committee.

The failure of this President, like his predecessor, to deal with juvenile crime and his insistent stifling of an act designed to curb this escalating phenomenon is the Achilles' heel of the administration's approach to crime.

I understand the President's concern that new spending programs be curtailed to help the country to get back on its feet.

But, I also believe that when it can be demonstrated that such Federal spending is an investment which can result in savings to the taxpayer far beyond the cost of the program in question, the investment must be made.

In addition to the billions of dollars in losses which result annually from juvenile crime, there are the incalculable costs of the loss of human life, of fear for the lack of personal security and the tremendous waste in human resources.

Few areas of national concern can demonstrate the cost effectiveness of governmental investment as well as an all-out effort to lessen juvenile delinquency.

During hearings on April 29, 1975, by my subcommittee regarding the implementation or more accurately the administration's failure to implement the act, Comptroller General Elmer Staats hit the nail on the head when he concluded: "Since juveniles account for almost half the arrests for serious crimes in the Nation, it appears that adequate funding of the Juvenile Justice and Delinquency Prevention Act of 1974 would be an essential step in any strategy to reduce crime in the Nation."

I must emphasize, however, that I do not believe that those of us in Washington have all the answers. There is no Federal solution—no magic wand or panacea—to the serious problems of crime and delinquency. More money alone will not get the job done, but putting billions into old and counterproductive approaches, $15 billion last year while we witness a record 17-percent increase in crime, must stop.

As we celebrate the 200th anniversary of the beginning of our struggle to establish a just and free society, we must recognize that whatever progress is to be made rests, in large part, on the willingness of our people to invest in the future of succeeding generations. I think we can do better for this young generation of Americans than setting them adrift in schools racked by violence, communities staggering under soaring crime rates and a juvenile system that often lacks the most important ingredient—justice.

The young people of this country are our future. How we respond to children in trouble, whether we are vindicative or considerate, will not only measure the depth of our conscience, but will determine the type of society we convey to future generations. Erosion of the commitment to children in trouble, as contained in S. 2212, is clearly not compatible with these objectives.

I urge my colleagues to support this amendment and Mr. President, I ask unanimous consent that the amendment be printed at this point in the RECORD.

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

AMENDMENT NO. 1731

On page 33 beginning at line 11, strike out all through line 16.

On page 34, beginning at line 16, strike out all through line 23.

ADDITIONAL STATEMENTS

CASTRO'S INTERFERENCE IN THE DOMESTIC AFFAIRS OF OTHER COUNTRIES

Mr. STONE. Mr. President, Fidel Castro's continuing interference in the domestic affairs of other countries is a subject of great concern. On May 19, 1976, Gov. Rafael Hernandez Colon of Puerto Rico denounced subversive interference by Cuban-trained terrorists.

Unlike Latin America, the Middle East and Africa—where there are other targets of Castro's international subversion—Puerto Rico flies the flag of the United States. The terrorist bombings Castro's agents inflict there are killing and maiming citizens of the United States of America.

I ask unanimous consent to have printed in the RECORD an editorial on this topic which appeared in the Washington Star of May 27, 1976, an editorial published in the Tampa Tribune of May 28, 1976, regarding the announced withdrawal of Cuban troops from Angola, and a May 20, 1976 New York Times article which details Castro's subversive activities in Puerto Rico.

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

[From the Washington Star, May 27, 1976]

CUBANS COME HOME—TO WHAT?

There are several reasons for believing that Cuban troops are being withdrawn from Angola, although Secretary of State Kissinger says it bears checking.

Cuba already had been signaling through third parties that its Angolan military venture was being wound down, that the expeditionary force of 12,000 to 15,000 is not being given a new African assignment like the "liberation" of Rhodesia.

The development also would dovetail with the professed desire of the Soviet Union for some forms of detente with the United States, and the claim of Angolan President Agostinho Neto that he seeks to build an independent socialism.

Mr. Neto's Popular Movement for the Liberation of Angola won power in the former Portuguese colony, over two pro-western factions, with the aid of massive Russian supplies and the Cuban soldiers. Should his rivals in the late civil war stay beaten, Mr. Neto might be glad to say good-bye and thanks to the Cuban gunmen and concentrate on Angola's post-colonial economy, in which Soviet and Cuban aid also figure.

If southern Africa's Cuban problem is on the way to solution, the same cannot be said for the Western Hemisphere's Cuban problem. There has been less concern in recent years about Castro "exporting revolution" to the rest of Latin America, and the anti-Cuban sanctions of the Organization of American States have been all but dismantled. Until the Angolan flare-up even the United States was moving slowly toward restored diplomatic relations with Havana.

But there is new worry about Cuban mischiefmaking in the Hemisphere, a concern that could just be heightened by the repatriation of Castro's Angola veterans.

This was reflected in a recent speech here by Gov. Rafael Hernandez Colon of Puerto Rico. Of the instability growing out of increasing "economic trouble and political ferment" in the Caribbean, Mr. Hernandez said: "This ferment and instability appear to coincide . . . with a new, militant phase of Cuban revolutionary activity. Already, the Cubans have shown by their willingness to serve as a sort of 'foreign legion' for the Soviet Union that they could pose anew a threat to tranquility and security in the Western Hemisphere. I do not believe it is exaggerated to suggest that Cuba hopes to convert much of the Caribbean area into a totalitarian, Communist bloc hostile to the United States."

Governor Hernandez has reason to keep a beady eye on Castro, because of Cuban links to a violent fringe of the Puerto Rican independence movement that seeks to break the island's commonwealth tie to the United States. More serious effects of Cuban influence, if not interference, are feared in other, leftward-moving countries like Jamaica and Guyana.

So if Castro's foreign legion is really headed home from Africa, and there is no renewed interest in improving relations with the United States, a good question is where all that military energy and revolutionary zeal will be used next.

After the delights of Luanda the labors of the sugar harvest will seem like tame fare indeed.

[From the Tampa Tribune, May 28, 1976]

PROVE IT, FIDEL

Fidel Castro says he is pulling out Cuban troops from Angola at the rate of 200 a week.

Let's see. For the 15,000 Cubans believed to be in Angola that would mean the last would depart 75 weeks or about a year and a half after the Angolan civil war had ended. Cuban soldiers backed the Communist faction in taking over the government.

The Cuban dictator disclosed his plans in a letter to Swedish Prime Minister Olof Palme. It so happened that Secretary of State Henry Kissinger was visiting Sweden when Castro's letter arrived.

This country's position is that there will be no U.S. dealings with Angola until all Cuban troops have gone and neither will there be further talks about improving relations between Washington and Havana.

Castro has been proved a liar in the past and there's no reason to believe he's any different now.

Even now, the wily Castro is pulling a fast one. He isn't telling where his withdrawing troops from Angola are going. Could it be to Mozambique, to organize guerrilla attacks against Rhodesia?

Secretary Kissinger's response to Castro should be: You'll have to prove it, Fidel.

[From the New York Times, May 19, 1976]

CUBA SAID TO AID PUERTO RICO FOES—GOVERNOR HERNANDEZ SAYS CASTRO IS TRAINING TERRORISTS

(By David Binder)

WASHINGTON, May 19—Gov. Rafael Hernández-Colón of Puerto Rico contended today that Cuba was training and aiding terrorists to overthrow the government of the island commonwealth.

He said that the rebel movement, although small, posed "a constant threat to the system we have," adding. "Therefore, we are watching its activities very, very carefully."

A high-ranking Ford Administration official, queried about the allegations of Cuban support of terrorism in Puerto Rico, said: "We have no evidence of the Cubans doing any muscle work there. Their support for the Puerto Rican Independistas is confined largely to rhetoric and providing free vacations for the leaders."

The official said he based this estimate on information available in the American intelligence community.

The remarks of Mr. Hernández, before the National Press Club, appeared to constitute one of the strongest accusations of subversive actions against Cuba in the Western Hemisphere in recent days.

"CLEAR TIE" SEEN

He said there was "a clear tie" between the Puerto Rican Socialist Party, headed by Juan Mari Bras, and Cuba, asserting that "the officers and leaders of the party travel continuously to Cuba; they receive training in Cuba."

He also noted that Prime Minister Fidel Castro of Cuba had "sponsored pro-independence activities for Puerto Rico in Cuba."

"Terrorists activities in Puerto Rico are being sponsored and they are within the mantle of Castro's Communist objectives in general." Mr. Hernández continued. "In general, it is true as to the pro-Communist Socialist forces working for the independence of Puerto Rico. There is a clear and undeniable link to Castro.

The Puerto Rican Governor said the Socialists were able to maintain a daily newspaper, Claridad, with the help of Cuban funds, adding:

"Now my party, which is the majority party of Puerto Rico, cannot even afford a weekly newspaper much less a daily newspaper—and this paper agitates and they conduct all sorts of activities supposedly geared to a revolutionary takeover of Puerto Rico."

Mr. Hernández heads the Popular Democratic Party.

"CAN MAKE TROUBLE"

As for the magnitude of the rebel threat, the Governor said: "I don't think that the Cubans can realistically hope to promote a successful revolution in Puerto Rico by any stretch of the imagination. But they can make trouble for us. They can, as they have done in the past, train these people in terrorist activities."

He said that Cuban efforts to plead the cause of independence for Puerto Rico in international organizations was causing "all sorts of embarrassment" for the United States and for Puerto Rico at the United Nations.

These developments, he said earlier in a prepared speech, were taking place at time when there was considerable instability in the Caribbean brought about by "economic trouble and political ferment."

Mr. Hernández added, "This ferment and instability coincidence, moreover, with a new militant phase of Cuban revolutionary activity."

Meanwhile, in a public opinion survey released today, a sampling of 1,017 Americans showed 57 percent held an unfavorable opinion of Cuba and opposed diplomatic recognition of the Castro Government by the United States.

The survey, by the Opinion Research Corporation of Princeton, N. J., was done on behalf of the Committee on Latin America, an ad hoc organization of conservatives formed last year in Washington on the initiative of Senator Strom Thurmond, Republican of South Carolina.

The respondents overwhelmingly rejected proposals that the United States use armed force to deal with possible military ventures by Cuba, but gave substantial support to potential blockade actions.

BETTY CROCKER SEARCH

Mr. BROCK. Mr. President, I recently had the opportunity to spend a few hours with a unique group of Americans. I would like to take this opportunity to relate the feeling that I experienced while visiting with boys and girls from across the Nation who were participants in the annual Betty Crocker Search for Leadership in Family Living educational, scholarship meeting here in Washington.

The program is exactly what the name implies, and I was taken with the strength, determination and dedication of this young group of men and women. Now, it may sound a little strange that I mention men, but this year, for the first time in the 22-year history of the leadership program, a young man won the first place award.

By way of background, the Betty Crocker Search for Leadership in Family Living group indeed searches for outstanding young men and women across the Nation who excel in education, leadership and family strength. Those are just some of the criteria. The competition begins with a written examination taken by several hundred thousand high school seniors in 14,788 schools throughout the Nation. Fifty-one winners receive a $1,500 scholarship and a trip to Washington. These finalists undergo additional oral testing and four top winners are selected.

This year, 17-year-old Daniel McVicar of Broomfield, Colo., won the competition, the first young man ever to do so. This is an outstanding tribute to Daniel. The three other top winners were Genevieve LaForet of Brooklyn, Mass., Karen Brown of Washington, D.C., and Michael Rothenberg of Santa Fe, N. Mex.

Now, having been familiar with this program for many years, I think it is outstanding that two young men placed in the top four positions. It clearly indicates that the family and the leadership required in today's world is being equally shared by all, and is of great concern to all.

I congratulate these winners, and all of those across the Nation who participated in this important program. I also extend my congratulations to General Mills for their concern about our world tomorrow and for their sponsorship of this program.

Mr. President, it is important that we have leadership in our Nation, but it is vitally important that our leaders of tomorrow have the full knowledge necessary to make the critical decisions which they will face. I am proud of this program and appreciative that I was afforded the opportunity to share a few hours with these outstanding men and women. We must count on them for the future.

JUSTICE 1976, BICENTENNIAL CITIZENS ASSEMBLY ON COURTS AND JUSTICE

Mr. BAYH. Mr. President, the American Judicature Society, founded in 1913 to promote the effective administration of justice is sponsoring a Bicentennial Citizens' Assembly on Improving Courts and Justice, to be held in Philadelphia beginning July 4, 1976. President Ford and Chief Justice Burger will serve as honorary chairmen of Justice 1976 and the principal meetings will be held at the new U.S. courthouse, with special events in the American Philosophical Society.

The assembly will commemorate the central role of justice in the development of the United States and will encourage broader citizen commitment toward improving Federal and State court systems.

This assembly will bring together delegates of leading citizens from throughout the country to re-examine the reasons for the principles upon which our system of justice has been founded. This national forum will develop goals and recommendations for improving the quality and administration of justice and will encourage greater citizen concern for and involvement in our justice system as our country moves into its third century. Rev. Theodore M. Hesburgh, president of Notre Dame University, will be the keynote speaker opening the Assembly on July 4. Father Hesburgh is eminently well qualified to discuss the direction of justice in this Bicentennial Year. For 15 years he was director of the American Civil Rights Commission; he has been president of Notre Dame University for 24 years; he is the author of many books; and Father Hesburgh is a recipient of the Presidential Medal of Freedom and many other awards for public service.

Members of the Sponsoring Committee include: Chairman Howard C. Petersen, chairman, The Fidelity Bank, Philadelphia; Charles Francis Adams, former chairman, Raytheon Company, Lexington, Mass.; Dr. Chester M. Alter, chancellor emeritus, University of Denver; Gov. Jerry Apodaca of New Mexico; Harding F. Bancroft, former vice chairman, The New York Times Co.; Gerhard D. Bleicken, chairman, John Hancock Mutual Life Insurance Co.; Mayor Tom Bradley of Los Angeles; Charles Benson Branch, chairman and president, The Dow Chemical Co.; Clarence S. Campbell, president, National Hockey League, Montreal; Tom C. Clark, former associate justice of the U.S. Supreme Court; Ruth C. Clusen, president, The National League of Women Voters of the United States.

Gloria Cole, president, Citizens' Committee on the Modernization of Maryland Courts and Justice, Bethesda; William T. Coleman, secretary, Department of Transportation; Eberhard P. Deutsch, attorney, New Orleans; Carl B. Drake, Jr., president, St. Paul Companies, Inc.; Rev. ROBERT F. DRINAN, U.S. Representative from Massachusetts; Lois Eargle, president, Court UpDate, Conway, S.C.; Milton S. Eisenhower, president emeritus, The Johns Hopkins University; Elizabeth Hughes Gossett, president, U.S. Supreme Court Historical Society, Bloomfield Hills, Mich.; Rabbi Alfred Gottschalk, president, Hebrew Union College, Cincinnati, Ohio; Rev. Theodore M. Hesburgh, C.S.C., president, University of Notre Dame; Lee Hills, chairman, Knight-Ridder Newspapers, Inc., Detroit, Mich.; Senator ROMAN L. HRUSKA of Nebraska; Rev. Jesse L. Jackson, national president; Operation PUSH, Chicago; D. Donald Jamieson, executive vice president, First Pennsylvania Bank; Leon Jaworski, attorney, Houston; Clarence M. Kelley, director, Federal Bureau of Investigation; Philip M. Klutznick, Klutnick Investments, Chicago.

Lewis E. Lehrman, president, Rite Aid Corp., Harrisburg; Henry Luce III, vice president, Time, Inc.; John J. McCloy, past chairman, Chase Manhattan Bank; George Meany, president, AFL–CIO; W. B. Murphy, director, Campbell Soup Co.; Dr. Dorothy W. Nelson, dean, Law Center, University of Southern California; Dwight D. Opperman, president, West Publishing Co., St. Paul, Minn.; William J. Pape II, president and publisher, Waterbury Republican and American, Waterbury; Dr. Jaroslav Pelikan, dean, Graduate School, Yale University; Francis T. P. Plimpton, attorney, New York; Henry T. Reath, attorney, Philadelphia; Robert W. Sarnoff, former chairman, RCA Corp.; Ralph S. Saul, chairman, INA Corp.; Irving S. Shapiro, chairman, E. I. duPont de Nemours & Co., Inc.; H. Robert Sharbaugh, president, Sun Oil Co.; Dr. Henry King Stanford, president, University of Miami; B. Victor Sturdivant, president, Citizens' Association on Arizona Courts; H. A. True, True Oil Co., Casper, Wyo.; Dr. Clifton R. Wharton, Jr., president, Michigan State University; Roy Wilkins, executive director, NAACP; Leonard Woodcock, president, United Auto Workers.

A book of readings has been prepared for Justice '76 entitled, "American Courts and Justice." The book contains thoughtful essays on such varied topics as "Judicial Administration and the Bicentennial" by Chief Justice Burger; "Criminal Justice for the Future" by Judge Bazelon; and "Embarking on Our Third Century: A Time for Improvement in Our Juvenile Justice System" which was my contribution and which I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BAYH. Mr. President, the book will be distributed at the Justice '76 Assembly and, in addition, will be available from the American Judicature Society's offices in Chicago, Ill.

Mr. President, I hope that my colleagues will have an opportunity to participate in this assembly—a historic assembly which begins in Philadelphia on the very day and place we celebrate the beginnings of 200 years of the longest continuous democratic government in the history of the world.

EXHIBIT 1

EMBARKING ON OUR THIRD CENTURY: A TIME FOR IMPROVEMENT IN OUR JUVENILE JUSTICE SYSTEM

(By Hon. BIRCH BAYH)

Two hundred years ago our nation was born. And we declared to the world our commitment to the justice, freedom and dignity of the human spirit.

Two hundred years later we find ourselves struggling to maintain that commitment through the public and private institutions which control our lives.

The partnership of public and private initiative built during the last two hundred years has produced the strongest representative democracy in the history of the world.

The institutions of this partnership are unique in their structure and ability to provide for the general welfare of our citizens. And since 1899, the juvenile court movement in America has established a unique approach—"a juvenile justice approach"—to handle the separate, noncriminal procedure for young people who have been brought to the attention of the court as neglected, homeless or delinquent.

The juvenile justice system has never been fully understood by most Americans, laypeople or lawyers. But, none refute the unique approach of this system: rehabilitation and prevention.

But that was yesterday. What about today?

When the average citizen hears the words "juvenile justice system" he or she believes that it means we have a system of justice for young people who break the laws of our society.

But in reality when young people first confront the American system of juvenile justice, the net result is often more injustice than equity. The idealistic experiment which began nearly 80 years ago in Illinois, tragically, has not lived up to its promise.

Can the public and private institutions serving young people, effectively counter the many destructive influences of present day society? And, can our system of juvenile justice cope effectively with those young people in need of enlightened attention?

I believe it is possible. But it requires the commitment of us all to make it happen.

The youth of America are today under greater stress and facing greater challenges than at any time in our history.

Young people are saturated daily with the violence of media and motion pictures.

Young people are subjected daily to deceit and violation of law by officials sworn to uphold their trust.

Young people are forced daily to struggle with news accounts of a world grappling with starvation, political disorder, and economic collapse.

Young people are exposed daily to ravages of poverty and the destruction of family cohesion.

And young people are being sacrificed daily by the very institutions created to serve their interest and maximize their potential.

The blame for youthful criminal behavior is bounced among the family, police, schools, courts, and juvenile institutions like a cracked ping-pong ball. The players hear the empty sound of the ball, but continue the game until the ball is destroyed or the game ends in frustration.

Our present system of juvenile justice is failing miserably. The time for games is over; the time for accepting responsibility and re-ordering our approach to juvenile justice, however painful, is here.

Five years of hearings in Washington and throughout the country by my Subcommittee to Investigate Juvenile Delinquency has led me to two important conclusions.

The first is that our present system of juvenile justice is geared primarily to react to youthful offenders rather than to prevent the youthful offense.

Secondly, the evidence is overwhelming that the system fails at the crucial point when a youngster first gets into trouble. The juvenile who takes a car for a joy ride, or vandalizes school property, or views shoplifting as a lark, is confronted by a system of justice often completely incapable of responding in a constructive manner.

The most eloquent evidence of the scope of the problem is the fact that although youngsters from ages 10 to 17 make up only 16% of our population, they account for fully 45% of all persons arrested for serious crimes.

More than 60% of all criminal arrests are of people 22 years of age or younger.

We can trace at least part of this unequal distribution of crime to the idleness of so many of our young people.

The rate of unemployment among teen-agers is at a record high and among minority teen-agers it is an incredible 50%. Teen-agers are at the bottom rung of the employment ladder; in hard times they are the most expendable.

We are living in a period in which street crime has become a surrogate for employment and vandalism a release from boredom. This is not a city problem or a regional problem. Teen-age crime in rural areas has reached scandalous levels. It takes an unusual boy or girl to resist the temptations of getting into trouble when there is no constructive alternative.

But it is not just the unemployment of teen-agers that has contributed to social turmoil. The unemployment of parents deprives a family not only of income but contributes to serious instability in American households which, in turn, has serious implications for the juvenile justice system. Defiance of parental authority, truancy, and the problem of runaways are made materially worse by national economic problems. And, it is here that we confront the dismal fact that nearly 40% of all the young people involved in the juvenile justice system today fall into that category known as "status offender"—young people who have committed no criminal act in adult terms.

Yet these young people often end up in institutions with both juvenile offenders and hardened adult criminals. Instead of receiving counseling and rehabilitation outside the depersonalized environment of a jail, these youngsters are commingled with youthful and adult criminals. There should be little wonder that three of every four youthful offenders commit subsequent crimes.

Moreover, the juvenile justice system's impact on the lives of troubled girls is especially seerious.

I am reminded of testimony about the "El Paso Nine" before my Subcommittee at one of our initial hearings assessing the juvenile justice system. No, they were not mad bombers, vicious criminals, or political radicals, but youngsters with troubles. Five were girls; the oldest was seventeen. Each one had been committed to a state institution without legal representation or benefit of a judicial hearing. Of the five, most had been committed for having run away only once. Beverly J., for example, was sent to the Gainsville State School for Girls because she stayed out until 4:00 a.m. one night. Alicia M. was sent to the same school when she was seventeen because she refused to work.

This tragic story is repeated over and over again around the country. Children are in trouble. We neglect or mistreat our children, and then when they react in socially unacceptable ways—not usually crimes—we often incarcerate them. We call them "neglected" or "dependent" or, even more euphemistically, "persons in need of supervision," but whatever the label, these youngsters often end up in common jails. Fully 50 percent of all children in juvenile institutions around the country could not have been incarcerated for the same conduct had they not been minors. Children are continually incarcerated for running away from home, being truant from school, being incorrigible, or being promiscuous.

It is not surprising that many of the prejudices our society has against females are reflected in the juvenile justice system, but the ramifications of such discrimination and bias are shocking. Girls are arrested more often than boys for status offenses—running away, truancy, and the MINS, PINS, and CINS violations, (minors, persons, and children in need of supervision). And girls are jailed for status offenses longer than boys.

Between 70 and 85 percent of adjudicated girls in detention are there for status violations compared with less than 25 percent of the boys. Thus, there are 3 to 4 times more girls than boys in detention for noncriminal acts!

Additionally, the available research and evidence adduced by my Subcommittee shows that a girl is likely to be given a longer term of confinement than a boy and that her parole will be revoked for violations less serious than for a male revocation. In responding to these facts which affirm gross discrimination, the director of a state institution for girls explained: "Girls, unlike boys, offend more against themselves than against other persons or property." What she really meant was that often girls—not boys—are locked up for engaging in disapproved sexual conduct at an early age; that our society applies the term "promiscuous" to girls but not to boys.

Such arbitrariness and unequal treatment at a minimum produces more criminals. It is well documented that the earlier a young person comes into the juvenile justice system, the greater the likelihood that person will develop and continue a delinquent and criminal career. Another disturbing reality is that juvenile records normally accompany a child when arrested as an adult. What this means is that young girls incarcerated for running away from home or arguing with their parents (incorrigibility) will have a criminal record for life and if arrested as an adult will more likely be incarcerated.

The basic problem is that we have not been willing to spend either the time or the money necessary to deal with the diverse set of problems children in trouble present. We must not continue to ignore today's young delinquent for all too often he or she is tomorrow's adult criminal. Our young people are entitled to fair and humane treatment and our communities are entitled to be free of persons who threaten public safety.

Our citizens should be aware of the limited alternatives available to the juvenile judges in your communities when they are confronted with the decision of what to do with a juvenile involved in an initial, relatively minor offense. In many instances the judge has but two choices—send the juveniles back to the environment which created these problems in the first place with nothing more than a stern lecture, or incarcerate the juvenile in a system structured for serious offenders where the youth will invariably emerge only to escalate his or her level of law violations into more serious criminal behavior. Each year an excessive number of juveniles are unnecessarily incarcerated in crowded juvenile or adult institutions simply because of the lack of a workable alternative. The need for such alternatives to provide an intermediate step between essentially ignoring a youth's problems or adopting a course which can only make them worse, is evident.

Some youthful offenders must be removed from their communities for society's sake as well as their own. But the incarceration of youthful offenders should be reserved for those dangerous youths who cannot be handled by other alternatives.

As the Chairman of the Subcommittee on Juvenile Delinquency I have had a unique vantage point on this problem. I am proud of the legislation that we have produced, most notably, the Juvenile Justice and Delinquency Prevention Act of 1974. This measure had the strongest bi-partisan support as reflected in the 88–1 vote by which it passed the United States Senate and the 329–20 vote in the United States House of Representatives. The purpose of this Act is to prevent young people from becoming entangled in a juvenile justice system which has failed, and to assist state and local governments, as well as individual and private organizations in developing more sensible, less costly, and ultimately more productive assistance for youngsters already in the juvenile justice system. A major objective of the Juvenile Justice Act is to prevent youth facilities from continuing to be nurseries for crime. The Act forbids the incarceration of

status offenders and requires the separation of juvenile and adult offenders.

To say that a young person is incorrigible is not the same as saying that he or she is a criminal. We must remember that even the most benevolent intentions of the State can never be a substitute for the comfort and support of a loving family. Whatever the State may do, however, it should not provide incentives disruptive of family life.

Federal efforts in the past have been inadequate and have not recognized that the best way to combat juvenile delinquency is to prevent it. The Juvenile Justice Act is based on the age-old conviction that an ounce of prevention is worth more than a pound of cure. The Act represents a Federal commitment to provide leadership, coordination, and a framework for using the nation's resources to deal with all aspects of the delinquency problem.

To do this:

It creates an Office of Juvenile Justice and Delinquency Prevention in the Law Enforcement Assistance Administration of the Department of Justice to coordinate all federal juvenile justice programs which are now scattered throughout the federal government.

It establishes a National Advisory Committee on Juvenile Justice and Delinquency Prevention to advise the LEAA on federal juvenile delinquency programs and broadens the representation on State LEAA boards.

It provides for block grants to state and local governments and grants to public and private agencies to develop juvenile justice programs with special emphasis on the prevention of delinquency. The purpose is not to provide a federal solution to juvenile justice problems but rather to encourage local initiative and provide some of the resources necessary for local leaders to do the job.

It creates a National Institute for Juvenile Justice and Delinquency Prevention to serve as a clearing house for delinquency information and to conduct training, research demonstrations and evaluations of juvenile justice programs.

It incorporates the Runaway Youth Act, a proposal of mine, introduced in 1971 and passed by the Senate in 1972 and 1973, which permits local communities to establish temporary shelter care facilities for youngsters who run away. It is likely that the availability of these alternatives will help to reduce detention facilities' population problems.

To meet these needs the Act authorizes $75, $125, and $150 million for fiscal year 1975, 1976, and 1977, respectively and requires the LEAA maintain its present commitments to juvenile programs. Congress has given taxpayers a bonus by recently voting to re-direct $20 million in unused LEAA funds to begin the Federal effort to reduce juvenile crime and curb juvenile delinquency.

The Juvenile Justice Act was approved overwhelmingly by Congress which realized that in the past three years, the Law Enforcement Assistance Administration had never spent more than 19 percent of its annual budget on juvenile programs, and very little of this on prevention. The Congress also recognized that the lack of coordination and absence of full funding for the many juvenile programs scattered among federal agencies had to be corrected.

I believe the Juvenile Justice Act is an important step in that direction. We have a great opportunity to make significant inroads against juvenile crime and, thus, adult crime. But, I will not assert to you that the Juvenile Justice Act, even if it is fully funded, will be a magical cure. It does, however, mark a creative beginning. For my part, I will persist in the efforts to see that this Act is brought to full fruition. But the real challenge rests with concerned citizens and dedicated community leaders. It is a people-to-people responsibility—a reaching out by one human being to another.

Now we are all aware that the President is confronted with numerous serious problems affecting millions of Americans. Each affected group is urging the President to act. All the more reason for those of us who are concerned about crime and who are aware of the inadequacies on our present approach to youthful offenders to convey our concern to the President and his advisors. We must urge the President and Congress to make the investment necessary to reverse the present alarming and inexcusable trend.

When we stop to consider that almost 75 percent of the cost of crime in America is generated by young people under twenty-five years of age . . .

When we stop to consider that these categories of crime cost Americans more dollars than the entire budget outlay of the federal government just 34 years ago and more than the current budgets of 20 states . . .

When we stop to consider that the almost $15 billion lost annually to these categories of crime is as much or more than we are currently spending by category for education, community and regional development, agriculture, transportation, environment and natural resources, energy resource and development, general science and space, manpower and social services, and law enforcement and justice.

A total lack of commitment to juvenile programs is unbelievable and patently unacceptable.

I believe that when it can be demonstrated that federal spending is an investment which can result in savings to the taxpayer far beyond the cost of the program in question, then the investment must be made.

It is important to understand that the costs involved in the broad attack on juvenile delinquency are far less than the cost to society of continued inaction.

In addition to the billions of dollars in losses which result annually from juvenile crime, there are the incalculable costs of the loss of human life, of fear for the lack of personal security and the tremendous waste in human resources.

Few areas of national concern can demonstrate the cost effectiveness of governmental investment as well as an all out effort to lessen juvenile delinquency.

We know a few things about crime and delinquency which hold serious implications for the future.

We know that recent polls reveal that half of our citizens are afraid to walk alone at night in their neighborhoods and nearly 20 percent do not feel safe in their own homes.

We know that a child born in 1974 is more likely to be murdered than a World War II American soldier was likely to die in combat.

We know that in 1974 someone in America was the victim of a violent crime every 33 seconds.

We know that last year serious crime in the United States rose 17 percent.

We know that the number of juveniles arrested for serious and violent crimes increased 1,600 percent between 1952 and 1972.

You and I are very familiar with these miserable statistics. They represent a true picture of our failure to come to grips with crime and delinquency. They represent a failure that can no longer be tolerated if we are to truly pass justice on to our future generations.

It is one matter to lament and criticize the failure of our systems of criminal and juvenile justice. But, it is altogether another matter to use the knowledge we have to correct these failures.

I must emphasize, however, that I do not believe those of us in Washington can, or should, make those decisions and policies which are quite properly made by citizens most familiar with the realities and peculiarities of specific local situations. There are no "Federal" solutions to problems such as these.

Nor can we solve these problems simply by burying them under massive amounts of Federal money. We are all aware that we are facing issues which are too troublesome, complicated and important to be solved purely by monetary grants from the Federal government.

Together though we can provide a vehicle through which our local, state and Federal governments, along with our private sector, can pool experience and resources to assist in securing the quality of juvenile justice for our young people that was intended by its 19th Century framers. Not only rededication to the original ideals, but new ideas, answers and adjustments to today's changing social patterns and problems are required.

We need to develop different ways of treating young people in trouble. We need to establish group foster homes for the neglected; halfway houses for runaways, and community-based programs for the serious juvenile delinquents. We need 24-hour crisis centers and Youth Service Bureaus to help young people find the services which they need. And we need a greatly expanded parole and probation system to provide supervision and counseling for the large majority of young people who never should face institutionalization.

In addition, we need to focus more specifically on the matter in which, and the frequency with which, females are entering the juvenile justice system. We must assure equal treatment for these young women and see to it that assistance is available to them on an equal basis.

We must see to it that the preponderance of delinquency research and study is no longer exclusively male in its orientation, for it is essential that we know more about what can be done to prevent the personal tragedies involved in the ever increasing contribution females are making to the escalating levels of delinquency and serious crime. Some assert that the proliferation of dangerous drugs and their epidemic level of abuse are responsible; others cite society's gradual adoption of egalitarian attitudes devoid of sexism as the explanation; and, several argue that modern, more efficient methods of collecting and keeping female crime statistics are the answer. Perhaps, all of these are contributing factors, but it is certain that we know far too little.

As we celebrate the 200th anniversary of the beginning of our struggle to establish a just and free society, we must recognize that whatever progress is to be made rests, in large part, on the willingness of our citizens to invest in the future of succeeding generations. I think we can do better for our young generation of Americans than setting them adrift in communities staggering under soaring crime rates and a juvenile justice system that often lacks that most important ingredient—justice.

It is often said, with much validity, that the young people of this country are our future. How we respond to youth in trouble; whether we are vindicative or considerate will not only measure the depth of our conscience, but will determine the type of society we convey to future generations. We must make a national commitment as our country moves into its third century that is commensurate with the importance of these concerns. We must acknowledge our collective duty to protect the right of our young people to develop physically, mentally and spiritually to their maximum potential. The young people of this great country, as well as the rest of us, deserve no less.

ONE LEGACY OF SENATOR FULBRIGHT: "GLOBAL COPING"

Mr. HATFIELD. Mr. President, among the legacies left by our former colleague, Senator J. William Fulbright, is the scholarship program bearing his name. As I have traveled around the world, I have met leaders who have studied here under the program, and I know outstanding Americans who have benefited greatly from receiving these awards.

Recently, the Washington Post published an editorial commenting on the 30th anniversary of the enactment of this fine program, and I ask unanimous consent that this article be printed in the RECORD.

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

GLOBAL COPING

To students, teachers, artists and scholars in a hundred countries, "Fulbright" is the magic password that opens new worlds of knowledge, understanding and experience. It has now been 30 years since the international exchange scholarship program was created by the Fulbright Act. In the early years, much of the program was financed with foreign currency acquired from the sale of war surplus property abroad. By 1961, the Act was expanded and consolidated with other federal programs concerning educational exchange in the Fulbright-Hays Act. The program is under the overall supervision of a Board of Foreign Scholarships, appointed by the President. It is based on a series of bilateral agreements with the governments of other countries. A number of these governments also share the cost of the program. In many countries, non-governmental academic institutions help administer it. So far about 120,000 students, scholars and artists have been given the opportunity to broaden their horizons by study and travel in countries other than their own. Of these, 45,000 were Americans.

The Fulbright-Hays Board decided to mark the 30th anniversary of the program with a series of ten regional alumni seminars rather than simply with ceremonial celebrations. All told, some 2,000 intellectual leaders around the country and a number of foreign scholars have participated in these sessions which explored the meaning and potentials of educational exchange for both the United States and a troubled world. The meetings are coming to an end this week with a three-day symposium at the Freer Gallery of Art. The symposium attempted to assess the importance of international cultural exchange to our foreign policy. But the answer seems to be that there is no way to measure it except in general terms. The late historian Arnold Toynbee once called the Fulbright program one of the most generous and imaginative acts since World War II. Music critic Robert Taubman measures its impact in another way: At one point, he recalls, five out of seven stars of the Metropolitan Opera were former Fulbright scholars. Alumni have gone on to become prime ministers, Nobel prize winners, professors, parliamentarians and cultural leaders all over the world. As John Richardson, Jr., the assistant secretary for educational and cultural affairs at the State Department, put it: The program has taught America "global coping—a sense of ease in dealing with the world and of discerning reality through the dust thrown up by the clash of ideologies."

THE ADVANTAGES OF INCUMBENCY

Mr. CLARK. Mr. President, it is a fact of political life that incumbent officeholders seeking reelection are terribly hard to beat. In recent congressional elections, for example, incumbents have been successful at least 95 percent of the time.

Certainly, a major factor in that high rate of success has been the tremendous advantage enjoyed by incumbents in their ability to raise campaign funds. But money is only part of the story. The natural advantages that accrue to incumbents also play a very significant role in returning incumbents to office year after year. And, perhaps the most important natural advantage of all is the incumbents' utilization of taxpayer-financed official staff personnel.

Where incumbent Presidents are concerned, this advantage extends not only to the ever-growing White House staff, but to Cabinet officers and other high-ranking Government officials as well. Recently, this issue was raised in a complaint filed with the Federal Election Commission by the Citizens for Reagan Committee concerning alleged campaign activities on President Ford's behalf by Secretary of State Henry Kissinger.

On May 13, 1976, Alan B. Morrison, director of the Public Citizen Litigation Group, submitted to the FEC an amicus curiae brief in support of the Citizens for Reagan complaint. As Mr. Morrison stated in his letter of transmittal:

It is the position of Public Citizen that the payment of the salary to a government official such as Secretary Kissinger, while he engages on-duty campaign activities, constitutes the making of a contribution under the Federal Election Campaign Act and therefore must be reported to the Commission and charged against the appropriate spending limitations for presidential candidates.

Mr. President, I have no basis for commenting on the merits of this particular case. But the issues raised in this case again underscore the need for Congress to act to eliminate this substantial incumbent advantage—use of official staff—both for presidential and congressional elections.

I ask unanimous consent that materials submitted by the Public Citizen Litigation Group to the Federal Election Commission be printed in the RECORD.

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

PUBLIC CITIZEN LITIGATION GROUP,
Washington, D.C., May 13, 1976.

Hon. THOMAS B. CURTIS,
Chairman, Federal Election Commission, Washington, D.C.

DEAR MR. CHAIRMAN: Please find eight copies of a memorandum of law which is submitted by Public Citizen as amicus curiae in support of the complaint filed by Citizens for Reagan against the Ford Election Committee, alleging that it had failed to report the on-duty campaign activities of Secretary of State Henry Kissinger as contributions and expenditures. It is the position of Public Citizen that the payment of the salary to a government official such as Secretary Kissinger, while he engages in on-duty campaign activities, constitutes the making of a contribution under the Federal Election Campaign Act and therefore must be reported to the Commission and charged against the appropriate spending limitations for Presidential candidates.

Pursuant to its regulations, the Commission has refused to confirm or deny that the Reagan complaint even exists. For your convenience in dealing with our memorandum we have attached a copy of the Reagan complaint which we obtained from his committee.

Respectfully submitted,

ALAN B. MORRISON.

CITIZENS FOR REAGAN,
Washington, D.C., March 12, 1976.

Hon. THOMAS B. CURTIS,
Chairman, Federal Electron Commission, Washington, D.C.

DEAR MR. CHAIRMAN: Citizens for Reagan respectfully requests that the Federal Election Commission, pursuant to Section 437 (d) (3 & 4) of Title 2 of the United States Code, launch an immediate investigation of Secretary of State Henry Kissinger's conduct in engaging in his current round of "political stump speeches". It is clear to everyone that Dr. Kissinger is using his high office for the express purpose of a campaign platform to promote the Ford candidacy. This raises serious questions under the Federal election laws currently on the books.

If an incumbent is to be able to use individuals like Dr. Kissinger, paid for by the public, for campaign purposes, while these individuals' expenses are not charged against the incumbent's campaign limits, then the limitations in the law are a mere mockery.

Clearly, the Commission has both a legal and a moral duty to insure that Mr. Ford does not use Dr. Kissinger as a campaign speaker at taxpayers' rather than campaign expense. Kissinger's expenses are now hidden from Commission disclosure and apparently paid out of public funds. The Commission has both the power and the responsibility under 2 U.S.C. 437(d)(6), (8) & (9) to investigate, take legal action, draft rules and formulate general policy in this matter. Some combination of these is clearly necessary.

If the various candidates for President of both political parties are to be limited to the provisions of 18 U.S.C. Section 608 while the incumbent President can freely use the resources of the Federal Government to promote his campaign, then God help our democracy. If this distortion of fairness is allowed to go unchecked, then we are giving the incumbent a $395 billion campaign budget.

It is a new and disturbing development when the Secretary of State becomes a surrogate speaker for the President's campaign while purportedly making a "nonpolitical speech". This use of the powers of incumbency carries on a bad tradition of using the powers of government to promote the reelection of the President. While this practice was always bad, it is even more unfair today when a new election law severely restricts the fundraising and expenditure ability of the challengers. While Mr. Ford may only be doing what others did before him, I had hoped that the new law would have taught us something. Apparently it has not.

The use of government powers for clearly partisan campaign purposes represents the greatest danger facing the current election laws.

I hope the Commission will act on this matter immediately.

Sincerely,

LOREN A. SMITH,
General Counsel.

[In the matter of the complaint of Citizens For Reagan versus President Ford Committee]

FEDERAL ELECTION COMMISSION: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT OF CITIZENS FOR REAGAN SUBMITTED BY PUBLIC CITIZENS AS AMICUS CURIAE

This complaint presents a vital question for determination under the Federal Election Campaign Act of 1971, as amended by the

Federal Election Campaign Act Amendments of 1974:[1] Is the use of United States Government resources, specifically the payment of the salary of a government employee, while engaged in the patently political purpose of influencing the primary elections of 1976, a contribution under the Act? If so, then the Act requires both the contribution and expenditure to be reported to the Federal Election Commission and further requires that the expenditure be charged to the candidate's expenditure limit. Although this complaint is directed primarily against Secretary of State Henry Kissinger's campaign activities, it raises the more general question of whether the salaries of employees who are admittedly doing campaign work, must be reported when they are campaigning during regular working hours.

In this amicus curiae brief Public Citizen argues that to exempt an incumbent's use of government resources from the reporting and expenditure limit provisions of the Act would permit wholesale circumvention of the reforms brought about by the 1971 and 1974 amendments. We believe that this comprehensive reform cannot tolerate an exception for the use of government resources by an incumbent to foster his own reelection. Not only will the all-encompassing language of the Act not permit such an exception, but a contrary interpretation would create a fundamental unfairness by allowing an incumbent to exclude significant expenditures from public scrutiny and would permit him to receive far greater support for his campaign from the taxpayers than would his opposition. Finally, such an exception would raise serious equal protection questions about the constitutionality of the Act. Since equality is the cornerstone of all of the spending and disclosure limitations and the public funding provisions in the Act, a construction raising equal protection problems should be resorted to only where the language plainly requires it.

Public Citizen has long been concerned about the problems of improper use of government-paid employees to aid the reelection efforts of office holders. There is now pending a lawsuit challenging the legality of using such employees on a substantially full-time basis on the ground that Congress had made no appropriation for such purpose as required by Article 1, Section 9, Clause 7 of the Constitution and 31 U.S.C. § 628. *Public Citizen* v. *Simon*, No. 74-2025, D.C. Cir. argued Oct. 23, 1975.

Although the legal questions at issue here are different from that case, we believe that it would be useful for the Commission to have a better idea of the breadth of the misuse of White House staff in the past, and so we are submitting a copy of our brief on summary judgment in the District Court in that case. (*Public Citizen v. Shultz*, No. 72-2280, D.D.C.) We wish to emphasize, however, that whatever the outcome of that case may be, it cannot dispose of the questions presented by the instant complaint. Thus, even if the use of government-paid White House staff to perform campaign duties while on duty is not absolutely prohibited, the disclosure and limitation questions raised by this complaint are by no means foreclosed.

Lastly, although the specific matter raised in the complaint involving Secretary Kissinger is a narrow, and perhaps a unique one, the problem presented is much broader. Thus, we urge the Commission to address the legal issue presented at this time so that everyone concerned will then know what is expected in terms of reporting and spending. There will be time enough later to handle specific factual situations once the basic legal issue is resolved.

[1] The Act has again been amended by the Federal Election Campaign Act Amendments of 1976. These Amendments are cited herein only where they are relevant.

ARGUMENT: U.S. GOVERNMENT RESOURCES USED TO SUPPORT POLITICAL CAMPAIGN ACTIVITIES SHOULD BE CONSIDERED CAMPAIGN CONTRIBUTIONS AND EXPENDITURES UNDER THE FEDERAL ELECTION LAWS

When Ronald Reagan procures from a supporter the money to pay the salary and expenses of one of his campaign workers, there is no doubt that the transaction is governed by the provisions of the Federal Election Campaign Act. This is so whether the contribution is made in cash to the Reagan Committee, or the supporter donates the services of an employee on the supporter's payroll. 2 U.S.C. § 431(e)(4). Mr. Reagan is therefore obliged to report the contribution to the Treasurer of his campaign committee, 2 U.S.C. § 432(b), who must record it, 2 U.S.C. § 432(c), and eventually report it to the Federal Election Commission, 2 U.S.C. § 434. Any member of the public is entitled to access to the reports and can see who contributed how much money and how that money was spent. 2 U.S.C. § 438(a)(4). In addition, the money is considered a "qualified campaign expense" because Mr. Reagan requested the worker to incur the expense. 26 U.S.C. § 9032(9). As a "qualified campaign expense" the money counts towards the $10 million expenditure limit which Mr. Reagan and the other candidates have accepted as a condition to public financing. 26 U.S.C. §§ 9033(b), 9035.

When President Ford has Cabinet officials and White House advisors undertake campaign activities, the government pays their salaries, but the Ford campaign considers itself subject to none of the restraints placed upon Mr. Reagan and the other candidates in the same situation. The Ford campaign committee does not record the contribution, nor does it report the contribution or how it was spent. Thus, the information is not made available to the public so that the electorate can judge the propriety of the action.

Worse still, the salaries paid by the government to further the President's campaign effort are not charged to the candidate's campaign limit, nor do they serve to reduce the matching funds which the government is providing to candidates who qualify. In our view the Act prohibits such unfairness and we urge this Commission to so rule.

I. The Broad Language of the Federal Election Campaign Act Subsumes the Use of Government Resources For Campaign Purposes.

The Federal Election Campaign Act Amendments of 1974 represent a comprehensive reform which regulates campaign spending by imposing limits on campaign contributions and expenditures, by requiring reporting of contributions and expenditures, by providing for federal funds to finance Presidential elections, and by creating the Federal Election Commission to administer the Act. The Act was the culmination of a long line of campaign acts beginning in 1907 and its comprehensiveness came about "through the failure of piecemeal regulation to preserve the integrity of federal elections." *Buckley v. Valeo*, 519 F.2d 821, 907 (D.C. Cir. 1975) (Appendix C, "Brief History of Federal Election Regulation"), *aff'd in part and rev'd in part*, 44 U.S.L.W. 4127 (1976). In interpreting the provisions of the Act, the Supreme Court noted Congress' effort "to achieve 'total disclosure' by reaching 'every kind of political activity' in order to insure that the voters are fully informed and to achieve through publicity the maximum deterrence to corruption and undue influence possible." *Buckley v. Valeo*, 44 U.S.L.W. at 4149 (footnote omitted). When read in this light, the comprehensive language of the Act embraces contributions by all organizations, including the government.

"Contribution" is broadly defined under the Act to include, among other things, "the payment, by any person other than a candidate or a political committee, of compensation for the personal services of another person which are rendered to such candidate or political committee without charge for any such purpose . . . ." 2 U.S.C. § 431(e)(4); 26 U.S.C. § 9032(D). Clearly, in terms of utility to a campaign and of avoiding having to pay the salary of a campaign aide, the government payment of the salary of an official who spends a substantial part of his working hours campaigning for the President is comparable to any other contribution under this section of the Act. The only arguable basis of avoiding this common sense result would be to determine that the government is not a "person" under the Act. "Person" is also broadly defined to mean "an individual, partnership, committee, association, corporation, labor organization, and any other organization or group of persons. . . ." 2 U.S.C. § 431(h).[2] Thus, on the face of it, the government is an organization, and therefore a person within the meaning of the Act.

An examination of the other uses of the word "person" in the Act confirms the view that its all-encompassing character includes the government.

Political committees must keep a record of every "person" to whom an expenditure is made and must include that information in their reports. 2 U.S.C. §§ 432(c)(4), 434(b)(9). Obviously a committee which purchases materials from the G.P.O. must include that information on its expenditure record even though the GPO is part of the government. In the same vein, it would be absurd to interpret this provision to mean that expenditures to the United Parcel Service must be recorded, but those to the Postal Service need not be because the latter is a government organization but not a "person."

Furthermore, it is clear that "person" includes "government" because the Congress found it necessary to exclude expressly some government contributions and expenditures from the provisions of the Act. For instance, one section, which has since been repealed, required "any person" who publishes or broadcasts campaign material to file a reoprt with the Federal Election Commission. The Congress saw fit to note specially in that section that this report requirement does not apply "to any publication or broadcast of the United States Government." 2 U.S.C. § 437a, *repealed*, The Federal Election Campaign Act Amendments of 1976, § 105. The inevitable inference is that without the specific exemption, the United States Government would have been considered a "person" and its broadcasts and reports would have necessitated a report to the Federal Election Commission.

Another provision exempts members of Congress from reporting as contributions or expenditures the value of photographic, matting or recording services furnished to them by the Senate Recording Studio, the House Recording Studio, or by an individual whose pay is disbursed by the Secretary of the Senate or Clerk of the House and who furnishes such services as his primary duty as an employee of the Senate or House of Representatives . . . . 2 U.S.C. § 434(d). This provision makes it clear that without an express exception, the government would come within the meaning of person and would have otherwise been a person paying

[2] The legislative history of the Act says nothing about this definition except to repeat it. The language originated in the Federal Election Campaign Act of 1971 and the legislative history of that Act is equally unenlightening as to the meaning of "person." The only court comment on the definition is that it is a "broad definition." *Buckley v. Valeo*, 44 U.S.L.W. at 4134, 4139 n. 45.

the compensation of Congressional workers who are rendering services to a candidate.[3]

Because "person" is broadly defined, and because express provisions are needed in the Act to except the government from the term "person," the government must be considered a person within the meaning of the Act. Since the definition of contribution includes the payment of compensation by a person to someone rendering services to a candidate, the payment of compensation by the government to an official while he campaigns on behalf of the President, should be declared a contribution under the Act.

It is also clear that the payment of such salaries by the government for work for a candidate is an "expenditure" under the Act.[4] The definition of expenditure includes "a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of . . . (B) influencing the results of a primary election. . . ." 2 U.S.C. § 431(f)(1)(B). Certainly the payment of the salary of a government official while he campaigns is a payment of money or something of value made in order to influence the election, and thus should come under the expenditure reporting provisions of the Act.

In addition, the salary expended so that government officials can work for the re-election of an incumbent should be charged to the $10 million expenditure limits which the candidate has accepted. The Federal Election Campaign Act Amendments of 1976 prohibit presidential candidates who are receiving public funding from spending in excess of $10,000,000 to obtain the nomination and $20,000,000 on the general election. § 320(b)(1). That section further states that "an expenditure is made on behalf of a candidate . . . if it is made by . . . (ii) any person authorized or requested by the candidate . . . to make the expenditure." § 320(b)(2). Certainly White House and Cabinet officials campaigning for the President are "authorized or requested" to do so by him. Therefore, the salaries the governments pays so that these officials can campaign on behalf of the President must be attributed to his spending limit.[5]

[3] By making this specific minor exception, Congress indicated that only a few express exceptions would defeat the broad definition of contribution. The Act contains seven express exceptions to the term "contribution," none of which apply here. 2 U.S.C. §§ 431(e)(5)(A)–(F), 434. The only arguably applicable exception is contained in subparagraph (A)—"Services provided without compensation by individuals who volunteer a portion or all of their time"—but since the campaign work at issue is undertaken during regular hours as part of the employee's assignment, it is hardly "voluntary." Of course, this same rationale would require Members of Congress who are running for re-election or seeking other federal offices to include on-duty work done by their staffs their FEC filings.

[4] Indeed, as soon as these payments are considered contributions, they are also expenditures since they must cancel each other out on the balance sheet used to report to the FEC. *See* 11 C.F.R. Supp. B, App. III (1975).

[5] Arguably, if the construction urged in this Memorandum is adopted, section 608 (b)(1) of Title 18 can be read to limit contributions by the Government, as well as private persons, to $1,000. We believe that such a literal interpretation of a criminal statute should not be followed, and we are aware of no purpose that would be served by so construing it, and no unfairness that would be created by not including the Government. In addition, we note that another provision which might have required the Government to report these salaries itself, 2 U.S.C. § 437()a, has been repealed by section 105 of the 1976 amendments.

II. The Purpose of Campaign Finance Reform Can Only Be Fulfilled By Including These Salary Payments As Contributions Under The Act.

While the 1974 Amendments were the culmination of a long line of campaign acts beginning in 1907, much of the impetus for comprehensive reform came from the many abuses of the Nixon administration during the 1972 Presidential election. Among the most prominent of these abuses was the extraordinary use of the federal government for campaign purposes, including the extensive use of Cabinet officials and White House advisors in campaign activities. *See* attached brief in *Public Citizen v. Shultz*, pp. 9–26. Yet these same abuses continue to occur despite public outcry over the 1972 campaign abuses, and despite the comprehensive campaign reform designed to eradicate such behavior.

This type of abuse is even more objectionable now that Congress has enacted spending limits restraining the expenditures of candidates.[6] In order to work, these restraints must be applied equally to everyone, including the President of the United States. Otherwise, the Act would work the inequity of limiting all other candidates to $10 million in expenditures, while allowing the President greater expenditures provided that he take advantage of his incumbency and divert Government monies from their true course. The Federal Election Commission cannot reward such patently improper activities.

The shielding of this unfair use of Government resources from the full force of the campaign laws impugns everything which the reform represents. Indeed, to exempt these contributions from the provisions of the Act would be so inequitable as to undermine the entire reform. While other candidates struggle for contributions, the incumbent President could actively use government paid employees to do his campaigning for him. While other candidates must accept expenditures limits in order to obtain public financing, the President would be permitted unlimited use of White House staff to conduct his campaign. It would be a cruel irony if the very Act which was meant to eradicate political campaign corruption were to be interpreted in a way which would insure that a fair Presidential election could not be held.

Nor should the Commission shield such activity from public scrutiny. The disclosure provisions are among the most important provisions of the statute and are "supported by compelling governmental interests—informing the electorate and preventing the corruption of the political process." *Buckley v. Valeo*, 519 F.2d at 867. These interests were great enough so that all the disclosure requirements of the Act were upheld by the Supreme Court as "the least restrictive means of curbing the evils of campaign ignorance and corruption that Congress found to exist." 44 U.S.L.W. at 4147 (footnote omitted). They were upheld even though serious First Amendment rights of privacy were at stake. Certainly they should not now be defeated when no privacy interest of the government is involved, and public corruption is afoot.

Disclosure was seen to promote a compelling governmental interest because it provides the electorate with information "as to where political campaign money comes from and how it is spent by the candidate." H.R. Rep. No. 564, 92d Cong., 2d Sess. 4 (1971), *as quoted in Buckley v. Valeo*, 44 U.S.L.W. at 4147. By improving the flow of information to the voter, the disclosure provisions enable the voter to more accurately evaluate the candidate and more intelligently exercise the franchise.

Certainly there is no rational reason why the electorate should know about all campaign financing except that which the President obtains by benefit of his incumbency. To the contrary, the political use which a President makes of his incumbency would seem to be of special concern to every voter.

In addition, the disclosure requirements deter corruption by exposing it to the public at large. As Justice Brandeis wrote: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." *Other Peoples Money*, 92 (1914), *quoted in Buckley v. Valeo*, 44 U.S.L.W. at 4147.

The other candidates must report the origin and use of all resources which are intended to influence an election, so that the public may make judgments on questionable campaign practices. It would be in keeping with this notion for the government's contributions to the Ford campaign to be made public so that the public may judge them also.

Finally, the disclosure requirements were meant to prevent even the appearance of corruption. This purpose will be entirely defeated if the Act is applied to private contributions but not to government expenditures on behalf of a candidate. By shielding from public scrutiny the President's use of government resources to further his own re-election, the Act would fail to dispell one of the basic sources of the public's cynicism about elections, that is, the well-documented political use of the incumbency by Richard Nixon in the 1972 election.

III. Excepting Government Expenditures From The Scope Of The Act Would Raise Serious Questions About The Constitutionality Of The Public Funding Provisions Of The Act And The Act Should Be Interpreted So As To Avoid These Constitutional Infirmities.

In *Buckley v. Valeo*, the Supreme Court upheld the constitutionality of the public funding provisions of the Campaign Act, including the use of expenditure limits as a condition of public funding. 44 U.S.L.W. at 4154–4159. An interpretation of the Act which would effectively remove expenditure limits from the President while leaving them on other candidates would again put these provisions in Constitutional jeopardy. Interpreted to exclude government expenditures, the Act would deny equal protection by discriminating in favor of an incumbent with no conceivable rationale for limiting the expenditures of others, but not those of the President.[7]

The Supreme Court made it clear that the expenditure limitations of the 1974 Act represent the restriction of fundamental rights of expression and association protected by the First Amendment:

"A restriction on the amount of money a person or group can spend on political com-

[6] While the Supreme Court struck down the expenditure limitations in the Act, it upheld the $10 million primary spending limit and other limits, when used as a condition for eligibility for public financing of a campaign. *Buckley v. Valeo*, 44 U.S.L.W. at 4144, 4154–4159. It did so because the significant government aid, coupled with a desire to supplant the dominant role of the large contributor, was considered a great enough interest to justify the First Amendment restraint when undertaken voluntarily. 44 U.S.L.W. at 4155.

[7] The identical equal protection arguments would apply to the disparities in the reporting requirements as well, but we will not address them separately. In addition, these government contributions should also reduce the matching funds made available to qualifying candidates for the same reasons.

munication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditures of money. . . .

"The expenditure limitations contained in the Act represent substantial rather than merely theoretical restraints on the quantity and diversity of political speech." *Buckley v. Valeo*, 44 U.S.L.W. at 4132 (footnote omitted).

The substantial restraints on First Amendment rights which the expenditure limits represent, were declared unconstitutional except where integral to a scheme to replace private funding with public funding in order to eliminate corruption. Although the restraints are justified to further this "substantial interest," they cannot be unevenly applied. A provision which would discriminatorily restrict the "quantity and diversity" of speech of all candidates but not the President, is in no way justified.[8]

The Supreme Court has consistently held the discriminatory restriction of such fundamental rights to be unconstitutional unless found "necessary to a compelling state interest." *American Party v. White*, 415 U.S. 771, 779 (1974) and cases cited therein. Thus, filing fees which discriminatorily limit access to the ballot on the basis of wealth are unconstitutional even though the state has a legitimate interest in limiting access to the ballot. *Lubin v. Parish*, 415 U.S. 709 (1974); *Bullock v. Carter*, 405 U.S. 134 (1972). And in *Buckley v. Valeo*, the Supreme Court invalidated the expenditure limits of the Act, noting that the government's interest in equalizing the financial resources of candidates, preventing corruption, and reducing the skyrocketing costs of political campaigns were all insufficient to justify governmental restriction on campaign expenditures. 44 U.S.L.W. at 4143–44. "It is not the government but the people . . . who must retain control over the quantity and range of debate on public issues in a political campaign." 44 U.S.L.W. at 4144 (footnote omitted). An exemption for government contributions stands this statement on its head by permitting the government to limit the spending of some candidates while contributing to the President's cause.

Discriminatory restrictions have been upheld only when significant State interests were involved. For instance, in *Storer v. Brown*, 415 U.S. 724 (1974), the Court upheld a California Election Law restriction that independent candidates could not be members of political parties for 12 months prior to the election. It upheld the restriction only because it furthered the "compelling" goal of preventing the election from becoming a refuge for primary losers rather than a forum for major political struggles. 415 U.S. at 736. *See also American Party v. White*, 415 U.S. 767 (1974). In the instant case there is no comparable "compelling" interest being served by the discrimination; indeed, there is a noticeable lack of legitimate government interest in allowing the President more speech than other candidates.

Finally, the expenditure limits which are presently circumvented by the political use of government employees were a major reason for upholding the public funding provisions of the Act against an equal protection challenge. In upholding the provisions which make available more money to major parties than to minor parties, the court said:

"Any disadvantages suffered by operation of the eligibility formulae under Subtitle H is thus limited to the claimed denial of the enhancement of opportunity to communicate with the electorate that the formula affords eligible candidates. But eligible candidates suffer a countervailing denial . . . [A]cceptance of public financing entails voluntary acceptance of an expenditure ceiling. Non-eligible candidates are not subject to that limitation. Accordingly, we conclude that public financing is generally less restrictive of access to the electoral process than the ballot-access regulations dealt with in prior cases." 44 U.S.L.W. at 4155 (footnotes omitted).

The expenditure ceilings were significant because the overall effect of public funding was to enable minority candidates to increase their spending relative to those who traditionally raised great amounts of money. 44 U.S.L.W. at 4159. This line of reasoning is invalidated when the law is applied in a way which permits the President to spend far beyond the limits. Without an effective expenditure ceiling on the President, the rationale for upholding the public funding provisions of the Act is removed.

To exempt the President's use of government resources from the scope of the Act would raise again in practice the Constitutional problem solved in theory in *Buckley v. Valeo*. It would also raise the question of discrimination against other major party candidates who must report *all* of their resources and who must charge *all* of their expenditures to the spending limits. The Act should be read to encompass the use of government resources so that it can be construed to avoid these Constitutional infirmities. *See Buckley v. Valeo*, 519 F.2d at 874.

CONCLUSION

The Federal Campaign Election Act of 1971 as amended should be read to embrace the use of government resources for campaign purposes for three reasons. First, the broad language of the Act indicates that it was meant to include every type of campaign funding. Second, such a interpretation is necessary to fulfill the purposes of the Act. Third, any other interpretation would make the Act unconstitutional. Thus, we ask that government paid salaries for employees working to influence the election be declared campaign contributions and expenditures. As such they should be reported and attributed to the candidate's expenditure limit.

ALAN B. MORRISON.

[United States District Court for the District of Columbia, Civil Action No. 2280–72]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

(Public Citizen and Ralph Nader, Plaintiffs, versus George P. Shultz, Secretary of Treasury, Defendant)

INTRODUCTION

This action seeks to recover for the benefit of the United States Treasury improperly expended federal tax monies that were utilized during the 1972 Presidential campaign to pay salaries of various government officials who were devoting substantial portions of their working time to that campaign rather than to public matters. The complaint seeks a declaration that the monies paid as salaries in such circumstances may be recovered by the United States Government since there was no lawful appropriation of funds for campaign purposes. The complaint also asks for an order requiring the defendant to take appropriate action to recover such unlawfully paid salaries, but at this time plaintiffs seek only a declaration that various payments made in the form of salaries were unauthorized and that the defendant has an obligation to take further steps to attempt to recover those unauthorized payments. We do not at this time seek injunctive relief compelling the defendant to take any specific action since we believe that defendant will, once so advised by the Court, take appropriate steps to effectuate the recovery.

We believe that, based on the five depositions; the two sets of answers to interrogatories, and the submitted testimony from the Senate Watergate Committee, it is clear that significant federal salaries were paid to White House personnel who were actively engaged in a political campaign and that plaintiffs are entitled to summary judgment. Under our view of the law, we have no obligation to establish that specific individuals received specific dollar amounts of unlawful salaries because they were engaged in specific campaign-related activities at specific times, although our proof establishes those facts in many instances. We believe that our obligation is simply to establish that significant unauthorized salary payments were made; the exact amount of these payments is a matter for further examination by defendant or other responsible federal officials, at least in the first instance. The legal inferences to be drawn from a number of the facts may be disputed by defendant and others, and there may be factual disputes as to the correct amount of salary repayment due on account of the activities of certain individuals. These disputes do not relate to material facts, however, since we are presently seeking only a declaration that there were "salary" payments made that were unauthorized and that defendant has a duty to investigate and determine the exact amounts of such payments under the rule that "doubts as to accountability may well be resolved against the one having the duty to account." *United States v. Bowen*, 290 F.2d 40, 45 (5th Cir. 1961).[1]

STATEMENT OF THE CASE[2]

Beginning at least as early as 1971, various members of the White House staff began to work on the 1972 Presidential campaign in which it was expected that President Nixon would run for re-election. Because of a specific exemption in the Hatch Act, 5 U.S.C. § 7324(d)(1), members of the White House staff are permitted to "take an active part in political management or in political campaigns" without violating section 7324 (a)(2) and subjecting themselves to removal from their positions under section 7325. That exception is, in our view, a license to engage in some incidental political activities, but does not constitute a congressional sanction that individuals employed on the federal payroll can devote a substantial portion of their working time to political activities and still continue to draw their federal salaries. As we shall demonstrate in considerable detail below in Part II of our argument, the incidental time spent on political activities in 1971 rapidly accelerated so that many individuals on the White House staff were devoting substantial portions of their time to political activities and some persons were devoting virtually full time to those activities for various segments of time.

On October 10, 1972, and again on October 24, 1972, plaintiffs called this situation to the attention of defendant and asked him to take appropriate action to prevent the continued payment of salaries to personnel who were devoting substantially all of their

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[8] The Supreme Court in *Buckley v. Valeo* recognized the Constitutional problems posed by provisions which discriminatorily permit incumbents to use their offices for campaign purposes. Speaking of the exemption for photographic services furnished to Congressmen, 2 U.S.C. § 434(e), the Court was "troubled by the considerable advantages that this exception appears to give incumbents." The Court upheld this provision only because "in the absence of record evidence of misuse or undue discrimination," it served the permissible purpose of enabling legislators to serve their constituents. 44 U.S.L.W. at 4152 n. 112.

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time to re-election matters as opposed to the public matters for which their positions were established. Defendant made no reply to either letter, and thus on November 16th after the election, plaintiffs filed this action seeking declaratory and injunctive relief with respect to the unauthorized salaries.[2]

After obtaining a thirty-day extension of time within which to answer the complaint, defendant chose not to answer but filed a motion to dismiss, alleging that the plaintiffs lacked standing, that the case was nonjusticiable because it presented a "political question," and that the complaint failed to state a claim upon which relief could be granted. In opposition, plaintiffs filed a detailed memorandum, and on March 8, 1973, this Court entered its order denying the defendant's motion to dismiss. Thereafter, discovery took place, and while it was in progress, defendant moved for summary judgment on essentially the same grounds as previously rejected by this Court in denying defendant's motion to dismiss. That motion was ordered to be held in abeyance until discovery was completed and until plaintiffs made their motion for summary judgment, which was to take place no later than January 28, 1974.

The argument below is divided into four sections. The first establishes the proposition that the payment of salaries from the Federal Treasury to persons engaged in substantial political campaign activities is a violation of Article I, Section 9, Clause 7 of the Constitution and of 31 U.S.C. § 628 because no appropriation has ever been authorized for such purposes. Second, we will demonstrate that in fact in the 1972 campaign there were widespread uses of White House staff members to work on the re-election campaign of President Nixon. In the third part we will establish that defendant, perhaps along with other officials, has a duty to investigate and determine the exact facts behind these serious charges and to take steps to recover the unlawfully paid monies for the benefit of the United States Treasury. Finally, we will briefly discuss defendant's claim that plaintiffs lack standing, notwithstanding this Court's earlier determination to the contrary.

RELEVANT AUTHORITIES

Article 1, Section 9, Clause 7, United States Constitution: "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; . . ."

Section 628, Title 31, United States Code: "Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others."

ARGUMENTS

I. The use of Federal funds to pay salaries of Federal employees engaged in substantial political campaign activities violates Article I, § 9, Clause 7, U.S. Constitution and 31 U.S.C. § 628

Article 1, Section 9, Clause 7 of the Constitution and 31 U.S.C. § 628 together provide that monies shall not be drawn from the Treasury except pursuant to lawful appropriations, and then only for the purposes for which they are made and no others. It is undisputed that there were no appropriations lawfully made by the Congress to be used for the purpose of paying salaries for the campaigns of either President Nixon, Senator McGovern, or any other candidate in the 1972 Presidential election. Thus, if a federal official had written a check to the Committee to Re-elect the President in the amount of $100,000 "to be used to pay the salaries of the Director and Deputy Director of the Campaign and the Director of the Finance Committee for the Re-election of the President," there can be no doubt that that check would be unauthorized and the payment of it would violate the above provisions of law. Plaintiffs' position is, quite simply, that what is forbidden to be done directly by means of a check to the Committee to Re-elect the President, is equally forbidden when done indirectly by means of paying the salaries of persons who are nominally employed by the federal government, but who are actually working on an election campaign.

In fact, with respect to a closely related area of expenditures, many of the persons whose salaries plaintiffs contend should be recovered in whole or in part readily acknowledged that Government funds should not be expended for campaign purposes.

Thus, when questioned about whether the Committee to Re-elect or the taxpayers should pay for the travel expenses, hotel rooms, etc. of federal employees on political trips, every witness stated that the Committee to Re-elect should and did pay. They all emphasized the scrupulousness with which the entire White House staff viewed the matter and stated that there was a rule that when in doubt, the charge was to be made to the Committee to Re-elect rather than to the Government.[4] Thus, those very persons involved in the campaign themselves have acknowledged that taxpayers should not be required to bear certain costs associated with the campaign even when incurred by persons on the Federal payroll, yet it is contended that the salaries paid to these persons while on avowedly political trips are perfectly proper.

We cannot agree that the law permits to be done by the backdoor of salary payments, that which it concededly prohibits via the front door of direct payments to the Committee to Re-elect. This is not a situation in which form can be permitted to prevail over substance, and where taxpayers can be made to bear a cost simply because it is disguised in the form of a salary payment rather than a direct subsidy to a political committee. These salary costs should properly have been borne by the Committee to Re-elect the President and not by the taxpayers at large, many of whom supported other candidates, and others of whom simply prefered to support no one at all. There is nothing to suggest that Congress ever intended to appropriate a single penny for the payment of salaries for the persons working on political campaigns.[5]

The defendant nonetheless contends that the Constitutional proscription does not apply (Br. pp. 11–12) because Article I, Section 9, Clause 7 provides only that "no money shall be drawn from the Treasury but in consequence of appropriations made by law; . . . ", and there have been appropriations by law made here.[6] Thus, according to defendant, Article 1, Section 9, Clause 7 of the Constitution is not violated where monies appropriated for one purpose, are applied to a wholly different purpose. We submit that there is no rational basis for a distinction under which the Framers would have permitted misuse of appropriated funds provided that there was some appropriation, but would have been sufficiently concerned about the general problem to include a prohibition against the use of Federal funds where there was no appropriation. Similarly, defendant's argument (Br. p. 16 and note 4) that section 628 has not been violated because it applies only to transfers between agencies is without basis in reason or authority. The authorities and reasons given in our brief of March 5, 1973, at pages 11–18, however, fully support the proposition that both the Constitution and section 628 have been breached in this case.[7]

Accordingly, it is plain that if Federal monies were utilized to pay salaries of White House personnel while such persons were engaged in substantial campaign activities, there were violations of the Constitution and section 628 since there was no lawful appropriation covering such expenditures.

II. The evidence demonstrates that persons on Federal payrolls were engaged in extensive activities relating to the re-election campaign of President Nixon while continuing to draw their Federal salaries.

Beginning no later than mid-1971, various members of the White House staff while still on the Federal payroll began taking active roles in the upcoming 1972 campaign. (See Buchanan Tr. 3914 and Strachan Tr. 2492).[8] The type of campaign work done by the individual staff member varied according to his general duties and in some cases involved primarily work in the White House and in other cases involved extensive on the road campaigning or other campaign related work outside of Washington. Many of these activities, such as planning the 1972 convention for the Republican Party and making frankly partisan speeches, were campaign related under any view of the law. Others such as "information dissemination" and general liaison with special interest groups became clearly political in the context of the post-convention period.

The evidence in this case demonstrates the massive use of White House personnel to aid the re-election campaign of President Nixon. But as the location of the campaign work varied, so did the nature and extent of the work. Insofar as we have learned, the campaign work patterns broke down into four general categories.

First, there were those who were working essentially full-time on the campaign such as Gordon Strachan, Pat O'Donnell, and Ken Khachigian. A second group were persons who, for blocks of time, did work that was unequivocally campaign related, but appeared to have done normal work the rest of the time. Included in such group are William Timmons, Ron Walker, and members of their staffs. The third general category is comprised of those persons who devoted large portions of their time over an extended period to the campaign although also continuing to perform other non-campaign related functions. Included in this group are Charles Colson, Robert Finch, and Patrick Buchanan. Finally, there are those persons whose activities are at least arguably properly classified as governmental when performed by the staff of the President in normal times, but because of the fact that the campaign was on, those seemingly routine functions were clearly political acts in direct aid of the candidate. Included in this group are Herbert Klein and members of the staff of Charles Colson.

The list of persons involved in political activities on behalf of the reelection campaign of President Nixon contained in this memorandum is by no means exhaustive. For instance, the testimony of Gordon Strachan and Patrick Buchanan make it clear that both H. R. Halderman and John Mitchell (while he was Attorney General) were engaged in detailed and extensive planning activities in relation to the 1972 campaign. (Strachan Tr. 2492 and Buchanan Tr. 3910, 3940 and Exhibits 175, 176, and 179, pp. 4174, 4185, and 4197, respectively). Limitations of time and money, as well as a belief that the proper persons to make a complete, detailed examination are government employees and not private parties, led plaintiffs to conclude that the evidence presented here is sufficient to show a widespread pattern of misuse of taxpayers' money to aid the reelection campaign of a single candidate.

There are many more witnesses to examine and documents to consider, as well as a need to place dollar figures on the recoverable salaries. But the pattern is clear and unmistakable; it demonstrates that the tax-

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payers paid the salaries of many significant assistants on the 1972 reelection campaign staff of Richard Nixon.

A. Full-Time Campaign Workers

One of the prime examples of a White House employee working on the campaign on a full-time basis is Gordon Strachan. He explained his duties to the Watergate committee as follows:

"I was a staff assistant to Mr. Haldeman. My office was located in the basement of the White House. One of my responsibilities during the President's reelection campaign To to serve as liaison with the Committee To Re-elect the President. It was my job to accumulate all the information I could obtain from members of the White House staff, personnel at 1701 [the Committee to Re-elect], the Republican National Committee and from the campaign personnel in key States and cities.

"Periodically, I was to report important political matters to Mr. Haldeman. I wrote him many long reports, entitled political matters memos, describing the current status of pending political matters. He relied on me as the member of his personal staff who would obtain information on campaign matters. Either I would have the answer, or I would get it." (Strachan Tr. 2439.)

As Mr. Strachan later noted, ". . . from January 1 [1972] through the election my primary duties were in the area of polling and in the area of political data bank." (Strachan Tr. 2446). He referred to himself as the "White House conduit for reporting the activities of 1701, including the activities of Mr. Magruder . . .," the Deputy Campaign Director, a former White House staffer, and a man with whom Mr. Strachan was in daily contact (Strachan Tr. 2440, 2894). He testified that there were "very substantial contacts between all members of the White House staff and the campaign organization" (Strachan Tr. 2446), and in fact the contacts were so great that there was a regular messenger service established to handle the flow of papers (Strachan Tr. 2469).

Beyond his liaison functions, Strachan was concerned early in the campaign with political intelligence plans (Strachan Tr. 2492), and he had extensive involvement with the political polls which Mr. Haldeman requested be taken by the White House itself (Strachan Tr. 2461, 2466, and 2494). Strachan also maintained the master White House campaign files (Strachan Tr. 2491).

The answers given by Mr. Strachan to plaintiffs' interrogatories spell out clearly the extent of his involvement in the election campaign. His answer to interrogatory 3 indicated that in late 1971 he was spending 20% of his time on polling matters and 40% on the campaign. According to his answer to the fourth interrogatory, he became substantially involved in the campaign in mid-1971, with the amount of time increasing as the election approached "During the late Summer and Fall of 1972 there were many weeks when virtually all of Mr. Strachan's time was devoted to the campaign and particularly to polling and advertising matters. During August, 1972, Mr. Strachan spent a major portion of his time on matters relating to the Republican National Convention and attending the Convention."

Answer to interrogatory 4. These candid answers given by Mr. Strachan demonstrate that we have come a full circle: the Hatch Act's exception in 5 U.S.C. § 7324(d)(1) to permit incidential campaigning by White House staff personnel has been turned on its end, as the performing of governmental duties became "incidental" and the waging of a political campaign became the principal work of a significant number of highly paid Federal employees. It is clear that the candidate and the committees supporting him were unjustly enriched by having the taxpayers support Gordon Strachan while he was working on the campaign, and those payments must now be returned to the Treasury by the responsible persons.

Another White House staffer who was primarily involved in campaign activities at least for the post-convention period was Pat O'Donnell of Mr. Colson's office. According to Mr. Colson, O'Donnell had been scheduling the speeches of Administration personnel, primarily Cabinet officers, for approximately two years, he continued to do this through the campaign, and in fact this was his "primary responsibility." (Colson II, 19–20). These speakers, of which there were approximately thirty during the campaign, participated in what was referred to as the surrogate program. As Robert Finch related it, they were "literally orchestrated around the country in behalf of the President." (Finch 36). Insofar as that orchestration was performed for Cabinet officials, the responsibility was that of Pat O'Donnell, the full-time government employee on the staff of Charles Colson.

A third example of a Government employee working full-time on campaign matters is Ken Khachigian, whom Patrick Buchanan referred to as his "political assistant" (Buchanan Tr. 3914, 3933). He was engaged in extensive political research activities directly related to assessing the strengths and weaknesses of various Democratic candidates who might be opposing President Nixon in 1972 (see, *e.g.*, Exhibit 183 p. 4225). In addition, he served as Mr. Buchanan's liaison to the Committee to Re-elect the President (Buchanan Tr. 3924). Mr. Buchanan's duties are discussed in Part C of this Point II in much greater detail, and from them it is apparent that if Mr. Khachigian was Mr. Buchanan's "political assistant," he was deeply involved in the many facets of the campaign with which Mr. Buchanan concerned himself. While it is possible that he may have had other duties, the testimony of Mr. Buchanan strongly suggests that Mr. Khachigian was devoting substantially all of his time to political matters related to the 1972 campaign.

B. Full-Time for Blocks of Time

Others on the White House staff worked essentially full-time on matters relating to the campaign, but did so for fairly limited periods of time after which they resumed normal White House duties. For example, William Timmons, the White House congressional liaison, had played an important role in the 1968 Republican National Convention while he was a legislative assistant to then-Congressman William Brock (Timmons 17). Beginning in May of 1971, Mr. Timmons began working what he described as a few hours a week (Timmons 9) or about half a day a week (Timmons 23) in connection with the planning of the Republican National Convention which took place in August of 1972. Beginning in May 1972 his efforts sped up, and he spent a few hours a day working on the convention (Timmons 23). Moreover, prior to it he made four trips of about three days each to the convention site in Miami (Timmons 12). At the time of the convention itself, he went down for an extended stay of three weeks and brought with him five members of his staff who stayed and worked for about a week (Timmons 12–13).

At the convention he was aided by members of the staff of another White House employee, Ron Walker, as well as other White House staffers (Timmons 14, Walker 21, 23–24). He was primarily concerned with the coordinating of the role of President Nixon's family and Vice President Agnew and his family at the convention (Timmons 15–16), although he also coordinated the roles of other White House staff personnel at the convention (Timmons 17). After it was over, he stayed around "and made certain that the materials we had rented, typewriters and cars, etc., were, in fact, returned and all the bills paid by the Committee to Re-elect." (Timmons 18). We submit that there is simply no justification for Federal employees to draw salaries from public monies while assuming responsibilities that the Committee to Reelect and/or the Republican Party should have and could have assumed themselves. Whatever conceivable justifications there might be for permitting members of the White House staff to engage in campaign related activities when those activities consist of planning and advising the President, surely do not exist when the work involved could easily be done by a person not in the White House and is identical in kind to that done by the opposing, non-incumbent party. Of course, all of the travel and other nonsalary expenses of these White House convention workers were paid by the Committee to Re-elect the President (Timmons 12–15), thus resolving all doubt as to the "political" nature of the work done by these convention workers.

The office of Ron Walker, the chief of advance work for the President, also provided significant assistance to the re-election campaign beyond the work that the staff members did at the convention.

Mr. Walker first became associated with President Nixon during the 1968 campaign when he did volunteer work as an advance man (Walker 5–6).[9] The duties of an advance man, which are set forth in detail in the Walker deposition pages 11–19, are generally to handle the logistics for the candidate, who in this case happened to be the President. Mr. Walker did that for the President at the convention where he remained for approximately two to three weeks (Walker 20). Thereafter, the President made approximately 15 to 20 trips before election day, for which Mr. Walker's office assumed the over-all responsibility (Walker 25). The President made a number of trips which were "purely political" such as the one to Atlanta for a motorcade (Walker 25, 29). In a typical trip a member of the advance staff of Mr. Walker would spend approximately 3 to 5 days in the city preparing for the Presidential visit (Walker 29–30). During these political trips all of the expenses, including travel, were paid by the Committee to Re-elect the President (Walker 27), except, of course, the salaries of the members of Mr. Walker's staff. While he used staff for some of these trips, he also utilized the services of more than 50 volunteers for Presidential, and apparently other visits as well (Walker 26, 34). It appears that the only determining factor on whether to utilize staff or volunteers was simply the availability of staff to do the job.

C. Large Portions of Times on a Continuous Basis

The third general category into which the campaign work of White House staff personnel fell was that of persons who devoted portions of their time to the political campaign, but did so over a long period of time and in that way the time became substantial in total. Charles Colson, for instance, estimated that beginning in mid-July he devoted approximately 20% of his time to political matters (Colson I 48, 50).[10] His chief admittedly political duty was his responsibility as chairman of a group which met six days a week at the White House at 9:15 (Colson I 36, 38). The members of this group included representatives from the Republican National Committee, the Committee to Re-elect the President and the White House (Colson I 37–38), and its primary purpose was to organize the replies to answer the opponents' charges and to make material available for the campaign speeches of the surrogates (Colson I 36, 41). These replies, which were obviously a central part of the strategy since the President campaigned very little, were prepared in part by the use White House

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speech writers who were on the public payroll (43–44). Beyond his responsibilities as chairman of the 9:15 group and the necessary work that had to be done to prepare himself for those daily meetings and to implement the decisions reached at them, Mr. Colson also acknowledged that he helped decide in some instances who should reply, where the reply should take place (Colson II 18–19) and consulted with regard to political ads (Colson II 22–24).

It is apparent that Gordon Strachan's description of Charles Colson as a member of the White House staff who was "politically active" (Strachan Tr. 2494) was an accurate one.

Another high-level White House staff member who was significantly involved in the 1972 campaign was Robert Finch, counsellor to the President and in charge of a number of special projects. For the post-September period he admitted to spending at least one-third and perhaps one-half of his time on partisan political campaign activities (Finch 26, 37–38). In this one-third he did not include "non-partisan" talks at which he gave the Administration's position to such groups as farmers and the DAR (Finch 26–27, 37–38). When these "non-partisan" appearances are added in, it is apparent that Mr. Finch was devoting well over half of his time to speechmaking "as a spokesman for the administration" (Finch 44–45). When the fact that he had already decided to leave the White House and was then making plans to return to California in a new job in a private law firm is taken into account (Finch 40), it is clear that the amount of time Mr. Finch was then devoting to finishing the various projects which he had started was quite small compared to his basic duty in the post-September period—to go out and campaign for the reelection of President Nixon.

During this time he continued to make use of the White House staff to get the facts that he needed for his speeches (Finch 31). Finch also testified that the other members of the Cabinet played similar parts in the 1972 campaign, speaking out with comparable frequency in a partisan effort on behalf of the Administration (Finch 27). Finally, during the last week of the campaign, Mr. Finch was fully available and working to do whatever he could to ensure the reelection of President Nixon (Finch 38–39). In short, although Robert Finch was continuing to serve in a position as counsellor to the President, he in fact was serving primarily as campaigner for the President for at least the last two months of the 1972 campaign.

Patrick Buchanan's assignment in the 1972 presidential campaign began in mid-1971 when he was "named chairman of the opposition research, opposition tracking, opposition analysis group which would be one task force within the campaign." (Buchanan Tr. 3914). His responsibilities in the campaign included those of political strategist (Buchanan Tr. 3921, 3940). In these capacities he wrote "political strategy memos," examples of which are produced in Exhibits 170–194 which are part of the Buchanan testimony. Many of them, it should be noted, were written on White House stationery.[11]

Mr. Buchanan recommended the establishment of a task force to monitor the activities of candidate Edmund Muskie known as the "Muskie watch." But as he testified, "the Muskie watch amounted to actually little more than the research files of Buchanan and Khachigian." (Buchanan Tr. 3936). However, as Exhibit 170 (p. 4146) demonstrates, the watch was a detailed and careful one and was a coordinated part of a strategy to ensure that Senator Muskie, who was viewed to be the most difficult opponent for President Nixon and the most likely person to unify his party, would not win the nomination (Buchanan Tr. 3933–3934).

In addition to the Muskie watch, similar analyses were made of Senator Humphrey (see Exhibit 171, p. 4154) and Senator Kennedy (see Exhibit 173, p. 4167). The campaign activities with which Mr. Buchanan was dealing as early as the middle of 1971 are nicely summarized by a memo he wrote to eight members of the White House staff concerning an upcoming meeting (Exhibit 174, p. 4173). Mr. Buchanan suggested that some of the questions that ought to be considered at the meeting would be, who is the likely Democratic nominee and how should he be dealt with? Who is the likely opposition within the Republican Party and how should the McCloskey movement be handled? What is the best strategy to defend against the attacks of potential Democratic nominees, as well as other thoughts on tactics to to be used to highlight the weaknesses in the other party and other candidates between now and this coming [1971] November. One can hardly conceive of a more politically oriented meeting than that one, and yet all of the participants were then on government salaries.

Beyond the political strategy function, Mr. Buchanan was involved in the hiring of pranksters to disrupt the opposition party (Buchanan Tr. 3923), he participated in the preparation of political ads (Bunchanan Tr. 3929–3930), and he prepared letters and telegrams to be sent in the name of private citizens supporting the Administration's position on a variety of matters (Buchanan Tr. 3976–77 and Exhibit 169, p. 4130). In addition, he had the specific campaign duty after September 1 of preparing a daily political analysis for the President (Buchanan Tr. 3947). And for all of this work he relied very heavily upon White House sources, particularly the daily news summary prepared by White House staffer Mort Allen for the use of the President and other members of the staff (Buchanan Tr. 3937). From these hearings alone it is clear that Patrick Buchanan spent considerable time on the campaign and that he was a key strategic beginning as early as the middle of 1971.

D. Facially Neutral Activities Which Become Campaign Activities During a Campaign

Many of the witnesses exclaimed that they were simply doing during the campaign that which they had always done while on the White House staff. It is not the intention of plaintiffs in this proceeding to challenge the propriety of taxpayers paying for many of the activities to be discussed below during the normal, noncampaign portions of a President's term. But we do contend that activities which may be facially neutral or non-political during non-election years change their character and become campaign activities during periods such as the post-convention time when the President was running for reelection.

Herbert Klein was, throughout the four and a half years that he served in the White House, a disseminator of information for the entire executive branch of government and for the Administration (Klein 13). He had no day-to-day responsibilities for briefing the press as did the press secretary but was concerned with acting as a liaison with members of the national media (Klein 14–15). Thus, when the election campaign began to become active after the convention, Mr. Klein did very little that he did not do before although he was outside Washington more than he was there and his travels increased above normal as he continued to tell the Administration's side of the story (Klein 26–28).

Mr. Klein claimed that the 1972 campaign was a different kind of campaign because he was doing the same things that he had done since January 1969. When asked about his contribution to the President's reelection, he stated "I thought I [sic] would be best served by carrying out the duties of my own office to the fullest extent possible and in an intensified fashion." (Klein 24). As he put it" . . . with the American people, part of the process in any election is that they understand what the issues are at the particular time" and it was essential in his view that "you do the best you can in at least answering questions regarding those issues." (Klein 25).

Although Mr. Klein in prior Nixon campaigns had taken leaves of absence from his positions (Klein 5, 7, 9, and 10), he did not do so this time. He traveled around the country, and on many of his trips the expenses were paid by the Committee to Re-elect the President (Klein 40). He made speeches (Klein 34) and kept himself generally available to the press (Klein 33), including servicing the needs of the National Press Corps at the Republican National Convention (Klein 19). Herbert Klein was spreading the word about the Administration, what it was doing and where it stood on issues. In his own mind he was making an important contribution to the reelection of the President, and yet it was equally clear that the taxpayers were shouldering the burden of paying his salary during this time. Whatever right the President may have to dissemniate general information about his policies at the public's expense during non-election periods does not extend to have the taxpayers support publicity agents when he is actively seeking reelection.[12] For if Herbert Klein had not been receiving a White House salary while working on the campaign, either the Committee to Re-elect would have paid him or he would have worked on a voluntary basis. That is the way that campaigns are supposed to operate, but that is not what happened in 1972.

The situation with Charles Colson and his staff is very similar to that of Herbert Klein since they were doing during the campaign that which they had done before (Colson I 46). Their regular duties were to cater to the various organized special interest groups in the country, ranging from ethnic groups to labor unions to business groups, and to ensure that these groups had a friendly ear in the White House when policy decisions were of concern to them (Colson I 8; Colson II 27–28). Although the Colson staff duplicated in some ways the substantive responsibilities of the various agencies, it was in effect a last chance for these groups to be heard before policy was to be decided in the White House. Whether those activities can fairly be characterized as governmental as opposed to political during non-election times is a matter of some debate. However, it seems clear that once the campaign was under way those workers were every bit as much campaign workers as the employees of the Committee to Re-elect.

The best evidence of the way in which Mr. Colson viewed the responsibilities of his staff is a memo he wrote to them in August 25, 1972, the Friday after he returned from the Republican National Convention (Colson I 29). This remarkable document, which is exhibit 1 to the Colson deposition, places in perspective all of the Colson testimony about the duties performed by him and his staff during the post-convention period. It is of particular significance in light of Mr. Colson's role as chairman of the 9:15 group which was concerned with devising reply strategies to the positions taken by the opposition. The memo begins by noting that there are "71 days left between now and the election. Every single one of these is a campaign day. . . ." Later on Mr. Colson observes, "[m]any of you have been through political campaigns before.

For those of you who have not, a campaign is a 24-hour a day, 7-day a week job. . . . Think to yourself at the beginning of each

Footnotes at end of article.

day. 'What am I going to do to help the President's reelection today?' and then at the end of each day think what you did in fact do to help the President's reelection." After stating his expectation of maximum staff output, he noted that if he bruised any feelings or injured anyone's morale, "I will be happy to make amends on the morning of November 8 when we have done our job and the results are evident."

Notwithstanding Mr. Colson's explanations as to his intentions in writing this memo, (Colson I 32), it is apparent that each member of his staff, which grew from a single secretary in 1969 (Colson I 21) to 15 professional and a like number of clerical personnel by the time of the election (Colson I 30–31), was told to devote himself to the reelection of President Nixon for the rest of the campaign and to focus entirely on campaign and campaign-related matters until that reelection was accomplished. Seen in this light it is apparent that everything that was done by the Colson staff was with that purpose in mind and that each of those thirty individuals was a campaign worker and not a servant of the government and the people as a whole.

Other facts support this conclusion. Each of the members of Mr. Colson's staff had a "counterpart" at the Committee to Re-elect who dealt with a specific area just as each of the members of the staff had a specific interest group to handle (Colson II 29). The White House counterpart provided substantive help to his colleague at the Committee to Re-elect (Colson II 30), and of course was available to the special interest group for direct White House access on any problem that might arise. It is apparent that during a campaign access of that kind is of the great importance and provides the candidate with key input as to how his policies are being received by the groups most directly affected by them.

Finally, the work of Colson's staff member Desmond Barker in coordinating the efforts of the Public Information Office of the various agencies, as he had been doing before the campaign, took on an increasingly important role as election day neared (Colson II 58–60). The ability to manage or coordinate the release of information by executive departments during a political campaign cannot be underestimated, and the political impact of it is obvious when the person managing the news effort is on the staff of the chairman of the daily 9:15 political strategy meeting. The timing of the releases of news—both good and bad—is an important campaign tool, and one which is inevitable that the incumbent will be able to have. That does not mean, however, that the taxpayers should pay the salary of the staff member who is doing the coordinating of the release of such information, as was the case in 1972.

During the course of his testimony before the Senate Watergate Committee, while obviously not considering his remarks in the context of this litigation, Patrick Buchanan made a statement which, coupled with the Colson memorandum, summarized plaintiff's case very nicely. In replying to a question as to whether the dirty tricks department played any significant role in the 1972 campaign, Mr. Buchanan stated that he agreed with the assessment of Theodore White that "these really had the weight of a feather in the campaign of 1972." He then continued with the statement:

"I think what was unprecedented for us, Senator, was the fact that we were—that we controlled the Office of the Presidency, and this was the, frankly, some of the, innovations in terms of the offensive strategy in media ads, the attack group which has gotten, the 9:15 group which has gotten a bad name, the use of surrogates, and the orchestration of our political offensive, these had nothing to do with dirty tricks. It was one of the most effective operations and one of the most enjoyable operations I have been involved in." (Buchanan Tr. 3956).

The evidence in this case demonstrates that Mr. Buchanan was entirely correct in his assessment that the uses of the Office of the President, and in particular the paying of large numbers of White House staff members from public funds while they were working on political campaign, was a major factor in the ability of the President to successfully mount his campaign and obtain his reelection. The evidence demonstrates massive misuses of government funds, and plaintiffs have established that which the complaint alleges—that government paid employees were devoting substantial portions of their time to a political campaign.

FOOTNOTES

[1] The determination here is similar to that in an action for an accounting in which the first question to be determined is whether an accounting should be ordered, *Irving Trust Co. v. McKeever*, 2 F.R.D. 1 (E.D.N.Y. 1941), and only then are the precise amounts to be repaid of relevance. Under that analogy, we are at the stage where the propriety of entering such an accounting order is to be determined.

[2] The facts are taken from the depositions of Charles Colson, Robert Finch, Herbert Klein, Ronald Walker, and William Timmons; the defendant's answers to plaintiffs' interrogatories (including the affidavit of John K. Carlock attached thereto), the answers of Gordon Strachan to plaintiff's interrogatories, and the sworn testimony of Gordon Strachan and Patrick Buchanan, along with their accompanying exhibits, before the Senate Watergate Committee. Reference to the depositions will be by the last name of the deponent and the page number: *e.g.*, (Finch 17). Because the deposition of Mr. Colson was taken on two days and the pages on the second day do not follow the first day's numbers, the Colson deposition will also include a "I" or "II" to designate the appropriate day's transcript. References to the Senate testimony will indicate the last name of the witness and the page; exhibits will be referenced by exhibit number and the page on which the exhibit starts, except where special attention is called to one part of the exhibit. For the convenience of the Court, copies of Volumes 6 and 10 of these Watergate hearings, which contain the testimony of Messrs. Strachan and Buchanan, are being provided.

[3] The complaint also sought relief with respect to unauthorized uses made of government supplies, telephones, etc. Since it is clear that White House personnel who were working on the campaign used such materials and equipment, declaratory relief with respect to that aspect of the complaint is also required.

[4] Klein 31, 40–41; Finch 27–29; Timmons 12; and Walker 27–28.

[5] To the extent that there is a congressional indication on the use of funds paid as salaries, we call the Court's attention to the various provisions of Title 5, U.S. Code, which although not directly related in all instances to White House personnel, are indicative of congressional intent to narrowly limit the purposes for which salary moneys are to be spent. For instance, § 3103 limits payments to employees for services rendered at the seat of government and only for the purposes within the appropriation; § 3107 prohibits the use of federal funds for the payment of salaries of publicity experts unless there is a specific appropriation for that purpose; and §§ 3373 and 3374 establish highly complex rules placing restrictions on the loaning of Federal officials for use by state or local governmental units. Finally, § 5502(a) prohibits the payment of salaries for unauthorized offices.

[6] He makes the Constitutional point primarily in connection with his standing defense as a means to distinguish cases such as *Flast v. Cohen* 392 U.S. 83 (1968), which sustain taxpayer standing based on violations of the rights of taxpayers secured by a specific Constitutional provision.

[7] See also § 627 of Title 31 which provides further proof that Congress intended appropriations to be narrowly construed.

[8] There is no dispute that all of the persons described herein were on the Federal payroll while engaging in campaign activities.

[9] Mr. Walker testified that he continued to draw his salary from his company during the 1968 campaign (Walker 6). Thus, it appears likely that the company made an indirect illegal political contribution in violation of 18 U.S.C. § 610, by loaning the Nixon campaign an employee whose salary it continued to pay. In our view the indirect contribution of a paid employe is equally prohibited by section 610, and such prohibition is analogous to the prohibition underlying the complaint here.

[10] He indicated a far lesser percentage of time when asked about "campaign" work which he defined in the narrowest sense of the word (Colson I 53–54).

[11] *E.G.*, Exhibit 170, p. 4146; Exhibit 171, p. 4154; Exhibit 179, p. 4197. The attached memo from Robert C. Odle, Jr. (p. 4204) makes it clear that the authors of Exhibit 179, noted only as "Research" were Messrs. Buchanan and Khachigian.

[12] Of course, the President is entitled, if not required to have a Press Secretary and supporting staff during a campaign, but that was not Mr. Klein's function.

REMARKS BY SENATOR JENNINGS RANDOLPH: EMPLOYMENT OPPORTUNITIES INCREASE FOR THOUSANDS OF STUDENTS THROUGH REALISTIC COLLEGE PROGRAMS

Mr. RANDOLPH. Mr. President, the true test of education is to prepare men and women to do useful work, to perform a service to society while living a productive and happy life. Over the past decade, the concept of the community college has reached into many geographic areas previously neglected by the higher education system. The story of these indigenous institutions is testimony to their responsiveness to the needs of their students and their communities. Such programs are based on actual needs as reflected by employment opportunities available to graduates in their particular communities.

On Sunday, May 2, I was privileged to join in the dedication ceremony of the new Weirton Campus of the West Virginia Northern Community Campus.

The growing educational institution began as a branch of West Liberty State College in 1965. Seven years later, the West Virginia Board of Regents created West Virginia Northern Community College with campuses at Weirton and Wheeling, and later added a third campus at New Martinsville.

Enrollment has grown dramatically, rising from a total enrollment of 1,104 students in 1972 to more than 6,000 today. The new Weirton campus, a complex of seven buildings replacing temporary classrooms in local government and private industrial structures, has risen from 492 to nearly 2,000.

College President Dr. Daniel B.

Crowder and Weirton Campus Director Terrell L. Thistlewaite have committed West Virginia Northern to provide a broad range of educational opportunities to the Hancock and Brooke Counties.

President Crowder gave the dedication address. Others participating included: Rev. John W. Cromwell of the First Baptist Church, who gave the invocation; P. Paul Altomare, master of ceremonies; Matthew Magnone, who provided welcoming remarks; Weirton Mayor Michael J. Androchick, Jr.; and Arch Miller, Jr., vice chairman of the college advisory board.

President Crowder presented an eloquent case for the community college: He said:

As a comprehensive community college, West Virginia Northern must maintain a well-balanced curriculum. The familiar debate as to whether an institution of higher learning should emphasize career education or the liberal arts in a specious and futile argument: people must be able to earn a living, but also learn how to live. An over-emphasis in one direction is as bad as an over-emphasis in the other . . .

Community college programs are based on actual needs as reflected in employment opportunities available to graduates in their particular communities. In fact, many college students find employment before completing their intended courses of study.

Given these conditions, we feel it is irresponsible to overlook or ignore the Department of Labor study of 1972. This study concluded that not more than 15 to 20 percent of jobs available in the foreseeable future will require a four-year degree or post-graduate professional training. The same study indicated, however, that an increasing number of employment opportunities would require varying degrees of technical training beyond high school. Today, approximately 50 percent of all high school graduates seek some form of post-secondary education. It is irresponsible to channel even a majority of these young people into a traditional college curriculum.

America's community colleges are responding to real employment conditions. At the same time, they are highly sensitive to the cultural and aesthetic needs of the people in their service areas . . .

The American community college is proud to train people for useful employment; it subscribes to the time-honored American proposition that all skills and professions are valuable, providing they increase the happiness of individuals and promote the welfare of society.

Mr. President, the Weirton campus of Northern West Virginia Community College is a product of creative minds, the cooperation of community officials and of citizens whose public-spirited endeavors are well reasoned.

DIVESTITURE IN PETROLEUM INDUSTRY

Mr. HANSEN. Mr. President, in a recent edition of the Baltimore Sun, the issue of divestiture in the petroleum industry is discussed at some length by my colleagues, Senator PHILIP A. HART, and Senator HRUSKA. At issue are the provisions of the bill, S. 2387, which is now being considered by the Committee on the Judiciary. This is a complex problem and both Senators address it articulately and wisely.

Personally, I do not believe such drastic action is necessary. It appears to be another step toward the nationalization of American industry. With the legitimization of such tremendous Government interference in the workings of the petroleum industry as a precedent, what industry will be "broken up" next? The possibilities are staggering and the consequences, I believe, would be disastrous.

Mr. President, I ask unanimous consent that the article "Should Big Oil Be Broken Up?" which appeared in the May 15 edition of the Baltimore Sun be printed in the RECORD.

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

DEBATE AND DISCUSSION—SHOULD BIG OIL BE BROKEN UP?

The Senate Judiciary Committee moves into the final stage next week of hearings on antitrust proposals to force the giants of the oil industry to divide themselves into companies limited to production or transportation or refining or marketing. This is the highly controversial oil divestiture bill designed to break up the vertical integration that has permitted the oil majors to control operations from the wellhead to the neighborhood gas pump. The measure will be the focus of an intense struggle if it reaches the Senate floor. Senator Philip A. Hart, chairman of the Senate Antitrust and Monopoly Subcommittee, argues here for divestiture. Senator Roman L. Hruska, ranking Republican on the subcommittee, states the case against such a move.

(By PHILIP A. HART)

Most of us who have read a little history—and watched quite a bit more of it made—begin to develop almost a sixth-sense for the issues that have an "inevitable" stamp on them.

These are the issues which may seem radical—even crazy—when first raised but which become conservative and respectable as we become familiar with them.

Social Security, civil rights laws and national health insurance fit the mold. So, I think, does divestiture for the major oil companies.

The basic argument for splitting the major oil companies into producers, transporters or refiner-marketers, of course, is that this is the best way to restore competition to the industry.

The industry—and its apologists—react by saying there is much competition today. They point to figures on concentration of crude oil ownership—showing that the top eight companies had about 54 per cent. Although these figures are by no means insignificant, there are other industries where the concentration of economic power figures are higher. But the real problem is who controls crude supplies. And, in this industry, control does not come only from ownership.

The majors also gain control through the joint operations which dominate the industry. As partners in these operations, smaller and independent firms may have equity interest in crude produced, yet exercise little control over it.

Offshore, to the extent that smaller firms are involved at all, it is in joint ventures with major companies who generally operate the leases and—as a practical matter—control the disposition of the oil. On shore, a great deal of the independent production is under so-called farm-out agreements with major companies. Typically, these agreements give the major first call on production.

Another important factor in the control of crude is the pipeline system. Almost invariably crude passing into a pipeline is sold to the line's owner. Two simple figures demonstrate quickly how this transaction magnifies the majors' control of the crude supply: In 1973, more than 64 per cent of all interstate crude pipeline shipments were over lines owned by the eight largest oil companies. More than 92 per cent of the crude went over lines owned or controlled by the top sixteen companies.

Thus, each of the top eight firms ends up owning volumes of crude far in excess of its own refinery needs. In effect, these firms almost totally control the crude supplies to the independent sector.

The final way the majors keep control of crude is through exchange agreements. A very large volume of crude oil changes hands after it leaves the wellhead. A substantial part does so under exchange agreements. In a crude oil exchange two or more companies agree to make approximately equal amounts of crude available to each other at mutually convenient locations. The system removes a substantial portion of crude from open cash markets and forecloses the market to potential buyers. Moreover, the system deters price competition among exchange members who would suffer retaliation if they were to injure the interest of an exchange partner. Exchanges inevitably mean the sharing of much information among firms about their respective production and refining operation.

Since the October Arab-Israeli war, this control of domestic crude has had a new dimension which threatens to suffocate the independence—if not the life—of the non-integrated refining and marketing sectors.

In three years, the price of domestic crude has risen from about $3.90 to about $7.60. If price controls were lifted, the new level no doubt would be the world market level of $11 to $12 a barrel. This price exceeds the average cost of finding, developing and producing a barrel of domestic crude by $7 or $8.

Even very efficient competitors—which most of the independents have had to be for many years—can't overcome that kind of handicap.

In sum, what we have in the domestic crude market today is: No market. The supply is historically channelled by the top sixteen companies to the areas where it will do them the most good—or the least harm. In part, the major companies now are temporarily hampered in using their crude for their own best ends by the fact that the government has stepped in and demanded that supplies be made available to independent refiners at somewhat reasonable prices.

Clearly, the control program itself offers the best evidence that federal regulation is not a good way to govern a market—let alone to create one.

But using divestiture—splitting the producers from the refiners—would create a large and accessible crude market where all refiners would bid for crude on an equal basis.

Only with such an even start, can we be assured that the players with the best services—at the best prices—will come out winners.

And that is exactly what divestiture seeks.

In other words, we are seeking to re-establish the free enterprise system in this industry. That doesn't seem to be such a radical idea.

(By ROMAN L. HRUSKA)

The oil industry divestiture bill is based on the oversimplified propositions that there are insufficient competition and inadequate enforcement of antitrust laws. The bill would require the petroleum industry to divide itself into four segments—production, transportation, refining and marketing.

No one of those components could own or have any direct or indirect interest, not even long-term contracts, in any of the other segments.

The companies affected would have to submit to the Federal Trade Commission a plan to divest themselves of the offensive units.

There are drastic penalties for violations. An individual would be subject to fines up to $100,000, a corporation up to $1 million. I can foresee wholesale resignations.

The advocates of the bill have the burden to show that a change is necessary, that the proposal they make will work, and that it will work better than the present system. In none of these major propositions have the advocates shown any degree of success in coming forward with the needed evidence.

Their contentions are that this industry is dominated by huge, vertically-integrated companies, whose assets place them in virtual control of all four phases of the petroleum business. That is not true.

This bill, instead of resorting to litigation, is a legislative shortcut to do in five years what the courts would take eight or ten years to do. Fifteen years of litigation, turmoil and confusion would curtail capital funds necessary to proceed with additional production, refining, marketing and pipelines.

The bill, in my judgment, is a knee-jerk reaction to popular resentment against the high prices for which the domestic companies are not responsible. The Organization of Petroleum Exporting Countries (OPEC) sets the price of oil here in America, and we cannot forget it.

By any known definition of "monopoly" there is no monopoly in the petroleum business in America today. A monopoly consisting of 18 companies does not make sense, does it? The normal definition of monopoly is four companies dominating up to 50 percent of the market. In the oil industry, the top four share from 25 to 33 percent of the business, depending on what segment of the industry is being examined.

A monopoly keeps out new firms, restricts supply, maintains or raises prices, divides the markets and obtains high profits. None of these is true in the petroleum industry.

Are there new entrants? Since 1950 there have been ten companies which have erected refineries with daily capacities of 50,000 barrels and more. Obviously, these new entrants are doing just fine.

The independents in the marketing field controlled 25 percent of the gasoline market in 1968, and seven years later they have 33 percent. Now if that is a monopoly, the big companies sure fell down on the job, didn't they? They let 8½ percent of their market get away from them.

One would expect that if big companies were effective as a monopoly, the 25 percent share held by the independents would have been cut down to 15 percent. It did not happen.

As to raising prices, I suggest that job is taken care of by OPEC. Forty percent of the oil that we use in America today is imported oil. The domestic companies don't fix that price, OPEC does.

What about those so-called excessive profits in 1974? The fact is it was a year of inventory profits. Those profits were not paid out in dividends. Virtually all the companies had to stretch to meet the cash drain necessary to replace the inventory they sold at such a large margin of profit. So the profits aren't there. Over the years the level of profits in the industry is about 12½ per cent of assets. That's about the national average for all industries—so there aren't any excessive profits.

If joint ventures and exchange agreements are so pernicious, why not make them illegal? If you did make them illegal, there would be no drilling on the outer continental shelf and there would be no finishing of the Alaska pipeline. Any time you bar joint ventures in risky projects you invite disaster and a complete immobilization of growth and progress.

There is no showing that the fragmentation of these oil companies would result in a cessation of these practices which the supporters of divestitute find objectionable.

Would divestiture work? Maybe it would, but not without great cost. The cost would be a tremendous increase in prices for consumers and a steadily rising level of prices, because each one of these component elements would be producing under the specified maximums.

Each one on its own would have to produce a sufficient profit to entice and to retain investors. That cannot be done more economically than it is done now because there are certain economies of scale which, when eliminated, will automatically result in higher prices.

Will 80 companies instead of 20 increase our ability as an industrial nation to deal successfully with the OPEC countries? Common sense tells us no. The divestiture bill will hurt the industry and America.

THE OTHER VICTIMS OF ALCOHOL

Mr. BAYH. Mr. President, "The Other Victims of Alcohol" are children, men and women whose lives are affected by someone else's drinking problem.

Unfortunately, it is still not generally known that the victims of alcoholism, other than the alcoholic, need information, help and treatment, whether or not the alcoholic seeks help or even recognizes the existence of a drinking problem.

Increasing research data would indicate that:

First, more than 40 million people in this country are directly and adversely affected by someone else's drinking problem;

Second, of these 40 million "other victims" over 28 million are children of alcoholic parents;

Third, the stigma still attached to the disease of alcoholism is the greatest deterrent to people seeking help or information; and

Fourth, it is not generally known that the impact of alcoholism on "the other victims" touches all areas of society including schools, courts, industry, insurance and health and Government agencies.

When the disease of alcoholism strikes, the alcoholic is not the only victim.

Our society must become more aware of this major health and social problem.

Mr. President, I would like to bring to the attention of my colleagues an organization which grew out of the First National Women's Forum on Our Nation's Drinking Problem: Its Impact on Society which was held last February in New York City under the direction of Josie Balaban Couture, the chairperson of the communications committee of the National Council of Women of the United States, Inc. Ms. Couture, an energetic, resourceful and dedicated woman, is the president of the National Task Force on "The Other Victims of Alcoholism, Inc." The goals of this organization include:

First, Defining the issues: To identify, through the combined efforts of private citizens and concerned groups, the impact of alcoholism on "The Other Victims of Alcoholism," the people whose lives are adversely affected by someone else's drinking problem.

To outline the need to provide information, help and treatment for these "other victims," whether or not the alcoholic seeks help or even recognizes the existence of a drinking problem.

Second. Recommendations: To develop specific policy and program recommendations for action by all levels of government, the private sector and all areas of social concern, regarding these other victims of the disease of alcoholism.

Third. Implementation: To insure, through making provisions for "The Other Victims of Alcoholism" as an ongoing focal point, that steps are taken to implement these policy and program recommendations and that positive changes occur.

The national offices of The Other Victims of Alcoholism are located at 100 West 57th Street, New York, N.Y. 10019, (212) 247-8087, and Ms. Couture may be contacted for any further information on this task force.

Many of us know someone who has a drinking problem—a loved one, a friend, a neighbor, or a business or school associate. We realize it is a sensitive situation to deal with, yet we would like to help. But how? One suggestion—understanding alcoholism through educations programs. The prize winning special "Drink—Drank—Drunk" is available on 16 mm. film or videocasette and was produced by public television under a grant from the 3M Co. It is available through your local community alcoholism service organization. It is also available through the Public Television Library, 475 l'Enfant Plaza S.W., Washington, D.C. 20024, (202) 488-5000. I ask unanimous consent, Mr. President, to have printed at this point in my remarks the following quiz on drinking.

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

DRINK, DRANK, DRUNK QUIZ ON DRINKING

The following quiz was presented by E. G. Marshall on "Drink, Drank, Drunk," the public television special hosted by Carol Burnett and produced by WQED Pittsburgh, under a grant from the 3M Company.

Over 35 million Americans are affected by the abnormal drinking of someone close. But that also means that there are over 35 million people in a good position to help problem drinkers, because they are so close. But before you can help, you have to be able to recognize the problem. I'm going to ask 20 questions that can help you decide if someone close drinks too much. Just think of the person or people whose drinking you're concerned about, and answer "yes" or "no."

1. Do you worry about how much they drink?

2. Do you complain about how often they drink?

3. Do you criticize them for the amount they spend on drinking?

4. Have you ever been hurt or embarrassed by their behavior when they drink?

5. Are holidays in your home unpleasant because of their drinking?

6. Do they ever lie about their drinking?

7. Do they deny that drinking affects their behavior?

8. Do they say or do things, and later deny having said or done them?

9. Do you sometimes feel that drinking is more important to them than you are?

10. Do they get angry if you criticize their drinking or their drinking companions?

11. Is drinking involved in almost all your social activities?

12. Does your family spend almost as much on drinking as it does on food?

13. Are you having any financial difficulties because of drinking?

14. Does their drinking keep them away from home a great deal?

15. Have you ever threatened to leave them because of their drinking?

16. Have you ever lied for them because of their drinking?

17. Do you find yourself urging them to eat instead of drink at parties?

18. Have they ever stopped drinking completely for a period of time, and then started again?

19. Have you ever thought about calling the police because of their drinking behavior?

20. Do you think that drinking created problems for them?

Mr. BAYH. Mr. President, many Americans are unable to find meaning or purpose in life, to be happy or to relate to other human beings without using alcohol. You have the unique opportunity to provide a new beginning—a second genesis—for those victims whose lives and dreams have been lost to others' alcohol dependence. It is a people-to-people responsibility—a reaching out by one human being to another.

When life itself becomes a mind expanding experience, little will be heard about alcohol for this purpose.

We must begin now.

Now is the time to stress the impact of our Nation's drinking problem on "the other victims" of the disease of alcoholism.

Now is the time to assure that resources are available to assist "the other victims" with needed information, help or treatment according to what has happened to them—not according to what has happened to the alcoholic.

Now is the time to show the crucial role of the communications media in acquainting the public with this major social problem.

We must make a national commitment that is commensurate with the nature and extent of these concerns. Whether young or old; male or female; black or white; rich or poor; employed or unemployed; and executive or laborer; a student or doctor; an immigrant or native born, all the citizens of this country deserve no less.

"DARKNESS AT NOON" BY HAROLD KRENTS

Mr. HATFIELD. Mr. President, earlier this week, Mr. Harold Krents wrote a moving article in New York Times entitled "Darkness at Noon." Mr. Krents is blind, and the article discusses what life has been like for Mr. Krents to grow up in a world where too little attention is paid to problems facing handicapped Americans.

I know about Mr. Krents' success as a lawyer, and he is someone who has achieved much for which to be proud—indeed many people with no impairments at all would envy his record of success.

Mr. Krents' article should remind us all about the problems facing blind Americans. He refers to the type of problem that is too often ignored, even by those who consider them sensitive to the normal problems of blindness.

I call this article to the attention of my colleagues, and ask unanimous consent that it be printed in the RECORD.

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

[From the New York Times, May 26, 1976]

DARKNESS AT NOON

(By Harold Krents)

WASHINGTON.—Blind from birth, I have never had the opportunity to see myself and have been completely dependent on the image I create in the eye of the observer. To date it has not been narcissistic.

There are those who assume that since I can't see, I obviously also cannot hear. Very often people will converse with me at the top of their lungs, enunciating each word very carefully. Conversely, people will also often whisper, assuming that since my eyes don't work, my ears don't either.

For example, when I go to the airport and ask the ticket agent for assistance to the plane, he or she will invariably pick up the phone, call a ground hostess and whisper. "Hi, Jane, we've got a 76 here." I have concluded that the word "blind" is not used for one of two reasons: Either they fear that if the dread word is spoken, the ticket agent's retina will immediately detach, or they are reluctant to inform me of my condition of which I may not have been previously aware.

On the other hand, others know that of course I can hear, but believe that I can't talk. Often, therefore, when my wife and I go out to dinner, a waiter or waitress will ask Kit if "*he* would like a drink" to which I respond that "indeed *he* would."

This point was graphically driven home to me while we were in England. I had been given a year's leave of absence from my Washington law firm to study for a diploma in law degree at Oxford University. During the year I became ill and was hospitalized. Immediately after admission, I was wheeled down to the X-ray room. Just at the door sat an elderly woman—elderly I would judge from the sound of her voice. "What is his name?" the woman asked the orderly who had been wheeling me.

"What's your name?" the orderly repeated to me.

"Harold Krents," I replied.

"Harold Krents," he repeated.

"When was he born?"

"When were you born?"

"Nov. 5, 1944, I responded.

"Nov. 5, 1944, the orderly intoned.

This procedure continued for approximately five minutes at which point even my saint-like disposition deserted me. "Look," I finally blurted out, "this is absolutely ridiculous. Okay, granted I can't see, but it's got to have become pretty clear to both of you that I don't need an interpreter."

"He says he doesn't need an interpreter," the orderly reported to the woman.

The toughest misconception of all is the view that because I can't see. I can't work. I was turned down by over forty law firms because of my blindness, even though my qualifications included a cum laude degree from Harvard College and a good ranking in my Harvard Law School class.

The attempt to find employment, the continuous frustration of being told that it was impossible for a blind person to practice law, the rejection letters, not based on my lack of ability but rather on my disability, will always remain one of the most disillusioning experiences of my life.

Fortunately, this view of limitation and exclusion is beginning to change. On April 16, the Department of Labor issued regulations that mandate equal-employment opportunities for the handicapped. By and large, the business community's response to offering employment to the disabled has been enthusiastic.

I therefore look forward to the day, with the expectation that it is certain to come, when employers will view their handicapped workers as a little child did me years ago when my family still lived in Scarsdale.

I was playing basketball with my father in our backyard according to procedures we had developed. My father would stand beneath the hoop, shout, and I would shoot over his head at the basket attached to our garage. Our next-door neighbor, aged five, wandered over into our yard with a playmate. "He's blind," our neighbor whispered to her friend in a voice that could be heard distinctly by Dad and me. Dad shot and missed; I did the same. Dad hit the rim; I missed entirely; Dad shot and missed the garage entirely. "Which one is blind?" whispered back the little friend.

I would hope that in the near future when a plant manager is touring the factory with the foreman and comes upon a handicapped and nonhandicapped person working together, his comment after watching them work will be, "Which one is disabled?"

CODE OF CONDUCT FOR MULTINATIONAL CORPORATIONS

Mr. PERCY. Mr. President, this week the Organization for Economic Cooperation and Development—OECD—has unveiled a code of conduct for multinational corporations and a code of governmental responsibilities to firms. The OECD proposals are expected to be approved by the foreign and finance ministers of OECD member nations when they meet in Paris June 21 and June 22.

Although the proposals made by OECD are voluntary, they are expected to have considerable impact on member countries and multinational corporations.

The code specifically states that multinationals "should not render and they should not be solicited or expected to render any bribe or other improper benefit, direct or indirect, to any public servant or holder of public office." It also contains warnings about multinationals becoming involved in political activities. On the other side, the proposals admonish countries to treat multinationals operating in their countries in a consistent fashion with the treatment accorded to their own national companies.

In light of the importance of these proposals made by the OECD, I ask unanimous consent that several newspaper articles of the past 2 days outlining these proposals be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. PERCY. Mr. President, the unveiling of those proposals in the past 2 days reemphasizes the importance of a speech made on April 22, 1976, in Chicago by Mr. Gaylord Freeman, honorary chairman of the First National Bank of Chicago before the Chicago World Trade Conference. In that speech, Mr. Freeman talked about what elements should be contained in a code of conduct for business activities. In his remarks, Mr. Freeman strongly stressed that for any briber, there must also be a bribee somewhere in Government. Therefore, he strongly urged that any code of behavior not just

be limited to the corporations but also be extended to potential recipients of corporate funds.

At first glance, the OECD proposals appear to provide a code of conduct for governments as well as corporations as Mr. Freeman suggested. Mr. President, I ask unanimous consent that the speech by Mr. Freeman I have just referred to also be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. PERCY. Mr. President, the question of the conduct of multinational corporations has been one that the Multinational Corporations Subcommittee of the Foreign Relations Committee has been studying for some time. I know from our study and from my own personal experience of the immense benefits that multinational corporations have brought to the world economy and the millions of jobs and great contribution they have made to the strength of our country. However, we have found that, in some instances, unethical, if not illegal, payments have been made by some corporations in their business dealings.

It is my hope that the OECD proposals will help provide a climate in which multinational corporations can conduct their affairs in a straightforward and ethical manner without being subjected to the pressures they have in the past for payments in order to obtain business. I look forward to the signing of the OECD proposals next month and hope that they will help provide the framework for continued international economic activity and growth.

EXHIBIT 1

[From the Wall Street Journal, May 27, 1976]

OECD PLANS TOUGHER CODE ON BRIBERY FOR MULTINATIONALS THAN SLATED EARLIER

(By Jack Aboaf)

PARIS.—A code of conduct for multinational enterprises, to be formally adopted next month by the Organization for Economic Cooperation and Development, will contain tougher recommendations on the bribery issue than do earlier drafts.

Unlike earlier drafts, considered too mild by the U.S. and other member countries the recommendations being pondered by the international study group are more specific and cover both bribes and involvement in local political activities.

The final draft, which has been under discussion for more than a year, states that multinationals "shouldn't render—and they shouldn't be solicited or expected to render—any bribe or other improper benefit, direct or indirect, to any public servant or holder of public office."

It further states that "unless legally permissible, multinationals shouldn't make contributions to candidates for public office or to political parties or other political organizations," adding that multinationals "should abstain from any improper involvement in local political activities."

WORDING IS STRONGER

The new wording on bribery is stronger and goes further than a previous draft, which simply called on multinationals "to observe the best standards set by relevant local customs and practices with regard to rendering gifts and other benefits to public servants."

The code urges multinationals to disclose more "factual information" about their enterprises as a whole beyond the information disclosed under national laws in the country of operation.

It urges multinationals, too, to "refrain from actions which would adversely affect completion" by abusing dominant positions of market power.

In managing their financial and commercial operations especially their liquid foreign assets and liabilities, multinationals should take into consideration the established objectives of the countries in which they operate regarding balance of payments and credit policies, the proposed code says.

TAX OBLIGATIONS

The proposed code of conduct also calls on multinationals to avoid indulging in artificial transfer pricing to get around their tax obligations.

Host countries would be requested to "accord to enterprises operating in their territories" and owned or controlled by nonnationals law and now less favorable than that accorded in like situations to domestic enterprises," the draft says.

It emphasizes, however, that the code doesn't deal with the right of member countries "to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises."

Although observance of the code "is voluntary and isn't legally enforceable," corporations that depart from the general rules probably will find it difficult to operate in certain countries, some observers said.

The code of conduct is scheduled to be formally approved at the annual ministerial meeting of the OECD council set for June 21 and 22.

[From the New York Times, May 27, 1976]

TWENTY-FOUR NATIONS SET UP A CORPORATE CODE—OECD MEMBERS AGREE ON STRICT RULES OF CONDUCT FOR MULTINATIONAL CONCERNS

(By Clyde H. Farnsworth)

PARIS, May 26.—After more than a year of difficult negotiations, the 24 member countries of the Organization for Economic Cooperation and Development have agreed on a strict code of conduct for multinational corporations.

The O.E.C.D. action, which represents the first time Western governments, acting in concert, have expressed an opinion about corporate behavior, follows a series of disclosures of bribery and other illicit practices by some multinationals that had broad political ramifications. The multinational companies were chiefly but not exclusively based in the United States. The voluntary code has been negotiated against a background of demands for new legal restraints upon the corporations.

Although the guidelines, which are expected to be formally adopted at an O.E.C.D. ministerial meeting in Paris June 21, are voluntary, they are expected to carry considerable political and moral weight.

The differences over specific provisions, chiefly between the United States and Sweden, were resolved by compromises in meetings here. The final agreement came last Friday, and a text is now being circulated among companies and trade unions in the member countries.

Some 700 American corporate executives are to be briefed on the new code at a meeting in Washington next Tuesday, American officials said.

Business community and labor union representatives were consulted during the long O.E.C.D. deliberations. Officials now hope to get most corporations to proclaim their adherence to the code.

A text of the agreement was obtained by The New York Times.

In a strongly worded section on illicit practices, it says that companies should "not render, and they should not be solicited or expected to render, any bribe or other improper benefit, direct or indirect, to any public servant or holder of public office; unless legally permissible, not make contributions to candidates for public office or to political parties or other political organizations, and abstain from any improper involvement in local political activities."

RESPONSIBILITIES OUTLINED

The code and associated documents, which in the O.E.C.D. are called its investment package, outline the responsibilities that governments feel companies should accept.

But for balance the package also provides a framework of government responsibilities for "fair treatment" of the companies.

In this context the governments agree that treatment of the multinationals, under laws, regulations and administrative practices, should be "no less favorable than that accorded in like situations to domestic enterprises."

The guidelines note the important role the multinationals play in international economic relations and point to the substantial benefits of international direct investment and the efficient utilization of capital, technology and human resources.

But the governments also state that the phenomenon of multinational enterprises may lead to "abuse of concentrations of economic power and to conflicts with national policy objectives."

In addition, they say, the complexity of the enterprises and their diverse structures, operations and policies "sometimes give rise to concern."

The main thrust of the guidelines, then, is on greater disclosure of information. And it was here that the major conflicts arose among the governments.

The 24 O.E.C.D. nations of Western Europe, North America and developed Asia serve as headquarters for most of the multinationals. The area accounts for two-thirds of the world's gross national product and three-quarters of its trade.

Sweden led the fight for maximum disclosure. It had sought to get companies to disclose profits, wages, sales, transfer prices and other data on a country-by-country basis.

Other countries, led by the United States, argued that companies would be forced to give away to much competitive information if they broke down their data in this manner.

Under a compromise, companies would report by "geographical area," which means groups of countries or individual countries or individual countries as each enterprise deems appropriate.

Some of the data required under the guidelines go beyond what American companies must disclose.

[From the New York Times, May 27, 1976]

EXCERPTS FROM OECD TEXT ON CONDUCT CODE

(Paris, May 26—Following are excerpts from the text of the annex to the declaration of June 21, 1976 by governments of member countries of the Organization for Economic Cooperation and Development on international investment and multinational enterprises.)

GENERAL POLICIES

Enterprises should

(1) Take fully into account established general policy objectives of the member countries in which they operate;

(2) In particular, give due consideration to those countries' aims and priorities with regard to economic and social progress, including industrial and regional development, the protection of the environment, the creation of employment opportunities, the promotion of innovation and the transfer of technology;

(3) While observing their legal obligations

concerning information, supply their entities with supplementary information the latter may need in order to meet requests by the authorities of the countries in which those entities are located for information relevant to the activities of those entities, taking into account legitimate requirements of business confidentiality;

(4) Favor close cooperation with the local community and business interests;

(5) Allow the component entities freedom to develop their activities and to exploit their competitive advantage in domestic and foreign markets, consistent with the need for specialization and sound commercial practice;

(6) When filling responsible posts in each country of operation, take due account of individual qualifications without discrimination as to nationality, subject to particular national requirements in this respect;

(7) Not render—and they should not be solicited or expected to render—any bribe or other improper benefits, direct or indirect, to any public servant or holder of public office;

(8) Unless legally permissible, not make contributions to candidates for public office or to political parties or other political organizations;

(9) Abstain from any improper involvement in local political activities.

DISCLOSURE OF INFORMATION

Enterprises should, having due regard to their nature and relative size in the economic context of their operations and to requirements of business confidentiality and to cost, publish in a form suited to improved public understanding a sufficient body of factual information on the structure, activities and policies of the enterprise as a whole, as a supplement, insofar as is necessary for this purpose, to information to be disclosed under the national law of the individual countries in which they operate. To this end, they should publish within reasonable time limits, on a regular basis, but at least annually, financial statements and other pertinent information relating to the enterprise as a whole, comprising in particular:

(1) The structure of the enterprise, showing the name and location of the parent company, its main affiliates, its percentage ownership, direct and indirect, in these affiliates, including shareholdings between them;

(2) The geographical areas where operations are carried out and the principal activities carried on therein by the parent company and the main affiliates;

(3) The operating results and sales by geographical area and the sales in the major lines of business for the enterprise as a whole;

(4) Significant new capital investment by geographical area and, as far as practicable, by major lines of business for the enterprise as a whole;

(5) A statement of the sources and uses of funds by the enterprise as a whole;

(6) The average number of employees in each geographical area;

(7) Research and development expenditure for the enterprise as a whole;

(8) The policies followed in respect to intragroup pricing;

(9) The accounting policies, including those on consolidation, observed in compiling the published information.

COMPETITION

Enterprises should, while conforming to official competition rules and established policies of the countries in which they operate,

(1) Refrain from actions which would adversely affect competition in the relevant market by abusing a dominant position of market power, by means of, for example, (a) anti-competitive acquisitions; (b) predatory behavior toward competitors; (c) unreasonable refusal to deal; (e) discriminatory [i.e., unreasonably differentiated pricing and using such pricing transactions between affiliated enterprises as a means of affecting adversely competition outside these enterprises.]

(2) Allow purchasers, distributors and licensees freedom to resell, export, purchase and develop their operations consistent with law, trade conditions, the need for specialization and sound commercial practice;

(3) Refrain from participating in or otherwise purposely strengthening the restrictive effect of international or domestic cartels or restrictive agreements which adversely affect or eliminate competition and which are not generally or specifically accepted under applicable national or international legislation;

(4) Be ready to consult and cooperate, including the provision of information, with competent authorities of countries whose interests are directly affected in regard to competition issues or investigations. Provision of information should be in accordance with safeguards normally applicable in this field.

FINANCING

Enterprises should, in managing the financial and commercial operations of their activities, and especially their liquid foreign asset and liabilities, take into consideration the established objective the countries in which they operate regarding balance of payments and credit policies.

TAXATION

Enterprises should

(1) Upon request of the taxation authorities of the countries in which they operate provide in accordance with the safeguards and relevant procedures of the national laws of these countries, the information necessary to determine correctly the taxes to be assessed in connection with their operations, including relevant information concerning their operations in other countries;

(2) Refrain from making use of the particular facilities available to them, such as transfer pricing which does not conform to an arm's-length standard, for modifying in ways contrary to national laws and tax base on which members of the group are assessed.

INDUSTRIAL RELATIONS

Enterprises should within the framework of law, regulations and prevailing labor relations and employment practices, in each of the countries in which they operate.

(1) Respect the right of their employees to be represented by trade unions and other bona fide organizations of employees, and engage in constructive negotiations, either individually or through employers' associations, with such employee organizations with a view to reaching agreements on employment conditions, which should include provisions for dealing with disputes arising over the interpretation of such agreements, and for insuring mutually respected rights and responsibilities.

[From the Wall Street Journal, May 28, 1976]

A CODE FOR MULTINATIONALS

(By Paul H. Boeker)

For the past 18 months the U.S. government has been working with other industrial countries of the Paris-based Organization for Economic Cooperation and Development to develop voluntary guidelines for multinational firms as well as a complementary codification of governmental responsibilities to firms. Why?

The U.S. economy and U.S. business have long benefited from a liberal climate for international investment flows among the industrial countries. Throughout the post-World War II period this basically open investment climate has been sustained simply because most industrial countries considered that it unambiguously served their interest in high growth. No multilateral structure—not GATT for investment—was needed to maintain this investment climate. The normal course of events was toward greater liberalization.

The U.S. interest in liberal treatment of investment flows among the industrial economies remains unchanged, but the environment in which the U.S. has to pursue this interest, and therefore the techniques required, have changed dramatically in the last three years. Although the basic environment of regulation regarding foreign investment among the industrial countries is still a generally liberal one, significant political and economic pressures are working to erode an open investment climate.

Most of Western Europe has attained a level of employment and a rate of growth such that the previous the-more-the-better presumption regarding incoming investment is no longer so widely accepted. Moreover, increased emphasis on the qualitative effects of investment, both domestic and international, have led to more careful scrutiny of all investment activity from the standpoint of environmental safety, health and social policy aspects.

In addition, there is a significant intellectual challenge, particularly on the part of trade union economists in the U.S. and Western Europe, to the liberal presumption underlying open investment policies; that is, the presumption that letting investment flow to where returns are greatest increases incomes all around. This challenge implies a presumption that governments should selectively encourage or restrict some kinds of outgoing investment and other kinds of incoming investment.

Most recently two significant sets of events have increased pressures for investment restrictions. First, exaggerated expectations of massive direct investment by the new oil-rich countries prompted a careful review of each industrial country's regulatory devices regarding incoming investment. Second, dramatic revelations in the United States regarding illicit payments and in some cases improper political activity by multinational enterprises has shaken confidence worldwide in this institution.

COUNTERING ERODING CONFIDENCE

Unless effectively countered, this eroding confidence can feed pressures for regulation of investment for years to come, thus threatening the real benefits that we have enjoyed and continue to derive from a liberal international investment regime. U.S.-based multinationals have recognized this problem, as indicated by the rash of company codes now being issued by U.S. firms. Company codes are a useful and necessary part of an effective response to public concerns. Yet a series of company codes has limited impact on perceptions and judgments regarding the multinational enterprise as an institution.

Further, company codes do not touch the program of government behavior—an essential element of a stable investment climate. To produce a stable investment environment indications by foreign-controlled firms that they are willing to respect national policies on the environment, regional development, etc., should be balanced by government undertakings to treat these firms no less favorably than domestic firms.

Regulation at the national level can deal with some of these concerns and problems. But national regulations have to be very restrictive to affect decisively behavior in other jurisdictions; thus they involve an inherent bias towards overkill. Unilateral approaches can also invite counter actions by others. For example, even if governments could successfully pinpoint particularly favorable and less favorable investments for their interests, efforts to selectively pull these in and push them out through investment aids and restrictions would yield an unstable

system of competitive actions and reactions by others; in short, the beggarthy-neighbor cycle spiraling toward the most restrictive possible environment. Finally, the benefits of the U.S. of a liberal climate for international investment depend upon other countries playing the game as well. Unilateral approaches simply cannot yield this essential reciprocity.

If valid, this analysis leads to two fundamental conclusions. First, a liberal climate for international investment flows among industrial countries will not survive resigned neglect on the part of its proponents, particularly its proponents in the United States. Second, the time has come to try to extend the discipline of multilateral cooperation to the last, uncovered area of international economic activity—international direct investment.

It is these two conclusions that have motivated the U.S. government to support development within the OECD of an integrated set of undertakings regarding international direct investment. The OECD package, which the foreign and finance ministers of the OECD countries hope to formally approve when they meet in Paris on June 21 and 22, consists of the following interrelated elements:

1. The governments of the OECD, at the ministerial level, will affirm their common orientation towards international direct investment flows. This orientation embodies the fundamental presumption that a liberal climate for international direct investment among the industrial countries is in their common interest and that therefore their common aim is to encourage the positive contribution that multinational enterprises make to the economic and social development of the countries of the region.

2. These governments reaffirm their basic responsibilities for treatment of incoming foreign investment, in particular the obligation to accord foreign-controlled enterprises operating on their territory national, or nondiscriminatory, treatment; the package also includes these governments' basic understanding that they should meet their other responsibilities to multinational enterprises, particularly to treat them equitably and in accordance with international law, to respect contracts concluded with foreign enterprises and to encourage use of international dispute settlement mechanisms.

3. The governments of the OECD agree to take each other's interests into account in the field of investment aids and restrictions and to cooperate to avoid any beggar-thy-neighbor type actions pulling or pushing particular types of investment in or out of their territory.

4. In an effort to address the underlying problem of public confidence, the governments of the OECD plan to recommend to multinational enterprises operating in their territories voluntary guidelines which embody what their governments collectively consider to be high standards of good business practice for multinational firms.

5. The governments of the OECD will agree to establish a consultative process to review experience under each of these basic declarations; in particular the consultation process will review any derogations from the national treatment principle in an effort to eliminate them; consultations will also monitor the "don't-beggar-thy-neighbor" principle in the field of investment aids and restrictions; and finally, consultations will review experience with the guidelines for multinational enterprises.

Because of the importance of this negotiation to U.S. business, the Department of State, which has responsibility for these negotiations, as well as Treasury, Commerce and other government agencies involved have worked closely with U.S. business not only to consult on the course of the negotiations but also to help the administration develop its position on the substance of the guidelines. An advisory committee was set up last summer, which included representatives from the U.S. Chamber of Commerce, National Association of Manufacturers, the U.S. Council of the International Chamber of Commerce and a number of other business organizations and companies as well as representatives from labor, consumer groups, the academic community and the legal and accounting professions. Succeeding drafts of the guidelines and the related intergovernmental undertakings have been regularly provided to business and other interested private sector groups through the advisory committee at each stage of the negotiations.

STANDARDS OF BEHAVIOR

The challenge to the governments of the OECD to specify what high standards of business practice multinationals should follow has now led to a set of standards which should be ones that U.S.-based multinationals can indicate with confidence that they do follow, and intend to follow, in their operations. U.S.-based multinationals therefore will have an opportunity to indicate what is, despite the illicit payments nightmare, the actual state of business standards for the preponderance of U.S. multinations: that is, that they are internationally in the vanguard of those practicing high standards of business conduct.

The U.S. government would welcome such a response in whatever form by U.S. companies to the guidelines. There will, however, be no arm-twisting from Washington—because the U.S. objective from the beginning has been to set up a voluntary compact between governments articulating reasonable standards of business practice and enterprises indicating on their own that these are standards they do apply and intend to apply in the future. The administration has opposed binding international guidelines for multinational enterprises in significant part because it feels the problem of public confidence is most effectively addressed by voluntary guidelines. The best result is not that governments enforce high standards through regulation but that the enterprises themselves indicate from their side that they can and will apply high standards of business practice.

The U.S. objective, a liberal climate for international direct investment, is unchanged. But the approach required to sustain this objective in the current environment is no longer total laissez-faire, but rather the creation of multilateral structures for cooperation and restraint on unilateral action. The U.S. government, therefore, has supported development of OECD guidelines for multinational firms in an effort to sustain an international environment for these firms conducive to their making their full contribution to economic growth in the industrial countries. While our objective relates to the industrial country area where 70% of U.S. overseas investment is, the basic approach and successful OECD guidelines for multinationals would have a broader impact on general confidence in this institution world-wide.

[From the Washington Post, May 28, 1976]

OECD TO SET MULTINATIONALS GUIDELINES

PARIS, May 17—The main industrial countries will lay down official guidelines next month designed to overhaul the behavior of multinational companies.

With the United States doing considerable prodding, the member governments of the Organization for Economic Cooperation and Development have agreed to a sternly worded code of conduct for multinationals.

The code covers everything from bribery of local officials to pricing policies.

OECD sources said the code was much more specific and employed tougher language than had earlier drafts on the subject drawn up by OECD experts. It appeared to reflect a hardening attitude in both America and other countries following disclosures in recent months of bribery, kickbacks and an assortment of illegal or dubious practices engaged in by some multinationals as routine methods of doing business.

The code, which is expected to be formally approved at an OECD ministerial conference here late next month, is especially stringent about bribery. In contrast to earlier drafts which merely urged international firms to "observe the best standards set by relevant local customs," the final wording states that they neither "render" nor "be solicited to render" a bribe, "other improper benefits, direct or indirect" to a civil servant or public officeholder.

The code also seeks to limit the multinationals' political activity. It bans contributions to political parties and candidates unless local law clearly allows it. Multinationals are told to avoid "improper involvement" in local politics, although what is improper is not clearly defined.

In itself, the new code carries no teeth. It is therefore uncertain whether it will lead to significant changes in practice or merely amount to a batch of pious, but mainly ignored, principals.

However, OECD authorities believe that several governments which intend to ratify the code also will enact at least some portions of it into law. Certainly, multinationals that openly defy it will be running risks in several European nations where there already is rising political pressure to restrict their growth or even to force them to cut back. In both France and Italy, multinationals have become prominent whipping boys for the increasingly powerful parties of the left.

It is understood here that the American government's insistence on a toughly worded code of conduct was intended to forestall future backlash against the multinationals, many of which are controlled by American capital. U.S. government officials are known to feel that every time a multinational firm receives adverse publicity, it adds fuel to political anti-Americanism abroad.

A CODE OF CONDUCT FOR TRANSNATIONAL CORPORATIONS

(Introductory Comments by Gaylord Freeman, Honorary Chairman, the First National Bank of Chicago, to the Chicago World Trade Conference 1976)

On March 11, 1975 the directors of Gulf Oil announced the appointment of a committee to examine certain foreign payments made by Gulf Oil officials, and on January 15, 1976 four top executives of Gulf resigned.

On August 1, 1975, it was announced that the Lockheed Corporation, our country's largest military supplier, had apparently made improper payments in connection with foreign sales of aircraft and systems. Periodically the papers reported further developments in that case, and on February 13, 1976 the two senior officers of Lockheed resigned.

Early this year our government, which as recently as two years ago was giving our businessmen tips on how to get business in certain foreign countries, reversed its attitude and began an apparent "crack-down." As Ray Garrett may explain more fully, the SEC developed an intense interest in the making of such improper payments and the falsification of records to hide such payments. It began a practice of requesting voluntary disclosure of the use of corporate funds to obtain foreign sales.

This led to first a trickle and then a torrent of declarations by corporate managements of improper or at least "sensitive" payments in connection with sales abroad. A quick count of stories in *The Wall Street Journal* would indicate that approximately

eighty-eight companies have reported such questionable payments.

On February 10, 1976 the Internal Revenue Service announced that in connection with the examination of tax returns it was going to question the senior executives of the top 1,200 companies about such payments. It is not likely that the agents themselves, already overworked, embraced this new assignment with enthusiasm, but they are pursuing it in a detailed way.

Upon my first reading of the IRS questions, I felt they were not unreasonable.

(1) Did the corporation, any corporate officer or employee or any third party acting on behalf of the corporation, make, directly or indirectly, any bribes, kickbacks or other payments, regardless of form, whether in money, property, or services, to any employee, person, company or organization, or any representative of any person, company or organization, to obtain favorable treatment in securing business or to otherwise obtain special concessions, or to pay for favorable treatment for business secured or for special concesions already obtained?

(5) Was any corporate officer or employee compensated, directly or indirectly, by the corporation, for time spent or expenses incurred in performing services for the benefit of, or for the purpose of opposing, any government or subdivision thereof, political party, candidate or committee, either domestic or foreign?

However, I have been informed by the officers of one of the corporations represented in the audience that the IRS agent, in going over these questions with their management interpreted question 1 to include any payment even to one of its own employees to solicit business. Thus the answer obviously is that every company has done so—though in most instances quite properly.

The Agent suggested that the answer to question 5 would have to be in the affirmative if any employee at any level had ever made a telephone call or made a personal request on company time to urge the city Sanitation Department to pick up garbage or to urge a school board member to vote in favor of expanding the school or to express the company's attitude on pending legislation. So interpreted, the question would have to be answered in the affirmative by virtually every company, and it would be literally impossible to make a list of the occasions.

Thus, the significance of these questions lies entirely in the government's interpretation of them.

That's bad enough—but now the questioning of the business executive is no longer confined to the board room or the government agency—it has been extended to his private office—and into his home.

Earlier this month a self-appointed group calling themselves the "Peoples Bicentennial Commission" mailed personal letters to over 10,000 secretaries who work for major corporate executives and 13,000 journalists offering $25,000 in cash if they could provide information leading to the arrest and imprisonment of a chief executive of one of Fortune's 500 corporations.

Last month this same group—Peoples Bicentennial Commission or PBC—mailed to the wives of many of our nation's top executives, at their home addresses and in their given names, a tape cassette on which a quiet voice conveys a message which includes in part:

"Dear Friend: We are communicating with you because your husband is one of the top business leaders in the country. For that reason, we think you should listen carefully to what we have to say. No doubt you are aware of the recent revelations of widespread corruption and criminality in the corporate board rooms. It started with the Watergate investigations when 17 major American corporations were forced to admit illegal campaign contributions and payoffs. But, that was merely the tip of the iceberg. During the past three years, corporate scandals have reached epic proportions. ITT was discovered to have worked for the overthrow of the democratically elected government in Chile. Scores of American multi-national corporations have been implicated by the Justice Department, the SEC, and the Treasury Department in scandals involving hundreds of millions of dollars in bribes, kickbacks, and payoffs in this country and abroad. Lockheed has already admitted to paying out $202 million; Northrup, $30 million; Exxon, $27 million; Tenneco, $12 million.

"We think these corporate scandals put a special responsibility on your family to ask some probing questions of your husband because it is no longer possible to argue that the rampant corporate criminality represents merely isolated incidents or the aberrational behavior of a few perverted individuals. In fact, a recent survey by the prestigious Conference Board found that over half the executives surveyed said that they would not hesitate to make the same kind of payoff if they felt it would help their company make a sale.

"Have you ever asked your husband which half of that survey he falls in? Have you ever asked him if he or his colleagues or his firm have ever been involved in criminal activity?

"Would your husband inform the authorities if he was aware of illegal conduct among his own friends and associates?

"Would you inform the authorities if you uncovered such information?

"In the spirit of '76, we are the Peoples Bicentennial Commission."

Shortly thereafter, these wives received a letter which reads in part:

"Today, 200 giant corporations already own over two-thirds of the manufacturing assets of the country. Heading up these corporate empires are a small group of nameless, faceless men who have amassed enough power to virtually dominate American life, from the aisles of the supermarket to the halls of Congress.

"Your husband is a part of this small privileged business elite. That puts a special responsibility on you and your family to speak up against corporate policies that result in price-fixing, induced unemployment, environmental destruction, excessive profiteering, unfair distribution of wealth, and other abuses.

"We hope you and your family will question your husband on these issues we have raised, as well as do your own investigating into some of the concerns that we have presented."

A week or so later, the wives received another letter as follows:

"The PBC is offering $25,000 in cash to anyone who can provide us with concrete information that leads directly to the arrest, prosecution, conviction, and imprisonment of a chief executive officer of one of America's Fortune 500 corporations for criminal activity relating to corporate operations.

"If you have any further questions or would like to provide us with information that you think is relevant, please drop us a line at PBC, 1346 Connecticut Avenue, N.W., Washington, D.C. 20036.

"In the spirit of '76, The Peoples Bicentennial Commission."

In this unique and in some ways terrifying atmosphere, we are called upon to say something useful about "a code of conduct for transnational corporations."

A code of conduct sounds tempting. In the troubled waters of the current examination and secret sleuthing, many corporations are reaching for a code of conduct as for a life preserver in the stormy sea.

For some Congressmen and Senators the present atmosphere provides a joyous opportunity to point to the corruption of domestic business (and foreign officials) with an outraged sanctimonious attitude.

To some leftist groups, the revelations are merely proof of what they have always known, that business is crooked and that the bigger the business the more crooked.

To the social scientist there is the apparent incongruity of the business executive engaged in, or condoning, conduct for the benefit of the stockholders which he would never have indulged in for his own benefit.

Some business groups fear that the present disclosures and resultant discussions may lead to the adoption of more burdensome taxes on foreign income and perhaps legislation penalizing foreign investment.

To a more thoughtful group, the present atmosphere constitutes a real tragedy. It leads to a further loss of public confidence in one more basic institution. We have suffered the loss of confidence in government administration as a result of Watergate. We have suffered a less dramatic but important loss of faith in the church. And now we face a significant loss of confidence in the integrity of business.

To one who has been intimately acquainted with business morality for over forty years and has seen a dramatic upgrading in accepted standards of conduct—this current parade of executives crying "mea culpa" is devastating—it presents a grossly unfair picture of current business ethics.

Too many of today's corporate leaders are sufficiently on the defensive that they do not even consider acknowledgement and justification. The executive tends to feel that he has but two alternatives, either to:

a. declare with pride that his corporation has been entirely innocent of any wrongdoing in any part of the world (a fact of which he cannot actually be certain), or

b. acknowledge the existence of certain instances of impropriety and declare his determined commitment that no such impropriety will ever occur again.

To make this "crystal-clear" some executives are tempted to have their corporations adopt codes of conduct so self-righteous as to make a monk's vow of poverty seem greedy by comparison.

This is a simple reaction—perhaps too simple.

We have an outstanding panel today to discuss this subject: Dr. C. Fred Bergsten, Senior Fellow, The Brookings Institution; our own Ray Garrett, who took leave of absence from Gardner, Carton & Douglas for two years to serve as the Chairman of the SEC; and Alberto Jimenez De Lucio, Deputy Executive Director of the Center for Transnational Enterprise of the United Nations. I am sure that these gentlemen will each have definite ideas, and I am grateful to them for that. I myself am confused and will merely seek to raise five basic questions about self-adopted corporate codes—with no mention of governmentally imposed codes either here or abroad. My questions relate to:

1. The subject of any such code.
2. The sincerity of any such code.
3. The test of propriety.
4. The question of why this should be a matter only for the transnationals. And lastly,
5. If we are going to have a code, what should be its form?

1. THE SUBJECT

Times change. So do our ideas—even the accepted meaning of a phrase. "A code of conduct" today has a definite connotation as a result of the dramatic events of the last few months. Is this implicit connotation too limited?

As recently as two years ago, the forward looking management of a transitional cor-

poration faced with the subject of a code might have analyzed the situation thus:

The transnational corporation has done more to increase the world's wealth than has any other institutions nation or philosophy. Without the transnational corporation, the oil of the Middle East would be undeveloped. The minerals, gold and diamonds of Africa, the rubber of the Far East, the sources of wealth in many less developed countries would be undiscovered or undeveloped.

The transnational corporation has not only created tremendous new wealth. It has caused its distribution far more widely throughout the world and within individual countries. The transnational corporation is entitled to the world's gratitude, but, by its distributive effect it has inevitably brought about changes. In addition, it is owned by "foreigners."

When a multi-national corporation in the retail field opens stores in Venezuela, it changes the purchasing habits of hundreds of thousands of Venezuelan citizens. They are enabled to obtain more consumer goods of better quality at lower prices. And the existence of this large purchasing capacity stimulates local production and hence creates additional jobs. But it also challenges and perhaps destroys hundreds of small shops and the livelihood of those shopkeepers.

Thus, this transnational corporation has well served the foreign country and its people. But it has effected changes. Many local citizens have benefited. A few have suffered, and those few are likely to be more vociferous than the many who have benefited. Thus the Venezuelan government, hearing these acomplaints and adhering to Article 21 of the Andrean Pact, has required that 80% of the ownership of the Venezuelan subsidiary must be sold to Venezuelan citizens.

So two years ago the transnational executive might well have said:

"I, and other transnational managements, both in our individual interest and our common interests should adopt more thoughtful programs or codes of conduct which might include our intentions to:

a. Better explain to the public the purpose and method of our operation;

b. Play a more significant role in local civic and charitable affairs;

c. Be sensitive to the cultural and traditional attitudes of the local population;

d. Encourage local production;

e. Offer employment to those whose current activities are jeopardized by our own operations;

f. Promote indigenous nationals to upper echelons of management as rapidly as they can be prepared for the responsibility;

g. Encourage the development of schools, whether at the trade school level or the business school level, that will enable the people of the area to develop greater capabilities in all stages; and lastly

h. Stay out of local politics except in the most unusual circumstances."

Two years ago we would not have thought to say anything about "sensitive" payments, or incorporate reference thereto in our codes although we might have known that some such payments were a recognized part of doing business in some countries. According to a front page story in *The Wall Street Journal* of April 14, 1976, William Wearly, Chairman of Ingersoll-Rand Co., said:

"Two years ago I went on a trip with other businessmen to the Mideast. The Treasury briefed us on what payments were necessary on a country-by-country basis. Payments are required. It is considered politically benevolent by rulers of those countries for companies to distribute money.

"Both the Treasury and State Department representatives were trying to keep us from spending money on the wrong people. They told us that as soon as we came into a country people would approach us, telling us that they had the right connections to get business. They said we had to find the guys who really were connected with the top people and use them as sales agents."

The same Treasury Department which two years ago was giving advice on the subject now has its Internal Revenue agents pursuing you on the apparent assumption that what you did in accordance with their recommendations is now improper.

Clearly, "a code of conduct for transnational corporations" today has an entirely different connotation that it did only two years ago.

Why then do I relate the conditions and type of code that might have been in our mind two years ago? Because it is just possible that in our society two or three years from now we may look back on the spring and summer of 1976 and say, "what a tizzy we were in." "What narrow vision we had, to think of a code of conduct in the single sense of decrying bribery or questionable payments."

Thus I would suggest for our panelists' consideration the question whether the codes that are being discussed today, largely confined to one phase of our activities abroad, serve our real purposes. In raising this question, I am a little fearful that we businessmen may tend to take a relatively cyclopic view of a single issue party because it is much easier to stand with our hands clasped and say something pious (even though we mean it) than to really dig in and attempt to make our corporation a better neighbor or a more acceptable influence in the foreign location.

2. SINCERITY

I do not doubt the sincerity that prompts a corporation to adopt a code of conduct. I believe that each corporate management has meant precisely what it has said, that it will not engage in any bribery or improper payments—none at all. Absolutely.

Let us assume that that is you own policy—100 percent.

You open a small office in a Southeast Asian country and put a very bright young man in charge. He starts out with a bang and works aggressively. He does well, but he feels a long way from home, and he is homesick that he does not hear from the home office. For a week, two weeks, three weeks, he does not receive a single communication. He feels forgotten. In the fourth week the mailman stops by and says that he is burdened with a great deal of mail everyday and that he cannot possibly deliver it all.

Besides, he can't devote all of his time to mail delivery because he is paid the equivalent of only $30 per month, and hence has to have a second job which takes much of his time. He recognizes that your company's mail is important so he would like to put in the extra time to get it delivered, but it would cost him some of the time he is devoting to his second job. So if you could afford to give him a mere 58c a week that would be adequate to cover his costs. Should you give him the 58c a week to get your mail? It is an insignificant amount.

Suppose you send a second American to that country. His household goods arrive on a ship from the United States and are unloaded on the dock. They sit there in the sun and the humidity for a day, two days, a week, two weeks, a month. The customs office is too busy to clear them. Meanwhile your new man and his family are living in a hotel at $120 a day. The customs office is too busy to clear the furniture, but for $1,000 the papers could be put on top of the pile and would consequently be approved within 24 hours. Should you pay? It is a somewhat larger amount but still insignificant.

Is bribery a matter of amount or a matter of principle? I don't question the sincerity of any corporate code. But I sometimes wonder whether the corporate boards in their initial sincerity have really asked themselves the hard question as to whether they will be able to live up to their declaration 100 percent. Perhaps our panel will have thoughts on these issues.

3. THE TEST

In that poor South Asian country the government acknowledges that its employees cannot live on their wages and hence have to have some supplemental income. Moderate bribery is considered quite appropriate. It may be illegal under the statutes, but it is not considered improper. It is a universal practice. Is bribery a matter of legality, morality or custom?

If bribery is a matter of principle absolutely, then the sad fact is that your corporation cannot do business in some countries. You will have to abandon those opportunities to competitors from other countries or to other U.S. corporations with somewhat more flexible attitudes toward such payments. Is it your duty to adopt a more moralistic attitude than that accepted in the "host" country? Are U.S. corporations to become self-appointed missionaries of morality?

Yesterday's Wall Street Journal reports that earlier this week the present Chairman of the SEC "suggested that U.S. companies can continue making payments 'extorted' by foreign tax, customs and other officials as the price of doing business overseas. 'Nothing the SEC has done interferes' with such 'grease' payments, Mr. Hills insisted, provided that they are accurately entered on the company's books and that management knows they are being made."

Let us take an easy case. Let us assume we base our code not on complex morality or custom—just on legality. Whose legality?

Of course, we don't want to do anything for which we, or our employees might be punished. Thus, we do not want to violate a law. But, whose law? Any law? Or just any law that is applicable to us? Would we feel differently if we ourselves were innocent but by our actions we made it possible for another to violate a law?

An example is presented in the relatively common practice of domestic manufacturing corporations here in the U.S. selling abroad to foreign-based individual dealers or distributors. A foreign dealer may ask the U.S. manufacturer to bill him at an artificially high price—or perhaps just refrain from giving a cash discount. The foreign dealer then pays an excess amount, and the U.S. manufacturer holds that excess for the credit of the foreign dealer. Or, on the request of the dealer, he may transfer that balance to a bank here or perhaps in Switzerland for the account of the foreign dealer. The American manufacturer is not engaged in any illegality in doing so.

But why does the foreign dealer request such an over-billing and retention? The American manufacturer doesn't know. He may suspect that it may be in order to enable the dealer to report higher costs and hence lower profits and by thus falsifying his records to evade taxes in his country. It may be that the foreign dealer uses this mechanism to escape the foreign funds control regulations of his country. Perhaps there are other reasons. The American manufacturer has not felt it necessary to inquire.

Should he? Of course he would attempt to prevent his agent or employee doing anything improper—but is he obligated to prevent an independent contractor from violating a law which is not directly applicable to him or to his employees? If so, is our standard strictly legal and not moral?

If a foreign representative increases his fee, should the transnational corporation inquire whether any of it goes from his hands

to a foreign customs agent? What if a forwarding agent increases his fee? Is there greater cause for suspicion? Is the transnational's management obligated to look into this? Is so is the test the question of the independent dealer's morality—or the fact that the U.S. corporation benefited from this immorality?

There is a collateral question that gives me some discomfort. Each of us as an individual likes to be more than honest. We like to be moral. It is rewarding to the executive to live by a higher standard than the law requires. Rewarding to whom—to the stockholder or just to the manager? Is a higher standard of ethics a mark of honor or just another fringe benefit—untaxed compensation in the form of moral satisfaction to the disadvantage of the stockholder?

4. THE LOCAL SCENE

I note that our subject today is "A Code of Conduct for *Transnational* Corporations"—not domestic corporations. Is there an implication that the transnational corporation has a greater need for a code than a domestic corporation or that it needs a different code?

I am reminded of a phrase developed in a different connection a few years back—"It takes two to tango." For every corporate briber I assume there has to be a government bribe recipient. It would be my guess, based on the scale of gifts of some of the corporations, that there are many more government bribees than business bribers. Thus I suffer a little at the thought that government representatives should be accusing business.

I am also concerned that the current uproar may suggest that we have telescopic vision. Our Congress is incensed about allegations of alleged payments to some Japanese officials or Saudi princes. We immediately assume that they are guilty, as many of my friends assume that Prince Bernhard of the Netherlands is guilty. They even suggest that it foretells the fall of the House of Orange. But businessmen in the Netherlands don't assume that at all. From my own inquiries, it would seem that the majority there feel he is entirely innocent, as we all hope he is.

So far the entire emphasis has been on foreign payments. Why? My recollection is hazy, but I remember some politicians in the United States that have been accused—perhaps equally unjustly—of impropriety. In the White House there was Sherman Adams. In the Senate, Maynard Tydings of Maryland; Edward Gurney of Florida; even the current leader of the Republican Party in the Senate, Hugh Scott, has decided not to run again—under some cloud. In the House, I remember Michael Kirwan of Ohio, George Hanson of Idaho, and John Watts of Kentucky. In some recent stories about Lockheed, there are implications that there may possibly be an involvement of current governmental officials. And in Chicago, we cannot escape the recognition that in the past few years, 7 members of our City Council and 5 other local officials have been indicted for impropriety. Yesterday's Chicago Tribune contained photos of Alderman Keane going to prison, Republican Rentscheler being sentenced, and Governor Moore (of West Virginia) going on trial for extortion.

It is interesting how all of a sudden we see the U.S. military publicly criticizing its officers for accepting visits to hunting and fishing lodges maintained by military suppliers. According to last Tuesday's *Wall Street Journal* an additional 21 high ranking officers and 3 civilians were admonished last week. I don't remember any such criticism before the last few months.

I don't point out others' indiscretion to justify any illicit or immoral payments on the part of business—not at all. Like Caesar's wife, we should be above reproach, even if other segments of our society are not.

But in passing, what is above reproach?

Each of you has undoubtedly made political contributions to local and national politicians. Why? Primarily to see that the best candidate is elected. But is that the *only* reason? When you sent in your check did you hope that it came to the personal attention of the candidate? Did you attempt to make sure that he knew that you had supported him? Was this in the hope that he would listen to you if you had a suggestion—in the national interest of course?

I am not entirely clear in my own mind exactly where the magic line should be drawn, and I am not entirely comfortable about those questions which the IRS is now asking. Of course we talk to public officials—often about our own special interests. That is not improper. If we give a contribution to a candidate for public office in the hope that if he is elected "he will at least listen to us" and presumably listen to us more attentively than if we had not supported him—are we acting improperly? I don't believe our elected officials are prepared to urge that position quite yet. Are we?

5. WHAT FORM SHOULD A CODE OF CONDUCT TAKE?

Another question that bothers me is what do we mean by a "code"? Is a code a list of do's and don't's—a laundry list? Or is it a single principle?

Caterpillar Tractor Corporation, long a very highly principled and respected transnational corporation, adopted a code two years ago. It has been very well received and in such demand that 5,000 copies have been distributed. It covers a wide range of topics, including Product Quality, Competitive Conduct, Ownership and Investment, Currency Management, and Public Responsibility. It is a very good code, and the company is entitled to credit for a thoughtful approach—but it doesn't mention bribery because the Caterpillar officers, never having engaged in any such impropriety, never thought to mention it. That is one of the problems in a laundry list approach. You just can't provide for everything that may come up in the future.

To avoid this pitfall, the Chairman of Atlantic Richfield, Robert O. Anderson, after careful consideration of the laundry list approach, has written:

"I endorse a different approach. In my view, a company's conduct depends, first, on a clear line of direction from senior management, and then on the good faith and good judgment of every employee in carrying out that policy. Let me, therefore, make it unmistakably clear that our policy—a policy for which every employee is to be held accountable—is to maintain ARCO's honorable reputation as a company of the highest standards of responsibility and accountability. To accomplish this simple but sometimes difficult objective, we rely not on a book of detailed rules but on the character and judgment of every employee. Moreover, I have full faith that ARCO employees at all levels will continue to conduct themselves so that their actions will never embarrass or disgrace themselves or the company. Disclosure of conduct should, therefore, never be a matter of concern."

One can argue that the laundry list is definite. It doesn't require any interpretation. It is precise. These are advantages. On the other hand, it is difficult and probably impossible to anticipate every form of impropriety and to cover it completely.

A shorter statement of principle has the advantage of brevity. But will it be uniformly interpreted throughout the world?

In thinking about these alternate approaches, it has occurred to me that there is an example of each type in the Bible.

Moses, in attempting to provide moral leadership for the Israelites came forth with a precise code, a laundry list—Thou Shalt Not—1 through 10.

On the other hand, the Bible tells us that Jesus said, "Therefore all things whatsoever ye would that men should do to you, do ye even so to them." This has frequently been restated as "do unto others as you would have them do unto you."

Looking into your own life and those of others in your community, which of those two types of codes of conduct has been, or is likely to be, the more useful—the laundry list or the statement of principle?

Does this give us any help in determining the form of code we might want our corporation to adopt?

I am deeply grateful that I am not called upon to pass any judgment. I am interested in the subject but I am confused. I am afraid that conclusion has shown in the questions that I have raised.

Fortunately, our panel is composed of outstanding and experienced men, and I hope that they can be helpful to each of you, not only in respect of the questions that I have raised, but the more fundamental ones which I am sure they will bring to your attention, including discussion of codes which might be imposed by law.

Let me turn now to our first panelist—

CLEAN AIR AMENDMENTS—PERFORMANCE WARRANTY NEEDED TO PROTECT CONSUMERS

Mr. MUSKIE. Mr. President, under present law automobile manufacturers are required to warrant that the emission control systems of new motor vehicles and engines in actual use will conform to the emission standards for 5 years or 50,000 miles provided that the vehicle or engine is maintained properly.

The Committee on Public Works adopted several amendments which were introduced by Senator BENTSEN to insure that no anticompetitive effect would result if the emission control warranty is implemented. These include a study by the Federal Trade Commission, establishment of an aftermarket parts certification program, and a prohibition of any attempt to tie warranty protection to the use of dealer's parts and service.

Senator BENTSEN will propose an amendment—No. 1614—which would reduce the useful life in the performance warranty to 18 months/18,000 miles. The committee rejected this proposal. The other measures were deemed to be more than sufficient to protect the aftermarket industry. Adoption of this amendment would simply protect the automobile industry at the expense of the consumer and the public.

The performance warranty is designed to protect the consumer. The consumer pays for an emission control system that is required to be designed to last for the useful life of the car. Without the warranty the manufacturer has no financial responsibility to assure that a car will continue to meet standards after 18,000 miles. The Bentsen amendment would shift that burden completely to the consumer.

The warranty also helps assure that public health will be protected by providing an incentive for manufacturers to build cars that actually perform for the

full 50,000 miles to which they are certified.

The choice of 50,000 miles for the useful life was based on the fact that automobiles generally last for 100,000 miles. Low mileage vehicles in certification shows emissions that are less than the standards. However, these emissions generally increase as the vehicle and engine gets older, and at mileages above 50,000 the emissions are greater than the standards. But, if a vehicle meets the emission standards at the 50,000-mile halfway point in its total life, as required, it is reasonable to assume that its average emissions over that total life will meet the emissions standards established to achieve health-related air quality. This purpose would be defeated if the performance warranty were reduced to only 18,000 miles.

And the warranty reduction is opposed by consumer groups. For example, Consumer's Union states that—

It is highly predictable that if (a shorter warranty period) is mandated device durability will be designed downward.... This would add substantially to the consumer's cost of maintaining emission control devices.

The Consumer's Federation of America is "opposed to this anticonsumer amendment."

Ralph Nader has stated:

Your proposed amendment to reduce the 50,000 mile/5 year... automobile emissions warranty in the Clean Air Act would not only adversely affect air quality but also would hurt consumers while benefiting only the auto manufacturers.

The major change in the warranty provision proposed by Senator BENTSEN is the reduction in useful life to 18 months/18,000 miles. As noted above, this would be inconsistent with clean air goals and consumer protection.

The performance warranty is one of the most important tools for achieving air quality goals for automobiles. Any attempt to reduce its coverage must be rejected.

In order to provide further information for Members of Congress and the public in this matter, I ask unanimous consent to have printed in the RECORD: First, a letter from the Consumer Federation of America, sent to all Senators, opposing this anticonsumer amendment; second, a letter and attachment from Consumers Union, Publisher of Consumer Reports, which opposes reduction of the warranty on emission control devices; third, a letter from Ralph Nader to Senator BENTSEN which states that the amendment would adversely affect air quality and hurt consumers while benefiting only the auto manufacturers; fourth, a letter from the Director of the Bureau of Competition, Federal Trade Commission to the Assistant Administrator for Enforcement of EPA which describes their suggestions for handling potential anticompetitive effects of emission control warranties, suggestions which were generally adopted in the committee bill, and which do not include reducing the performance warranty; and fifth, a committee staff memo, "Issues and Answers on the Aftermarket Industry and the Performance Warranty."

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

CONSUMER FEDERATION OF AMERICA,
Washington, D.C., April 28, 1976.

Re Bentsen amendment to effectively limit section 207(b) Auto Emissions Performance Warranty of the Clean Air Act to 18,000 miles.

DEAR SENATOR: Consumer Federation of America, the nation's largest consumer organization, is composed of over 200 national, state and local nonprofit organizations that have joined together to espouse the consumer viewpoint.

Senator Bentsen has announced his intention to introduce an amendment on the Senate floor to limit the 50,000 mile Section 207 (b) auto emissions performance warranty to 18,000 miles. CFA is opposed to this anticonsumer amendment for the following reasons:

1. In urban areas having emission inspections, consumers whose cars fail the emission test beyond 18,000 miles will have to pay to have their cars remedied even when the cars were properly maintained. This could well create absolute consumer liability for the repair of autos that failed the test despite the fact that the manufacturer is responsible.

2. Reducing the performance warranty encourages the auto manufacturers to lower quality on the assembly line. The reduced quality control may save the consumer one dollar ($1) in the sticker price of the automobile but may well cost the new car consumer $100 in repairs on the road when a car fails to meet the emission standards between 18,000 and 50,000 miles.

3. Routine service on the emission control system can be performed by any independent garage. The Senate Public Works Committee bill, S. 3219, even provides a $10,000 fine for any auto manufacturer to communicate in any way to the car owner that the warranty is conditioned on use of parts or service provided by the manufacturer or its dealers. (Section 203(a) (4) and Section 205.)

The Senate Public Works Committee bill also requires the Environmental Protection Agency to eliminate potential anticompetitive effects of the performance warranty on the after-market parts industry by setting up a voluntary parts certification program. The auto manufacturer is prohibited from invalidating the performance warranty where certified parts were used by the consumer.

5. More vehicles are already recalled each year for safety defects (5.6 million safety recalls each year) without any significant anticompetitive effects than will be "recalled" under the Section 207(b) warranty (2 to 4.5 million vehicles each year).

6. There is no persuasive evidence that reducing the performance warranty to 18,000 miles will improve the competitive position of the independent parts and service industries in relation to the monopolistic auto industry. More stringent measures such as antitrust actions and providing independents with access to warranty repairs are indispensable steps toward the accomplishment of this goal.

7. During the hearings on the Clean Air Act, Congress did not have the benefit of testimony from consumer groups such as CFA, Consumers Union, the National Consumers Congress and Ralph Nader's Public Citizen. Consumers Union did advise the House Subcommittee on Environmental Problems Affecting Small Business by letter that it opposed reducing the 50,000 mile warranty to 18,000 miles.

Very truly yours,
CAROL TUCKER FOREMAN,
Executive Director.
KATHLEEN F. O'REILLY,
Legislative Director.

CONSUMERS UNION,
Washington, D.C., April 2, 1976.

HON. EDMUND S. MUSKIE,
Chairman, Subcommittee on Environmental Pollution, Committee on Public Works, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of April 1 asking for any update there may be of Consumers Union's June, 1975 position on the auto emissions warranty issue. We have not changed or added to our position of that date as it was stated in our letter to Representative McCollister. A copy of that letter is attached for your information.

If we can be of further assistance to you in preparing for debate, please let me know.

Sincerely,
MARK SILBERGELD,
Attorney, Washington Office.

Attachment.

CONSUMERS UNION,
Washington, D.C., June 2, 1975.

HON. JOHN Y. MCCOLLISTER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN MCCOLLISTER: This is in response to your request for Consumers Union's views on H.R. 3598. This Bill, which you have introduced and which is now pending before the Health Subcommittee of the House Committee on Commerce, would prohibit EPA from requiring warranties of more than one year's duration on automobile emission control devices.

The purpose of the legislation is to prevent the automobile manufacturers and their franchised dealers from using the presently required five-year warranties to capture the markets for replacement parts—including the devices and many related parts such as spark plugs—and for repairs related to maintenance of such devices. After consultation with our Auto Test Division, we have concluded that we cannot support H.R. 3598 but prefer an alternative approach.

In response to the five-year warranty requirement promulgated by EPA, auto manufacturers have designed the control devices, and the various parts related to the performance of these devices, for substantially longer endurance than would be the case under a one-year warranty. It is highly predictable that if the one-year warranty period is mandated, device durability will be designed downward, so that devices and parts will not be expected to perform according to EPA standards for more than one year. Because there is no "quick" test which state auto inspection officials can use to determine whether devices are operating according to standards, this would mean that many more automobiles would be operating with inadequate devices than is now the case. Even when such a "quick" test is available, design of device durability for a one year period may well result in more devices operating below standards for the better parts of several years before they are detected upon inspection and required to be repaired or replaced.

In addition, a reduction in designed durability would mean an increased incidence of repair for such devices and parts. This would add substantially to the consumer's cost of maintaining emission control devices to EPA performance standards.

The alternative, we believe, is to prohibit new car manufacturers from specifying brand names or manufacturers in warranty conditions which required adequate maintenance and parts replacement. Instead, the law should limit such warranty conditions to performance specifications equal to those met by the manufacturers' own replacement parts and repair specifications, if any, required of their franchised dealers. The law should require manufacturers who use such

warranty conditions to submit these specifications to EPA for inclusion in a public record available to any person. This will permit independent parts manufacturers and independent repair establishments to compete in these markets with the new car manufacturers and their franchised dealers.

This entire problem, of course, is only a part of the historical problem of restraints of trade in the "after parts" and "crash parts" markets. The Federal Trade Commission has for several years been conducting an antitrust investigation in the crash parts industry. It is our understanding that no resolution to that investigation is yet in sight. Appropriate inquiries as to what action, if any, the Commission intends to take in this market and the "after parts" market might assist in obtaining whatever action is appropriate.

We hope that these comments will assist you in finding a solution to this problem. Please feel free to call on us if we can be of further assistance.

Sincerely,

MARK SILBERGELD,
Attorney,
Washington Office.

APRIL 28, 1976.

Senator LLOYD BENTSEN,
U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR BENTSEN: Your proposed amendment to reduce the 50,000 mile/5 year section 207(b) automobile emissions performance warranty in the Clean Air Act would not only adversely affect air quality but also would hurt consumers while benefiting only the auto manufacturers. One measure of the air quality impact is that certification of vehicles to emission standards alone results in an emission reduction of about one-third that achievable through enforcement including the full performance warranty.[1]

Reducting the performance warranty to 18,000 miles will not save consumers money but will cost them money. Lowering the performance warranty will induce auto manufacturers to reduce the initial quality of the emission control system. While the reduced quality may save consumers a few cents on the sticker price of the car,[2] it will cost them many dollars over the life of the car in increased repair costs. There is already too much planned obsolescence in the auto industry without further encouraging it by reducing the performance warranty.

Lobbyists for reducing the performance warranty to 18,000 miles attempt to justify their position on gross exaggerations of anticompetitive effects of a 50,000 mile warranty. Contrary to the lobbyists' allegations, routine service (including spark plug and point replacement, oil and filter changes, carburetor and timing adjustments and PCV and EGR valve servicing among others) can be performed by independent garages and local service stations. The Senate bill, S. 3219, would even improve the present service competitive situation by imposing a $10,000 fine on any auto manufacturer who communicates in any way to car owners that the warranty is conditioned on use of parts or service provided by the manufacturer or its dealers.

To eliminate potential anti-competitive effects, the Senate bill as suggested by the Federal Trade Commission requires the Environmental Protection Agency to set up a parts certification program where an independent parts manufacturer could voluntarily certify its parts as equivalent to an automobile manufacturer's original equipment parts. Where such equivalency of quality has been demonstrated in the aftermarket, the Federal Trade Commission has found that product manufacturers cannot force purchasers to also buy parts and services from the manufacturer.[3] The vehicle manufacturer is protected from undue warranty failures by the certified quality of the repair parts.

Manufacturer repair of cars which violate the section 207(b) performance warranty is very similar to manufacturer recall of motor vehicles for remedy of safety defects. (In both cases, the vehicle owner takes the car back to the dealer for repair of the defect at the manufacturer's cost.) The safety program recalls an average 5.6 million vehicles each year (with a high of 12 million in 1972) with no demonstrated anti-competitive effects. The section 207(b) program will subjest less vehicles (2 to 4.5 million depending upon emission test failure rate) to manufacturer remedy and hence even less potential direct anti-competitive effect through giving franchised dealers an opportunity to sell additional parts and service during a recall. In terms of the entire automobile poulation, only 2 to 4.5% of all cars will fail a section 207(b) emission test and be subject to manufacturer remedy at franchised dealers each year.

In considering other anti-consumer aspects of your proposed amendment, you may want to consult with Consumers Union and the Consumer Federation of America who are also on the reocrd as strongly opposing reduction of the 50,000 mile warranty to 18,000 miles. Both of these groups have also staunchly supported strong competition in the market and have exhibited special concern for small businesses.

Finally, enclosed is a copy of a letter to me from a member of the auto repair industry who opposes the warranty reduction position taken by the industry's Washington lobbyists. In commenting on the distorted "Destroy Your Business" lobbying campaign of the Automotive Service Industry Association (ASIA) and the Iowa Automotive Wholesalers Association, Mr. Schlebach writes:

"These people [the trade associations] are disturbed that a provision such as this is proposed to carry a 5 year/50,000 mile warranty.

"No wonder people are dissatisfied with the automotive repair industry. I am too, and I make a living from it."

Thank you for your consideration.

Sincerely,

RALPH NADER.

FEDERAL TRADE COMMISSION,
Washington, D.C., December 11, 1974.

Re: Corres. No. 97318.

Mr. ALAN G. KIRK II,
Assistant Administrator for Enforcement and General Counsel, U.S. Environmental Protection Agency, Washington, D.C.

DEAR MR. KIRK: This is in response to your letter of September 23, 1974 to Chairman Engman which requested an opinion with respect to the legality under the antitrust laws of certain language used by several automotive vehicle manufacturers in their 1975 emission control warranties and vehicle owner maintenance instructions. In accordance with your discussion with Assistant Director David L. Roll, I understand that because of time constraints you will accept the views of the Bureau of Competition on these matters rather than a letter from the Secretary expressing the views of the entire Commission.

Before commenting on the materials provided for our review, I would like to make two initial points. First, the comments herein set forth represent the views of the Bureau of Competition. They are not necessarily representative of the views of the Commission as a whole or any individual Commissioner.

Second, although the Commission has long been active in seeking to maintain competition in the automotive aftermarket parts and service industry and the Bureau itself has in recent months provided written statements to EPA and Congress concerning potential anticompetitive effects of the warranty provisions of the Clean Air Act on the parts and service industry, the Bureau does not have expertise in the technical aspects of air pollution and the technology of emission control devices.

As you know, the Bureau for some time has been concerned with the competitive problems which might arise for the independent businessman in the automotive aftermarket parts and service industry if the warranty provisions of the Clean Air Act are interpreted so as to allow each major motor vehicle manufacturer to condition the protections afforded by the statutory warranty on the use by the motoring public of parts made by such manufacturer and on the service provided by such manufacturer's franchised dealerships. Such conditions may be characterized as "tying practices" or "tie-ins" which raise serious questions under the antitrust laws because of their potential for adverse competitive impact on independent parts manufacturers and independent service outlets in the automotive aftermarket. The tie-ins which concern the Bureau are those which arise in the implementation of the Section 207(a) defects warranty and which may arise in implementing the Section 207(b) performance warranty.

In construing Section 1 of the Sherman Act and Section 3 of the Clayton Act, the Supreme Court has said that a tie-in violates those laws when the following is shown: (1) the purchase of one "product" (i.e., an automobile which carries with it Clean Air Act warranty protections) is conditioned upon the purchase of a separate distinct "product" (i.e., aftermarket parts and service); (2) sufficient economic power over the "tying" product (i.e., the automobile and its warranty) to make the tie effective; and (3) foreclosure of a substantial amount of commerce in the tied product (i.e., aftermarket parts and service). See *Fortner Enterprises, Inc.* v. *U.S. Steel Corp.*, 394 U.S. 495, 498 (1969). Moreover, if a practice does not fall squarely within the proscriptions against tying which flow from the Sherman and Clayton Acts, the Commission has the power to determine that a practice akin to a tie-in which in substance violates the spirit of the Sherman and Clayton Acts is a violation of Section 5 of the Federal Trade Commission Act. *FTC* v. *Sperry & Hutchinson Co.*, 405 U.S. 233, 244 (1972).

Based upon this authority, the Bureau is of the opinion that any language in warranties and maintenance instructions which will have the effect of substantially foreclosing the independent parts and service industry from competing for the business generated by the Clean Air Act emission control warranties will establish the basis for a violation of Section 5 of the FTC Act.

With the foregoing in mind, I turn now to the specific language of the warranty provisions and maintenance instructions which have been provided to us. They will be examined on a company-by-company basis.

1. Ford—

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[1] Environmental Protection Agency, "Motor Vehicle Emission Control and Enforcement Strategy" 37-38 (June 1975). The performance warranty is essential to mandatory implementation of vehicle inspection and maintenance programs.

[2] The Bureau of Labor Statistics has reported that Clean Air Act warranties (primarily the section 207(a) parts warranty) has added only one dollar ($1) to the price of new cars.

[3] See in the Matter of Chock Full O'Nuts Corp., Inc. 3 CCH Trade Reg. Rep. 20,441 (Oct. 2, 1973); Dec. 11, 1974. Bureau of Competition Letter to A. G. Kirk, General Counsel, Environmental Protection Agency.

In general, Ford's warranty instructions are of more concern to us than the terms of its actual warranty. However, the 1975 Ford warranty does deviate slightly from the warranty contained in MSAPC Advisory Circular No. 15–A (July 30, 1974) which is, we believe, a clear and straight-forward statement of the warranty protection the vehicle owner should enjoy under the Section 207(a) defects warranty. The Ford warranty states that it runs to "the eligible ultimate purchaser and each eligible subsequent purchaser" while the Advisory Circular language does not contain the word "eligible." It is possible that the word "eligible" may suggest to the motorist that he needs to do more to keep the warranty in effect than follow the maintenance instructions. You may want to question Ford on the necessity for the use of this word.

Although the Ford maintenance instructions do not expressly condition the warranty protection on the purchaser's use of Ford parts and the patronizing of a Ford Dealer, the instructions, at the very least, strongly recommend to the purchaser that he use Ford parts and go to a Ford dealer for maintenance. The warranty provides that it will be performed by the selling dealer's (in some cases any authorized Ford or Lincoln/Mercury dealer's): . . . repairing, replacing, or adjusting, following delivery of the vehicle to his place of business, without charge for parts or labor and using Ford service parts or Ford Authorized Remanufactured Parts, any part of the emissions system determined by Ford to be not in conformity with the requirement of the act.

2. General Motors.—

Like the Ford language, the GM maintenance instructions constitute a strong recommendation that the motorist use GM parts and GM franchised dealers. The instructions do this by recommending that "any replacement parts used for required maintenance services or for the repair of emission control systems be new genuine GM parts." "Genuine GM parts" are defined to include those manufactured by or for Pontiac, designed for use on Pontiac vehicles and distributed by Pontiac for any division or subsidiary of General Motors Corporation.* The instructions also shift to the purchaser of the GM automobile the burden of determining if non-GM parts are warranted as equivalent to GM parts by stating that:

If other than new genuine GM parts are used for required maintenance service replacements or for the repair of components affecting emission control, the owner should assure himself that such parts are warranted by their manufacturer to be equivalent to genuine General Motors parts in performance and durability.

Although the 1975 GM emission control systems warranty varies slightly in its wording from the provision in the Advisory Circular, the variance is not substantial.

3. British Leyland.—

The British Leyland maintenance instructions represent almost an explicit tie-in of the warranty to the use of British Leyland parts and British Leyland dealer service. The instructions indicate that the company's dealers are "trained and equipped to use proper parts, either manufactured by British Leyland or approved by it if made by others." A failure resulting from the use of non-approved replacement parts will apparently void the warranty; authorized dealers "will have spare parts that can be used." The language concerning dealer service makes it unlikely that the motorist will go anywhere else if he wishes to preserve his warranty protections:

If replacement of any component at the manufacturer's cost is necessary under the Emission Control Warranty, the work (including parts and labor) should be performed by an authorized British Leyland dealer, *unless written approval has first been secured from British Leyland for use of another service facility.* (Emphasis added).

No British Leyland warranty was sent to us for review.

4. Nissan (Datsun)—

Both the Nissan warranty and maintenance instructions represent a subtle, but consistent, linking of the warranty protection to the use of the company's parts and the patronage of its dealers. The Nissan warranty in the last sentence states that the company's obligation under the warranty: . . . is to repair or replace, at its option, at an authorized Datsun dealership, any part which proves to be defective as required to bring the vehicle into conformity with such standards.

Like the GM maintenance instructions, the Nissan instructions attempt to shift to the motorist the burden of determining if non-Nissan parts will be usable in the automobile. Nissan does this by first warning that "it is important that genuine Nissan parts be used when servicing the system" and the use of replacement parts "which are inferior to genuine Nissan parts may reduce the effectiveness of the system" and then, in the next paragraph, stating:

Therefore, if it becomes necessary to utilize other than genuine Nissan parts, the owner should make certain that such parts are warranted by their manufacturer to be equivalent to genuine Nissan parts in quality.

In light of the foregoing warranty language, we have come to a number of conclusions regarding the likely impact of the Clean Air Act warranty protections on the automotive aftermarket parts and service industry. In our judgment, the warranty and maintenance instructions of GM, Nissan and British Leyland, and to a lesser extent those of Ford, are likely to have a serious competitive impact on the independent aftermarket parts and service industry insofar as emission control systems are concerned. The British Leyland material comes close to an explicit attempt to tie company parts and company service outlets to the emission control system warranty. The impact of maintenance instructions like those of GM and Nissan, which seek to compel the vehicle owner to check the adequacy of the warranty provisions of other manufacturers if he is not disposed to use the company's parts, is clear. It is unlikely that more than a few motorists will take the time and trouble to find out about the warranty provisions of another manufacturer; instead, the motorist will avoid the possibility that the parts made by a company other than the vehicle maker will not have an equivalent warranty by patronizing the company's franchised outlets and allowing the company's parts to be used in the maintenance of the emission control system.

As an alternative to placing an impossible burden on the vehicle owner to investigate the adequacy under his warranty of a myriad of parts made by a large number of manufacturers, a program of voluntary certification could be undertaken by the manufacturers and EPA. The outline of such a program was disclosed in your April statement to the Subcommittee on Environmental Problems Affecting Small Business of the House Committee on Small Business. We have supported and continue to support the aims of such a program.

The major vehicle manufacturers might resist such a program on the ground that only their parts possess the quality and meet the technical requirements of the emission control systems in automobiles manufactured by them. However, the law on tying suggests that although in some circumstances a manufacturer/franchisor may require that its distributor/franchisee purchase non-specifiable items and ingredients from it, the manufacturer/franchisor cannot force the independent distributor/franchisee to buy from it those items and ingredients which could be supplied by other firms if these firms had the requisite specifications to insure quality control. In the Matter of Chock Full O' Nuts Corp., Inc., 3 CCH Trade Reg. Rep. ¶20,441 (October 2, 1973). By the same reasoning, the vehicle makers could be required to make the specifications for emission control device parts and components available to other parties. The same result could be accomplished through an industry program of voluntary certification for aftermarket parts, an approach which we favor.

None of the warranty provisions or maintenance instructions which we have reviewed contain an explicit statement that the vehicle purchaser is free to use any manufacturer's parts and service outlets in complying with the maintenance instructions so long as the parts do not impair the emission control performance. In your April testimony you indicated that EPA was "exploring the possibility of requiring the manufacturers to make a positive statement in their owner's manual that parts and service can be obtained from any competent source . . . ." We urge EPA to implement such a requirement and suggest that the statement recommended by the Motor and Equipment Manufacturers Association for use in the 1975 vehicle owners' manuals would amply suit this purpose. We also believe, as indicated above, that the warranty contained in MSAPC Advisory Circular #15–A is a clear and straightforward statement of the warranty protections the vehicle owner will enjoy under the defects warranty.

If you have any questions or are in need of further assistance regarding the matters discussed herein, please feel free to contact Assistant Director David L. Roll, Noel W. Kane, or myself.

Sincerely yours,

JAMES T. HALVERSON,
Director,
Bureau of Competition.

ISSUES AND ANSWERS ON THE AFTERMARKET INDUSTRY AND THE PERFORMANCE WARRANT

There has been considerable mail from the aftermarket industry—service stations, independent garages, parts makers—predicting that the 50,000 mile "performance" warranty—Section 207(b) of the Clean Air Act—will "destroy" their industry and increase consumer costs by "billions of dollars a year." Their campaign seeks to reduce the Section 207(b) warranty to 18 months/18,000 miles. The Committee rejected this amendment.

Contentions of the aftermarket people are incorrect. They do not represent the experience with warranties under the Clean Air Act, and they underestimate the value of the amendments that were adopted by the Committee to resolve any problems. EPA has stated that "strong warranty provisions are essential if the clean air goals of the Act are to be achieved . . . The aftermarket has demonstrated no present loss of business resulting from the Act—any anticompetitive problem is entirely prospective." The Consumer Federation of America has attacked any shortening of the warranty provisions as "anti-consumer."

Misconception: Monopolistic, Anti-Consumer Aspects—The performance warranty has been described by the industry as monopolistic and anti-consumer in nature.

Response—Consumer organizations, speaking for themselves, including the Consumer Federation of America, Consumers Union and Ralph Nader support the performance warranty and oppose any anti-consumer amendment which would reduce it.

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* Although only 1975 Pontiac warranty and maintenance instruction language was furnished us, it is our understanding that the language employed by the other divisions of General Motors is identical except for trade name.

Misconception: Consumer Cost—Much of the argument for reducing the warranty term involves the alleged high cost to the consumer.

Response—The Bureau of Labor Statistics has found that the existence of a Clean Air Act warranty has, so far, cost the consumer $1 per car, not the several hundred dollars per car often mentioned by the aftermarket people. (see below)

Estimates by the Bureau of Labor Statistics of the added retain costs attributable to the Clean Air Act requirements on New Cars (by model year):

Model year	Improved exhaust emission systems	Warranties
1971	$19.00	
1972	6.00	$1.00
1973 (NOx controls added)	27.70	
1974	1.40	
1975 (catalyst system added)	119.20	
1976	7.60	

Misconception: Manufacturer's Parts and Dealers Service Must be Used.—It is argued that customers must go back to the dealer for all service work during the 50,000 mile warranty period.

Response.—Antitrust laws and FTC activities prohibit such a requirement. To augment this position, the Committee included language that prohibits the manufacturer from conditioning its warranty or instructing the buyer to use the manufacturer's aftermarket parts or service to maintain the warranty (Sections 25 and 29 of S. 3219).

Misconception: Parts Covered.—It is claimed that practically all parts of the vehicle must be covered by the emissions performance warranty.

Response.—EPA draft regulations and practice require a car's owner to be responsible, as a part of "proper-maintenance," for replacing any part that has a design life of less than 50,000 miles. Spark plugs, for instance, carry a design life of 12,000 miles. EPA explains its policy on parts after this design life period: "If a manufacturer requires replacement of the positive crankcase ventilation (PCV) valve at 12,500 miles, this would constitute the normal replacement interval for the PCV valve . . . the Agency's position is that failures occurring in a component after the expiration of the normal replacement interval for that component are not covered by the . . . warranty. Such components should be replaced by the car owner at approximately the specified interval."

Misconception: Psychological Impact on Consumer.—The aftermarket industry has argued that the mere existence of the performance warranty, even with language in S. 3219 cited above, is a "psychological" impediment to the car owner's use of independent dealers.

Response.—The psychological aspects of the performance warranty have been in effect since 1970, and the industry proponents of the Bentsen amendment admit that their business has substantially increased during those years. And the proposed change does not touch the 50,000 mile defects warranty—section 207(a) of the bill—which might have just as strong an effect on the customer, if any such psychological impact exists. Similarly, the existing motor vehicle safety program recalls an average of 5.6 million vehicles each year with no demonstrated anticompetitive effects.

Misconception: Maintenance Instructions—It is claimed by the aftermarket industry that maintenance instructions provide illusory relief.

Response—The same Federal Trade Commission study cited above also recommended that maintenance instructions contain a statement that parts and service can be obtained from any competent source. Section 29 of the Committee bill prohibits the manufacturer from including in the maintenance instructions any component or service which is identified by brand, trade, or corporate name.

As stated in the Committee report:

"There is one exception to this requirement. If the manufacturer can demonstrate to the Administrator that such a captive part or service is essential to the car's operation, and if EPA finds that the exception is in the public interest, including a consideration of its impact on competition, then the Administrator may grant an exception. The Committee intends that the manufacturer will have a significant burden in making such a showing and would expect the Administrator to consult with Congress before making such an exception."

Misconception: Parts Certification—It is claimed by the aftermarket industry that certification of parts will not solve the anticompetitive problems of the performance warranty in its present form.

Response—The Federal Trade Commission concluded in a staff study in 1974 that a voluntary parts certification program would be useful in overcoming any potential anticompetitive problems of the Clean Air Act warranty. Such a program is mandated by Section 28 of the Committee bill.

Misconception: FTC Study—The aftermarket industry claims that a study of any anticompetitive effects of the performance warranty is of no help whatsoever.

Response—Such a study is mandated by Section 39 of the Committee bill, with the report required within 18 months of enactment. The performance warranty will only be triggered by the existence of a "quicky" field test with a penalty or sanction on the vehicle owner. These do not yet exist, and can only be expected to be established over a period of many months even in those communities that need them most. There is time for the FTC to conclude the study and for its findings to be considered without removing the performance warranty in the meantime.

Misconception: EPA Waiver of Parts Certification—The EPA waiver of the ban on specification of manufacturer's parts or service provides a major loophole which could hurt manufacturers of aftermarket parts.

Response—The limited authority of EPA to waive this prohibition under limited circumstances does not lessen its benefits to the consumer. The Administrator can only waive this requirement when he makes a "public interest" finding—a finding which would be indefensible if the effect would be to reduce competition.

Conclusion—It may be argued that it is better to be safe than sorry and therefore to reduce the warranty terms as a precaution. This would be unwise. The performance warranty was included to encourage the industry to design and install in its cars emission control systems that will meet the clean air standard for a car's "useful life" of 50,000 miles. Without such a requirement, there is every reason to believe the industry will not design emissions systems capable of meeting the standard for any longer than they must warranty. Shorter performance warranty means a less durable, less effective system. Time still exists to make a full FTC-EPA study and because of the need to maintain the design goals for the industry, it would be inappropriate to reduce the term of the performance warranty at this time.

REPORT OF COMMITTEE ON POST OFFICE AND CIVIL SERVICE PURSUANT TO CONGRESSIONAL BUDGET ACT

Mr. BURDICK. Mr. President, on behalf of the distinguished chairman of the Committee on Post Office and Civil Service (Mr. McGEE) I ask unanimous consent to have printed in the RECORD the report of that committee to the Senate pursuant to section 302(b) of the Congressional Budget Act.

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

COMMITTEE ON POST OFFICE AND CIVIL SERVICE[1]

REPORT TO THE SENATE PURSUANT TO SEC. 302(b) OF THE CONGRESSIONAL BUDGET ACT

[In millions of dollars]

Program	Fiscal year 1977: Direct spending jurisdiction — Budget authority	Direct spending jurisdiction — Outlays	Entitlement programs that require appropriation action — Budget authority	Entitlement programs that require appropriation action — Outlays
Special studies, services and projects, Bureau of the Census: Controllable	5	5		
Federal employees health benefits fund (trust revolving fund): Uncontrollable	0	−75		
Retired employees health benefits fund (trust revolving fund): Uncontrollable	0	7		
Civil service retirement and disability fund (permanent, indefinite): Uncontrollable	16,900	9,963		
Federal employees life insurance fund (trust revolving fund): Uncontrollable		−399		
National Archives trust fund (revolving): Uncontrollable		−0.4		
Payment to the civil service retirement and disability fund (permanent, indefinite): Uncontrollable	4,280	4,279		
Total	21,185	13,780		
Controllable	(5)	(5)		
All other	(21,180)	(13,775)		

[1] The Committee on Post Office and Civil Service notes that the Senate version of S. Con. Res. 109 included $1,000,000,000 in both budget authority and outlays for the Postal Service which was excluded from the conference substitute with the understanding expressed in the Senate on May 12, 1976, that the conference substitute is not intended to tie the hands of the Post Office and Civil Service Committee in dealing with the appropriate choice between off-budget borrowing and on-budget financing of this year's postal deficit.

ORGANIST RETURNS TO NATIVE STATE

Mr. SPARKMAN. Mr. President, Quentin Lane, organist-director of Music at St. Luke's Episcopal Church in Birmingham, Ala., has been appointed as a fellow in church music at the Washington Cathedral this summer. During the 2 months he is in our Capital City he will actively participate in the musical life of the cathedral. Mr. Lane is a fine example of the progressive young black people who are returning to their native Southland to share their talent.

On this Sunday, May 30, as part of the cathedral festival 1976 year-long celebration of the completion of the nave at the Washington Cathedral, the choir of St. Luke's in Birmingham, under Mr. Lane's direction, will sing at the noon eucharist and present an afternoon recital just before evensong. Dean Francis B. Sayre, Jr., will focus on Alabama in a special prayer he has written for the occasion. I heartily encourage my colleagues to attend one of the choir's performances.

Walter Bryant of the Birmingham News recently wrote a feature story on Quentin Lane which will be of interest. 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:

ORGANIST RETURNS TO NATIVE STATE

(By Walter Bryant, News staff writer)

If a person is born and educated in the South, he assumes a debt to that region of the country that cannot be ignored.

That is the thinking of Quentin Lane, the new organist at St. Luke's Episcopal Church, who serves part-time as a consultant in music for the Episcopal Diocese of Alabama.

"If you take something from your native region, you are obligated to share part of yourself with that region, rather than giving yourself to other sections of the country exclusively," said the 24-year-old musician.

One evidence of his commitment to both his music talents and his job is that he installed a telephone at the organ console at St. Luke's.

"I've been involved in church music as long as I can remember," said Lane. He began with the piano at age 3 and gave his first solo recital at 7.

At the University of Alabama he studied under Warren Hutton, professor or organ and university organist. Honors included being voted the outstanding freshman and sophomore in music and being judged the outstanding jazz organist at the Mobile Jazz Festival in 1970. In 1971 he won second place in the American Federation of Music Clubs national competition in organ.

While in Tuscaloosa he served as organist for Christ Episcopal Church.

He received a master's degree in organ from Eastman School of Music at the University of Rochester, N.Y, in 1973. In that city he served as organist for the Episcopal Church of the Epiphany and was a member of the music commission of the Episcopal Diocese of Rochester.

Lane said he decided to use his music talents with a church career because of his admiration of several Episcopal ministers who came to Selma during the middle 1960s to help blacks in the field of education.

"Also, very few organists can make a living just giving concerts. It gets old living out of a suitcase," he said.

He finds church musicians more committed to their work than are students in some of the private schools where he has taught. "This difference in commitment is because church musicians want to be where they are," he said.

Lane reasons that church musicians are more of a "sharing than a performing group." Their job is to make the congregation get more involved in the worship service.

While organist at Christ Church, Tuscaloosa, he became acquainted with the Rt. Rev. Furman C. Stough, bishop of the Episcopal Diocese of Alabama. Lane visited Alabama several times while in Rochester to play for church dedications or conventions of the diocese.

Conversations between Lane, Bishop Stough and representatives of St. Luke's as well as the growing cultural life of Birmingham's civic center made him decide to return to Alabama.

While not at an organ console or developing music programs, Lane is likely to be found in his kitchen enjoying his hobby of French cooking.

"As an only child I had to learn how to cook to survive at college. While in Tuscaloosa I turned to gourmet cooking," he said.

MEDICARE DEFICIT

Mr. TALMADGE. Mr. President, I have just received the 1976 annual report of the board of trustees of the Federal hospital insurance trust fund. This is the medicare part A fund which pays for hospital care. That report is shocking. It advises of a 300-percent increase in the actuarial deficit of the hospital funds over the next 25 years. The deficit is increased from 0.16 percent of taxable payroll to 0.64 percent of taxable payroll.

Let us put that in perspective. Taxable payroll are those wages and income on which social security taxes are paid by working Americans. These wages are estimated to amount to some $710 billion in calendar 1976. That 0.64 percent of taxable payroll amounts to about $4.5 billion. In 1976 dollars then, medicare will be short $4.5 billion a year in each of the next 25 years. This deficit is over and above already scheduled future significant increases in the wage base on which taxes are levied and tax rates.

Mr. President, as chairman of the Subcommittee on Health of the Committee on Finance, I have been working long and hard toward developing approaches intended to bring the costs of medicare and medicaid under reasonable control. Those costs are now rising in runaway proportions. I am hopeful that the Committee on Finance will be able to act promptly on my bill, S. 3205, designed to bring about necessary reforms in medicare and medicaid administration and reimbursement. Until effective reforms are enacted and implemented, it seems to me that we must tighten our belts. I want to serve notice that, as chairman of the Subcommittee on Health, I will scrutinize with extreme care any proposed changes in medicare which serve to increase costs and the medicare deficit, no matter how meritorious. I know there are many worth-while improvements which we could make in medicare to provide better coverage for our older and disabled citizens. I, myself, have introduced and cosponsored proposals to make some of these changes. But, I would not ask any Senator to do what I would not be willing to undertake. I will, therefore, not press for consideration of any legislation which I have sponsored which would increase medicare costs.

There are those who suggest that the answer to the enormous deficits in medicare and the rest of the social security system lies in the infusion of general revenues. To put that proposed solution in perspective, we are already committing $6 billion in general revenues to part A and part B of medicare. The many billions of general revenues which would be required annually just to make a substantial dent in the existing deficit in the various social security trust funds are not available and will not be available in the foreseeable future. Quite simply, apart from the obvious lack of general revenue dollars for this purpose, there is nothing magic about general revenues. General revenues come out of the hides of the taxpayers just as much as payroll taxes do.

Mr. President, hopefully, we can begin shortly to deal with some of the underlying causes of these enormous problems in underfinancing.

THE FEDERAL PROGRAM CONTROL ACT

Mr. HARRY F. BYRD, JR. Mr. President, on April 28, I introduced S. 3336, the Federal Program Control Act. Subsequently, the distinguished Senator from Arizona, Mr. FANNIN, joined me as a cosponsor.

This legislation would require review of Federal programs at least once every 4 years, including an examination of regulations issued pursuant to each program, and an analysis of administrative costs.

On May 3, Mr. Hubert W. Monger, superintendent of schools of Culpeper County, Va., wrote to me to express support of this legislation, setting forth reasons for his endorsement based on his experience as a local school official and citizen.

Mr. Monger's views are cogent and well stated, and I ask unanimous consent that the text of his letter be printed in the RECORD.

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

CULPEPER COUNTY PUBLIC SCHOOLS,
Culpeper, Va., May 3, 1976.

Hon. HARRY F. BYRD, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BYRD: This morning, in reviewing the Congressional Record of Wednesday, April 28, 1976, we noted on Page S6067 that you had introduced Senate Bill #3336 which would require a review and evaluation of all federal programs every four years, except Social Security and other contributory trusts. Even these would have to be justified by the Executive Branch. The bill speaks to a very fundamental basic problem and is long overdue.

While your rationale is most adequately stated, let us add a comment or two in the elementary language of a layman in support of your bill.

1. If the management of our financial af-

fairs is so atrociously conducted by our Legislative and our Executive bodies as to create an indebtedness of 76 billion in one fiscal year in peacetime, what would this figure be should we ever be faced with a major crisis or become involved in one? In essence, how do we pay the bills? Somehow our decision makers seem to be immune to facing this basic economic question.

2. Domestic dollars never seem to flow from Washington except those whose identity are cleverly concealed with strings attached. Somehow the one-third of our citizenry as a nation, who become engrossed in the octopus' daily activities, feels that all of the intelligence of the nation has been captivated by the octopus. A review of the headlines in our papers over the past several years soon dispels this theory.

3. Paperwork? What can be said about this that has not already been said? But, again the immunity seems to prevail. We are convinced that there are those in Washington who make a sizable sum annually designing and redesigning forms, and never let us live two years in succession by the same rules and regulations. We can't remember a year when the School Lunch Program, for instance, did not have to be completely redesigned at the local level in order to comply with the voluminous dispatches originating in our nation's Capital.

4. Finally, the administration of these is self-perpetuating and thus consumes far too much of the appropriated moneys. This denies the recipients the full benefits intended.

While one little sound is lost in a total performance of an orchestra, let us presume that the orchestra is blending together the sounds of the clarinets, trombones, cellos, etc., and is in the midst of a movement which we shall identify at this moment as Senate movement #3336 in A major. The membership of the orchestra is made up of the remaining two-thirds of our nation. The adjudicators say that the performance is far superior to that of the one-third heard regularly. Let us hope that the winner's trophy goes to the most deserving performers.

Sincerely,

HUBERT W. MONGER,
Superintendent of Schools.

DEFINITION OF GENOCIDE

Mr. PROXMIRE. Mr. President, I rise to answer those opponents of the Genocide Convention who object to the phrase "in whole or in part." They mistakenly claim that article II of the convention, which defines genocide as "* * * acts committed with intent to destroy, in whole or part, a national, ethnical, racial, or religious group," applies to acts against any members of any group. Critics argue that the treaty might be construed to include the incidents at My Lai and police actions against the Black Panthers.

A commonsense examination of the convention precludes such an interpretation. The qualification, "in whole or in part," is vital. It prevents the argument that atrocities directed at only half or two-thirds of, for example, Jews in Poland, are not defined as genocide. Never were these words understood to mean "some individuals."

To eliminate any possibility for misunderstanding, the Committee on Foreign Relations proposes an "understanding" to article II. It states:

That the U.S. Government understands and construes the words "intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such" appearing in article II to mean . . . in such a manner as to affect a substantial part of the group concerned.

The committee's "understanding," as well as commonsense, prove objections to the phrase "in whole or in part" unfounded; therefore, presenting no obstacle to ratification. Consequently, I urge speedy approval of the Genocide Convention.

THE CASE FOR SECTORAL PLANNING

Mr. STEVENSON. Mr. President, those who have been late to accept the Keynesian economics, including Presidents Nixon and Ford, have had little success in applying them. In part this is because Keynesian demand management policies are inadequate to deal with contemporary economic realities. Macroeconomic policy cannot be depended on to assure increased productivity in basic industries or to assure an adequate supply of essential commodities at free market prices. W. W. Rostow has written a provocative and persuasive paper calling for sectoral planning.

I ask unanimous consent that his remarkable exposition on this subject given before the chamber of commerce at its conference on national economic planning be printed in the RECORD, and I commend it to my colleagues.

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

THE CASE FOR SECTORAL PLANNING

I

I am told by the organizers of this conference that I was invited to speak today because of the following passage in a paper I recently published:[1]

"We must operate in a world somewhere between a Keynesian mixed economy and an indefinitely prolonged war economy. We need to cultivate again the kind of indicative sectoral planning developed in Western Europe in the postwar years of reconstruction, but this time on a broader international level." I believe that proposition holds for the next quarter-century, and perhaps for longer.

I take that view because I believe planning the sectoral pattern of investment is the key to the problem of returning to full employment and resuming a high rate of growth in the United States, the OECD world, and in the developing nations; and it is equally the key to the structural adjustments in energy, agriculture, raw materials, and the environment required to maintain the viability of the world economy. As in wartime, we must concern ourselves not merely with the level of investment and output or with the real rate of increase in investment and national output. We must concern ourselves also with the composition of investment and the composition of output. Our concern is not, of course, as detailed as it is in a war economy where reasonably precise sectoral targets are required over a wide range: uniforms and blankets, planes and ships, tanks and guns. But we are and shall remain in a world where certain types of energy and agricultural output, certain levels of purity in the air and water, certain kinds of raw materials production are achieved and sustained in our own country and in other regions of the world. And it is my central judgment that the approximation of those targets requires a significant degree of national and international planning which is not now taking place.

The point I seek to make is at once quite simple and quite difficult. In arguing it over the past year with neo-Keynesian economists, I am reminded of Keynes' observation in the Preface to his *General Theory*[2] on the probable reaction to his book of classical economists who "will fluctuate, I expect, between a belief that I am quite wrong and a belief that I am saying nothing new." The difficulty arises because a sectoral approach to investment and output clashes directly with the reigning modes of economic thought. These suffuse our minds more powerfully than we know. They drive us towards highly aggregated concepts focused almost exclusively on the level of effective demand which make it difficult to think systematically about our structural problems of supply. Evidently, population, food, raw materials, energy, air, water, and resarch and development have moved to the center of the stage in the world economy. We must act to try to make them move in the right directions. But these are variables which in modern economics are dealt with in one of four ways: they are left out of our equations (e.g., air and water); they are assumed to be fixed; they are introduced as exogenous, from outside our equations (e.g., population); or they are assumed to be easily and automatically evoked, in the correct amounts and patterns, by the price and profit incentives set up by our equations (e.g., food, energy, etc.). For good or ill, the kind of world in which we live and shall live is not well illuminated by frames of thought which are both highly aggregated and structured so as to rule out or to make dependent critical aspects of supply. An authentic revolution in economic thought is involved in the propositions I shall develop today. As always, the constructs of the past have not been rendered wholly irrelevant. As I said at the beginning, we shall continue to live, in part, in a Keynesian mixed economy where we shall continue to need the tricks and methods of modern income analysis. But Walter Heller spoke with precision as well as wit when he said in December 1973: "We [economists] have been caught with our parameters down." A great deal of useful *ad hoc* work is now going forward, conducted by economists and others, addressed to the problems of energy, population, food, etc. But before we have a firm grasp on our times and its problems—before politicians and citizens see the panorama we confront and what we must do to cope with it—we economists will have to create new structures of thought, which fit these problems into a comprehensible dynamic theory of production and prices. That dynamic theory must be based on a different set of parameters than those now conventionally taught or buried implicitly in our arguments and prescriptions; and, in the end, it should provide the intellectual basis for the sectoral planning we require.

So much by way of introduction. I shall develop this theme in four segments:

First, the relation of sectoral planning to our return to full employment;

Second, the relation of sectoral planning to the medium term structural adjustment required in the world economy (and the United States) between now and 1985 and, indeed, over the next quarter-century, as nearly as we can perceive;

Third, a brief aside on inflation;

Finally, some observations on the implications of all this for the position of the United States in the world arena, our security, and the prospects for peace.

First, then, the return to full employment. The debate about the current state of the American economy is characterized by a curious paradox. The paradox illustrates the clash between highly aggregated and sectoral

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methods of analysis. On the one hand, we are worried about the sluggish recovery now taking place in the United States and the OECD world. The forecast is that by the end of 1976 we shall still be wallowing along with something like 7% unemployment. If past unemployment for non-whites, 18% unemployment for those (white and non-white) 16–19 years old. In Europe, governments tend to look for an export-led return to full employment; but, as the London *Economist* recently reminded its readers,[3] "You Can't All Export at Once." At the moment, the estimates are that the OECD world will move ahead in the second half of the 1970's much more slowly than in the 1960's, with serious decelerating consequences for the rate of growth in the developing regions.

On the other hand, economists and others are worried about a capital market crunch. Adding up the volume of investment required for new forms of energy and energy conservation, antipollution programs, and other investment implications of stated public objectives, many feel instinctively that, in the time ahead, the United States will require a higher investment rate in relation to gross national product than in the past. The OECD energy analysts, for example, after estimating a rise of 44% in the proportion of energy to total gross fixed capital formation, between 1977 and 1985, with oil at $9 per barrel, counsel against seeking a much higher level of energy independence because of its potential conflict with "other objectives of government policy concerning income distribution, industrial structure, and policies aimed at combating inflation."[4]

In their analysis of *Capital Needs in the Seventies*, James Duesenberry and his colleagues examined carefully whether "we could afford the future" in terms of capital requirements for high priority social purposes.[5] They conclude: "We can afford the future, but just barely"; that is, they calculate increased outlays for energy, antipollution measures, and public transport, are more or less balanced out by relatively diminished outlays for education and the interstate highway system if there are no new major social programs, if we move to a federal budget surplus, and if a high average rate of growth yields its flows of both private investment resources and government revenues.

The paradox of severe unemployment and unused capacity versus the capital crunch was vivid but unresolved in the response of Walter Heller to Secretary of the Treasury Simon's proposal this summer for increased tax incentives for private investment.[6] Heller points to American industry operating at about 80% capacity. He implies that to cut business taxes now would be pushing on a string: there would be no significant investment response. He argues that the aggregate level of investment in relation to GNP has remained stable over the past decade; that a high rate of economic growth would generate the savings and investment to meet the investment needs of the next decade; and that we require, therefore, increased general stimulus to consumption and a closing of tax loopholes rather than regressive tax changes to stimulate investment at a time of large, idle industrial capacity. As a debating matter, Professor Heller scores some good points; but this is because the Ford administration then posed the problem in an over-aggregated way, permitting Heller to reply in similar terms. With great respect, I submit that both Simon and Heller fail to get at the root of the matter.

What is required in the United States (and in other OECD countries) to get back to full employment is not an undifferentiated expansion of investment; but a rapid expansion in certain particular directions. We now know those directions in the United States: new energy resources; energy economy; investment to clean the air and water; insulated housing; mass transport. To these I would add, for reasons I shall later develop, radically expanded investment in R&D and, quite possibly, investment to rehabilitate agricultural acreage we believed was arable until we took off acreage restrictions and found the land sub-marginal.

My central point, then, is quite simple: the return to full employment should come from rapidly expanded investment in certain key sectors; private enterprise has a role in each of these sectors; but in none of them will investment expand promptly enough and on a sufficient scale to bring us back to full employment unless the government acts in various ways to make investment flow. In some cases, direct government outlays are necessary; in others, the settlement of conflicts between production and environmental criteria; in others, legislation is required; in others, one form or another of subsidy or guarantee.

Thus, to get back promptly to full employment requires more of government policy than either Simon or Heller imply; although, evidently, intelligent fiscal and monetary policies retain an important role. A return to full employment on a viable basis requires intimate and painstaking sectoral collaboration between the public and private parts of our society.

As one who would prefer to see private enterprise carry forward the economy to the maximum and who believes government intervention has its costs, as well as benefits, let me put the question bluntly: Why is it that neo-Keynesian prescriptions for reducing unemployment through stimulus to consumers demand are not now sufficient? The answer is that the inescapable imperatives of higher energy prices and, for some advanced shift in the terms of trade, have cut into real income. These factors (reflecting both price and income elasticities of demand) have radically reduced consumers' outlays on postponable items; notably, automobiles and other consumers durables. They have also reduced the demand for housing. Against this background, and the combination of inflation and recession, governments cannot compensate adequately by rapidly expanding real outlays for social services (e.g., education and health care). These may, in any case, be approaching natural limits. The rapid expansion of OECD exports to the OPEC countries has been a balancing factor in terms of employment. But it also constitutes a quite insufficient compensation for these decelerating private and public outlays. Thus, the rise in energy prices has weakened the leading sectors which have carried forward economic growth in North America, Western Europe, and Japan over the past quarter-century. Resumed prosperity and growth require a massive shift of investment in new directions; and these directions (unlike automobiles, durable consumers goods, and suburban houses) require an enlarged government role and serious, sustained public-private collaboration.

Put another way, it is the multiplier (expanding income and employment through new forms of investment) rather than the accelerator (expanding investment through the increase in income), that will be rather more required than in the recent past to pull the OECD world out of recession and back to sustained growth. In a sense, we are returning to the dynamics of the pre-1914 world economy—the world of railroads, steel, and the opening of new territories—as opposed to the environment we have known since the 1920's when the leading sectors of high mass-consumption emerged, and investment was closely linked to the expansion of consumers' outlays on durable goods and certain services. This proposition relates, of course, to a marginal shift in the relative role of the two inter-acting mechanisms, not to a complete reversal. Surely, various built-in supports to the level of income and consumption have cushioned the recession of 1974–75 in the OECD world, as have government deficits; and this cushioning has prevented even greater declines in investment levels than those which have in fact occurred. And surely, as I have said, fiscal and monetary policy must contribute further to the return to full employment. Nevertheless, the marginal shifts required in the workings of the OECD economies are of significant orders of magnitude. They are the basis for my short-run case for sectoral planning.

III

I turn now to the longer run case for sectoral planning. A new phase in the history of the world economy began at the close of 1972 when bad harvests and the Soviet grain deal caused a convulsion in grain prices. World food reserves, waning in the 1960's as a proportion of world consumption, suddenly disappeared. At the same time, United States gas and oil reserves in relation to consumption were declining, and production began absolutely to decline after 1970. Then in the autumn of 1973 came the quadrupling of the oil price. Raw material prices simultaneously moved up across the board under pressure of a powerful worldwide boom. Although raw material prices have considerably softened in the subsequent recession of the industrial world, most analysts would agree that the prospects in the time ahead are for relatively expensive energy and food; and if the world economy recovers its lost momentum, in raw materials as well. The price revolution of 1972–75 yielded an accelerated general inflation; an extremely high range of interest rates; pressure on the real wages of industrial labor and on those with relatively fixed incomes; a shift of income and in the terms of trade favorable to producers of food as well as energy.

This is the fifth time in the last two hundred years that such a shift in relative prices has occurred; and on each of the other four occasions it has been accompanied by exactly the manifestations we have experienced since 1972. The other four occasions occurred in the 1970's; the early 1850's; the second half of the 1890's and the late 1930's. On each occasion these prices then remained in a relatively high range for about a quarter-century. A roughly equal period followed in which the trends reversed. Each of these periods was, in an important sense, unique; but the fact is that the world economy for almost two centuries has been subject to a rough and irregular pattern of long cycles in which periods of about 20 to 25 years of high relative prices for food and raw materials gave way to approximately equal phases of relatively cheap food and raw materials. The last downswing ran from 1951 to 1972. I am not wedded to the notion that these cycles will continue into the future. But I would guess that the inexorable pressure of excessive population increase in the developing world; the tendency of the poor to spend increases in income disproportionately on food; the rising demand for grain-expensive proteins; the pace of industrialization among those catching up; and the strains of the energy crisis will persist. Given these powerful and sustained demands operating on food, energy and raw material prices, and the costs we shall have to incur to achieve and maintain clean air and water, I believe we are in for a long period when the prices of these basic inputs to the economy will remain relatively high. Down to 1914 the classic response was to open new agricultural and raw material producing areas: the American West, Canada, Australia, Argentina, the Ukraine. The great movements of international capital during this era were, in substantial part, induced to bring new supplies into the market and to restore bal-

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ance in the industrializing world by the price system, combined with new technologies of transport and production. But we confront this trend period in a setting quite different from that of the past. We cannot rely wholly on the automatic workings of the price system and private capital markets to restore and maintain balance. All over the world, in one way or another, policy toward resources is in the hands of governments or is strongly influenced by governments. At every stage, therefore, public policy will be involved, seeking, if we are wise, to reinforce—and in some cases to control—the incentives and constraints set up by the price system.

What, specifically, do we have to do to bring the world economy back towards some kind of balance?

First, we need a concerted effort among energy importers to generate a mixture of expanded output and energy conservation sufficient to give us the bargaining leverage to negotiate a rational and equitable long-term agreement with OPEC. A large part of that effort must be undertaken by the United States, given the availability here of alternative energy resources and, perhaps, greater margins for energy economy. As among Western Europe, Japan, and the United States, only we command the capacity to reduce sharply our OPEC imports by 1985. We owe it not only to ourselves but to all energy importers to do so. If we do, there is a fair chance that an agreement could be reached between OPEC and the importers reconciling the three criteria which ought to be respected: an energy price sufficiently high in the United States and other advanced industrial countries to encourage economy and conservation and to induce the R&D required to supplant oil and gas as a primary energy source by, say, the end of the next generation; a politically and economically reliable flow of oil to consumers in advanced industrial countries at a price which does not impose chronic economic stagnation through excessive balance of payments pressures; a reliable long-term flow of oil to non-OPEC developing nations which would permit them to accelerate agricultural production and resume over-all growth at high rates, either via a concessional oil price or via long-term OPEC aid on a scale (along with OECD aid) capable of achieving the same dual objectives. To achieve the requisite bargaining position, the OECD world evidently requires a concert among national programs of energy production, conservation, economy, and R&D we have not yet achieved. The price system is slowly pushing us in the right directions; but the price system by itself is palpably insufficient. And then we shall have to achieve a diplomatic concert for the negotiation with OPEC which also does not now exist.

Second, agriculture. It is now agreed in the international community that while the OECD world can help, the task of feeding the inescapable increase of population in the developing world between now and the year 2000 must be undertaken primarily through a sharp increase in the rate of growth of agricultural output in Latin America, Africa, the Middle East, and Asia. This is an important consensus and a major result of the various international meetings of the past two years. As I say, the OECD world can help in various ways: by generating reserves for famine; supplying capital and technical assistance; offering enlarged markets for some agricultural exports. But the crucial variable may be the rate of increase of chemical fertilizer consumption in the developing regions. To achieve that increase will require public-private collaboration on a truly international basis. The domestic agricultural policies of developing nations are involved as they affect the incentive for farmers to use more fertilizers; their policies towards foreign-private investors in their countries are, in some cases, involved; the direction of public as well as private aid flows is involved; the possibility of guarantees may have to be considered in case of temporary fertilizer surpluses, so that investment in fertilizer capacity can proceed at a high rate without excessive anxiety; and, finally, there is the question of the price of fertilizer feedstocks, which comes to rest on OPEC's price or OPEC's aid. Here, evidently, is a task for sectoral planning on an international level of critical importance.

Third, international anti-pollution measures. In the OECD world, nations have generally moved to increase investment significantly to clear the air and water. This is proving a manageable but expensive task. We may argue about standards, time periods to achieve them, and trade-offs; but the fact is that we have irreversibly accepted the fact that air and water are not free goods; and we shall have to argue about and plan the air and water sectors for as far ahead as any of us can peer. But we have barely begun the task of coming to grips with the international dimensions of the problem, notably with respect to the seas and oceans. Here, again, sectoral planning will have to become international if the Atlantic and Pacific, the Baltic, Mediterranean, and Rhine are to be tolerably maintained.

Fourth, raw materials. The world recession has, for the moment, cut raw material prices. If the world economy resumes and maintains high growth rates, a range of issues similar to but less acute than those we confront in energy will assert themselves. As in the case of energy, there is no known physical limit to raw material resources on the planet. But a great deal of creative effort will be required to continue to fend off diminishing returns; to conserve and recycle; and to create an international framework within which the legitimate interests of producers and consumers are reliably guaranteed.

Fifth, R&D. I cannot prove it, but I am morally certain that the maintenance of a rapidly growing industrial civilization requires a substantial increase of investment in the form of R&D. The imperatives of our situation are already at work in the energy sector. The most thoughtful analysis of American agriculture I know commends an increase in agricultural R&D; that is, the report of *Agricultural Production Efficiency*[7] done by the National Academy of Sciences. We ought to be learning more about climate, as well as new anti-pollution technologies. I would expect us to have to be creative with respect to raw materials over the next generation. We owe it to the developing nations to find birth control methods that are cheaper, psychologically easier to accept, and longer lasting than any we now have. There is a lot more to bringing birth rates down rapidly than birth control devices. But their inadequacy has diminished the effectiveness of family planning efforts in the southern continents.

The list could, evidently be extended; but the underlying reason for my judgment about the necessary scale of R&D is that, as compared to the longer past, we cannot generate the new, necessary inputs to the world economy simply by opening up new territories. There is no American West, Argentina, Canada, or Australia to redress the balance of industrial civilization. A few frontiers there are: Alaska and the North Sea, Siberia and the seabeds. But every projective analysis of the longer future I know—pessimistic or optimistic—comes to rest technically on the capacity of the human race to continue to defeat classical diminishing returns with R&D and thus to provide a viable base for a global industrial civilization whose vast scale will be determined by both the inescapable expansion of the world's population over the next century and the determination of the developing world to achieve a meaningful version of affluence.

From the special perspective of this discussion of planning, R&D is a form of investment that requires a significant public role. A great deal can be done and should be done by the private sectors in response to private profit incentives; but public policy must set priorities and otherwise assure that R&D is directed to ends which respect non-economic values (including the environment and national security) and which guarantee work is done which is too large, risky, or distant in time for the private sector to undertake.

And if, as I believe, R&D may prove to be our scarcest and most vital sector for the next generation at least, there is, as with energy, agriculture, raw materials, and the environment, a whole new world of diplomacy to pioneer in achieving effective coordination of national efforts geared to commonly perceived priorities.

So much for my positive longer run case for sectoral planning. I could, of course, debate the matter much more simply. The fact is governments are in the sectoral planning business, including the government of the United States. Indeed, bad sectoral planning, here and abroad, accounts not for the existence but for the severity of our current agricultural and energy problems. Governments are deeply involved in R&D. There is no indication governments are about to get out of the sectoral planning business. The objective, therefore, is to do the best job intelligence and a sense of proportion permit. But to arrive at this conclusion, by one route or another, is the beginning, not the end of the matter.

Governments face tasks as basic as new forms of data collection and as difficult as guiding the private sectors on to the right patterns of investment without frustrating them and destroying their powers of initiative. With respect to energy, for example, Edward Teller's report[8] concludes with fourteen substantive recommendations for federal action under the heading of conservation; nine bearing on energy in relationship to the environment; seven with respect to oil and gas production; four with respect to coal; seven with respect to nuclear reactors; two with respect to electricity; twenty-two with respect to R&D; five bearing on demonstration plants; one concerning underground nuclear plants; three with respect to highly specific forms of international cooperation; and four general and institutional recommendations, including the creation of a National Resource Mobilization Corporation, a recommendation to which the Ford administration has already responded. Every one of these seventy-one recommendations involves technical and/or policy complexities, including, in some cases, legislation.

The Ford Foundation report on energy concludes with almost as long a list.[9] Studies of family planning, agriculture, raw materials, and the environment emerge with similar catalogues of recommended public action, national and international.

Without accepting or rejecting any particular prescriptions, they all reflect a simple fact: in the modern political world the price system will not suffice to bring about the kinds of structural adjustment—the changed patterns of investment—our common situation requires. This does not mean we must create large new bureaucracies. The bureaucratic raw materials for effective national planning are sprawled all over this city, in a variety of poorly coordinated departments and agencies. What we lack are three things:

The kind of data intelligent sectoral planning demands;

A Council of Economic Advisers and a centralized Economic Policy Council organized so that they can set, in coordination with the Congress, national sectoral targets

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in relation to what is going on in the world economy as a whole;

And, above all, new attitudes of mind in the Executive Branch and the Congress, the business community and the public, which would support the collaboration of private and public segments of our society in achieving large common purposes.

But behind each of these requirements is the basic need for a consensus on where we are in the sweep of our own economic history and the evolution of the world economy; and a common sense of direction for the next years and generation.

IV

Now one observation about inflation which is, evidently, as large a subject in itself as planning. Inflation relates to planning technically because wage-push inflation complicates the investment tasks we face, erodes provisions for the future, inhibits the vigorous pursuit of full employment, and, by setting each group in society against every other, makes difficult the national consensus we badly need for effective planning.

My observation is that the coming together of the public and private institutions of our society needed for selective sectoral planning should also make it easier for us (and the OECD nations in general) to bring under control the pathology of wage-push inflation. As an early observer of European income policies remarked, a disciplining of wages and prices must be "part of a coordinated effort to achieve a clearly defined national objective."[10] The appropriate objective of the OECD nations should be clear enough: to resume regular growth in ways which maximize the chance that their own societies and the larger civilization of which they are a part remain viable. Within the framework of that kind of consensus, it ought to be possible to achieve stable social contracts relating money wages to increases in productivity, and to do so in ways which do not result in an excessive surge of profits. My own preferred formula is radical by the standards of contemporary neo-Keynesian economists but more understandable to students of economic history who have examined the protracted periods in the past when wages were stable, prices falling, and real wages rising. It should also commend itself to those who have examined the dangerous problem of wage struggles and strikes in the public service sector of our economy. My formula is: a protracted wage freeze for at least five years, accompanied by strong, credible measures to ensure that increases in productivity are passed along to the consumer in lower prices and not trapped in excessive profits. This would require not merely mutual assurances among business, labor, and the Executive Branch, but also the backing of the Congress. Ultimately, what is involved, however, is not a technical formula, but a coming together of labor, business, and government to achieve a common goal. And, in this case, the common goal reflects the authentic long-run interests of business and labor, since both groups suffer severely, on balance, from the multiple consequences of wage-push inflation. I am well aware that it is not easy to create a negotiating framework in which authentic long-run interests triumph over even chimerical short-run interests. The mediocre record of efforts in this direction by OECD nations over the past generation underlines the psychological, institutional, and political difficulties involved. I raise this issue without naivety. But in a time when a higher sense of communal purpose will be, in any case, required to move the major sectors in the right directions, the chances of instituting more stable social contracts, capable of disciplining wage-push inflation to common advantage, should be enhanced.

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V

Now a final word about the relationship of this argument about sectoral planning to the larger questions of the American role in the world and the task of moving towards stable peace.

If I am right about the character of the period we entered at the close of 1972 and the character of its remedy, the responsibilities of the United States and our potential for influencing constructively the world economy have risen in a rather dramatic way. The American role emerges from five circumstances.

First, the United States, if it continues to nurture its agricultural base, is and should remain the dominant source of food exports, including exports required to certain developing nations until their own production can be expanded at a higher pace. About 75% of the world's grain surplus flows from the United States. The United States agricultural export capacity is also a significant cushioning factor in our balance of payments strengthening the relative position of the dollar among the major currencies and making more possible large oil imports. In addition, the flow of grain from the United States is important to the Soviet Union, Eastern Europe, and China, all of which are now in a chronically deficit position. The deficit each year varies with the harvests, but it is not likely to disappear. This import requirement does not give the United States a blackmail power over the foreign policy and international behavior of these nations. But it is a fact of life with which they must reckon—and a stabilizing fact of life.

Second, as I noted earlier, the United States alone commands sufficient alternative energy resources to reduce sharply OECD dependence on OPEC oil and, thereby, set the stage for well-balanced agreement between oil producers and consumers. If we do so, OPEC would face the choice of reducing its prices or forcing certain of its members (notably, Saudi Arabia) to cut output to unacceptable levels. The combination of good weather last winter and the OECD recession began to pose this problem to OPEC at its recent meeting. But they have thus far been protected because the United States lacks an energy policy worthy of the name. If we are to get a rational oil policy in the world—relieving the burden imposed by OPEC on the poorest nations, easing the vulnerability of the OECD nations, insulating our foreign policy from blackmail—it will come about only if we break the costly impasse between the President and the Congress and get on with the job.

Third, the energy and energy-related investment requirements in the United States are so large that it should be easier for the United States to return quickly to full employment and thereby help lead the OECD world in that direction. Changed patterns of investment will be required in all OECD countries in the next phase of growth. They cannot rely wholly on a prior American revival permitting a return to full employment based on expanded exports to the United States. Nor can they continue to rely, as over the past generation, on rapid expansion in production of automobiles, durable consumers goods, and other energy-intensive products. But the scale of additional investment required in the United States in the expansion of energy output, the diffusion of methods for energy conservation, mass transport facilities, insulated housing, and energy R&D are such as to make it somewhat easier for the United States than for others to return to full employment on such foundations and to help, at least, to lead the OECD world back to full employment and regular growth.

Fourth, the United States evidently has special advantages and responsibilities in the R&D sector as a whole. The American advantage stems from the absolute scale of our R&D resources and the potentialities for orchestrating them efficiently within a single national community. The proportion of United States GNP spent on R&D has fallen into the same range as that, say, of Germany and the United Kingdom (say, 2.2% per annum); but the absolute level of American R&D expenditures still towers over that of the other major industrial nations—by a factor of ten. If organized around the appropriate priority tasks they are an asset of universal value; and they place on the United States a special responsibility in bringing about effective international cooperation in this domain.

Finally, the United States has a special responsibility for political leadership in dealing with the new economic agenda. In part, this flows from our potentialities in agriculture, energy, research and development. But it is also the case because if the United States fails to lead there is, as yet, no nation or political group that can fill the gap: Western Europe is insufficiently unified; Japan too vulnerable; the Soviet Union too constricted by its ideological commitments to lead comfortably a heterogeneous mixture of politics; China is similarly constricted and at a stage of development when its inner problems and border anxieties must dominate its energies. Leadership in this context in no way implies dominance. It requires a mixture of three elements: a national capacity to act significantly with respect to the major issues; a capacity to define common objectives in ways that are not excessively self-serving; and, then, the capacity to help translate those objectives into a working agenda, and to help move it forward with dogged stubbornness. These are assets the United States potentially commands.

After a wobbly start in 1974, the United States began to exercise this potentiality in the critical area of North-South relations during the September 1975 special session of the United Nations Assembly. Over the previous year things went badly. There was the acrimonious United Nations General Assembly debate of April 1974; the population meeting at Bucharest; the food conference at Rome; and the sterile session on the law of the sea at Caracas. In all of them, the air was filled with rhetoric about imperialism; with claims for the unilateral transfer of resources from the rich to the poor; with the ardent assertion of national sovereignty by the less developed nations, combined with equally ardent demands that the more developed states surrender sovereignty and behave in terms of the requirements of the international community. It was not difficult to envisage all this yielding a neomercantilist fragmentation of political, economic, and military affairs—and disaster for the human race—as men and nations squabbled meanly for scarce resources in a nuclear age.

The September 1975 meeting was better not only because the United States outlined the headings for a North-South partnership but for two other reasons. The developing nations, which in 1974 were talking about the excessive raw material consumption of the North, had felt fully the effects of recession in the North. Their exports and export prices were down and their development prospects were badly damaged. In addition, they had come to appreciate how badly damaged they were by OPEC's price policy. The somewhat specious unity of OPEC and other developing nations in 1974 was strained. The result was a wide-ranging series of formally agreed resolutions covering aid, trade, agricultural production, the transfer of technology, commodity agreements and the other legitimate headings for action if North-South confrontation is to be converted into the partnership the facts of interdependence demands.

But it was only a beginning. United Nations resolutions do not automatically translate themselves into action. Hard work lies

ahead. Moreover, the United States took its distance from several important resolutions including that which reaffirmed the United Nations aid target for the 1970's: an expansion in official aid by 1980 up to the level of 0.7% of GNP, as opposed to the present figure of about one-third that proportion.

Right now, the potentialities of North-South partnership—and much more—are endangered. The danger is not of a great depression. It is of a protracted period of chronically high levels of unemployment, with its damaging social consequences compounded by continued high rates of inflation. These could bring about a kind of progressive weakening of our society like that experienced by Great Britain between the two world wars. It would enfeeble the OECD world and drag down the rate of recovery of the developing nations. The World Bank staff recently estimated that if the OECD countries grow in the second half of the decade at an average rate of 4.9%, the lower income developing countries will move ahead at 1.2% per capita—an inadequate but positive rate. If the OECD countries grow at only 3.5%, the poorest nations will virtually stagnate. Moreover, it is extremely doubtful that, if the OECD world continues to experience a disappointing recovery and sluggish growth rate, it can generate the political will to liberate trade, expand aid, and do the other things a serious North-South partnership requires.

Something of the same can be said for the prospects of détente and the stability of Europe, the Middle East, and Asia. It is worth recalling that the chronic debilitation of Great Britain between the two world wars weakened in quite direct ways the balance of power and palpably played a part in bringing on the Second World War. It is not difficult to envisage an America, failing to solve its domestic economic problems, wracked by increasing social unrest, turning away from its responsibilities in Europe, the Middle East, and Asia. In that process, the potentialities of détente could easily be lost and important parts of the world plunged into chaos or worse.

On the other hand, if we can shake loose from the neo-Keynesian framework which distorts the vision of our task, define our agenda, and act on it with the President and Congress united, the prospects are rather hopeful. The stabilization of the Middle East and Asia as well as Europe is not impossible; the economic tasks of the quarter-century ahead are difficult but doable and, in their way, rather exciting.

In a toast to the Royal Economic Society in December 1945, shortly before his death, Keynes spoke of economics and economists as "the trustees not of civilization but of the possibility of civilization." That has never been more true than of this time when we must shift from an obsessive focus on effective demand—which Keynes' *General Theory* set in motion—to the generation of the sectoral inputs required to sustain an industrial world economy. Keynes would have been the first to urge us to make that shift.[11]

FOOTNOTES

[1] "The Developing World in the Fifth Kondratieff Upswing," *Annals*, No. 420, July 1975, p. 114.

[2] J. M. Keynes, *The General Theory of Interest, Employment, and Money*, New York: Harcourt, Brace and Company, 1936, p. v.

[3] July 12, 1975, p. 68.

[4] "Energy Prospects to 1985," summarized in *OECD Observer*, No. 73, January-February 1975, pp. 18–19. The caution is expressed with respect to a full exploitation of OECD's energy import replacement potential, which would reduce the proportion of imports by 1985 to 2–7%, as opposed to 36% in the early 1970's, 21% in the "$9 case".

[5] Barry Bosworth, James S. Duesenberry, and Andrew S. Carron, *Capital Needs in the Seventies*, Washington, D.C.: The Brookings Institution, 1975.

[6] "Taxes and the 'Capital Shortfall,'" *Wall Street Journal*, August 19, 1975.

[7] Washington, D.C.: National Academy of Sciences, 1975.

[8] *Energy: A Plan for Action*, New York: Commission on Critical Choices for Americans, 1975.

[9] *A Time to Choose: America's Energy Future*, Cambridge, Massachusetts: Ballinger Publishing Company, pp. 325–343.

[10] Mark Leiserson, *A Brief Interpretative Survey of Wage-Push Problems in Europe*, Study Paper No. 11 for Consideration of the Joint Economic Committee, 86th Congress, 1st Session (Washington, D.C.: GPO, 1959), p. 55.

[11] This observation reflects not merely a judgment about Keynes' flexibility of mind but the fact that, as a young man, he was much concerned with the problem of the relative scarcity and high prices for foodstuffs and raw materials during the period 1896–1920. (See, notably, his note "Return of Estimated Value of Foreign Trade of United Kingdom at Prices of 1900," *Economic Journal*, 1912, pp. 630–31.) This anxiety suffused his *Economic Consequences of the Peace*, especially Chapter II. His focus shifted quickly, however, when the break of relative prices in 1920–21 confronted Britain with excessively favorable terms of trade, weakened export markets, and chronic high unemployment.

QUORUM CALL

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

The PRESIDING OFFICER. Is there objection?

Mr. ALLEN. I object.

The PRESIDING OFFICER. Objection is heard.

The call of the roll was resumed.

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

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

ORDER FOR DISCHARGE OF COMMITTEE AND REFERRAL OF BILL—H.R. 10138

Mr. JACKSON. Mr. President, as in legislative session, I ask unanimous consent that the Committee on Labor and Public Welfare be discharged from consideration of H.R. 10138, the Young Adult Conservation Corps Act, and that the bill be referred to the Committee on Interior and Insular Affairs.

Referral to the Committee on Labor and Public Welfare was in error. This matter has been cleared with the chairmen of both committees, Senator WILLIAMS and myself.

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

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

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

[Quorum No. 4 Ex.]

Allen	Glenn	Nunn
Bartlett	Griffin	Percy
Bellmon	Hart, Gary	Proxmire
Biden	Hart, Philip A.	Randolph
Burdick	Jackson	Scott, Hugh
Byrd, Robert C.	Leahy	Sparkman
Chiles	Metcalf	Stafford
Durkin	Moss	Talmadge

The PRESIDING OFFICER. A quorum is not present.

Mr. ROBERT C. BYRD. 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 West Virginia.

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:

Bayh	Hartke	Muskie
Brock	Haskell	Nelson
Byrd,	Hollings	Roth
Harry F., Jr.	Johnston	Schweiker
Clark	Long	Stevenson
Cranston	Magnuson	Symington
Dole	Mathias	Weicker
Ford	McGovern	

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Texas (Mr. BENTSEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. GARY HART), the Senator from Maine (Mr. HATHAWAY), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Wyoming (Mr. MCGEE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from North Carolina (Mr. MORGAN), the Senator from Rhode Island (Mr. PELL), the Senator from Rhode Island (Mr. PASTORE), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Mississippi (Mr. STENNIS), the Senator from Florida (Mr. STONE), the Senator from Georgia (Mr. TALMADGE), and the Senator from California (Mr. TUNNEY), are necessarily absent.

I further announce that the Senator from Montana (Mr. MANSFIELD), the Senator from Alaska, (Mr. GRAVEL) are absent on official business.

I also announce that the Senator from Iowa (Mr. CULVER) is absent attending the funeral of Congressman TORBERT MACDONALD.

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Maryland (Mr. BEALL),

the Senator from Massachusetts (Mr. BROOKE), the Senator from New York (Mr. BUCKLEY), the Senator from Arizona (Mr. FANNIN), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Nevada (Mr. LAXALT), the Senator from Idaho (Mr. MCCLURE), the Senator from Oregon (Mr. PACKWOOD), the Senator from Kansas (Mr. PEARSON), the Senator from Illinois (Mr. PERCY), the Senator from Alaska (Mr. STEVENS), the Senator from Ohio (Mr. TAFT), the Senator from South Carolina (Mr. THURMOND), the Senator from Texas (Mr. TOWER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

Mr. ROBERT C. BYRD. Mr. President, I move that the Sergeant at Arms be directed to compel the attendance of absent Senators. This does not mean they will be subject to arrest, but it means that there will be a serious effort to persuade them to come in.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, 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 question is on agreeing to the motion of the Senator from West Virginia (Mr. ROBERT C. BYRD) to direct the Sergeant at Arms to compel the attendance of absent Senators. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Texas (Mr. BENTSEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HART), the Senator from Maine (Mr. HATHAWAY), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Wyoming (Mr. MCGEE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from North Carolina (Mr. MORGAN), the Senator from Rhode Island (Mr. PASTORE), the Senator from Rhode Island (Mr. PELL), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Mississippi (Mr. STENNIS), the Senator from Florida (Mr. STONE), the Senator from Georgia (Mr. TALMADGE), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Montana (Mr. MANSFIELD), the Senator from Alaska, (Mr. GRAVEL) are absent on official business.

I also announce that the Senator from Iowa (Mr. CULVER) is absent attending the funeral of Congressman TORBERT MACDONALD.

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Maryland (Mr. BEALL), the Senator from Massachusetts (Mr. BROOKE), the Senator from New York (Mr. BUCKLEY), the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. FANNIN), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Wyoming (Mr. HANSEN), the Senator from North Carolina (Mr. HELMS), the Senator from Nebraska (Mr. HRUSKA), the Senator from New York (Mr. JAVITS), the Senator from Nevada (Mr. LAXALT), the Senator from Idaho (Mr. MCCLURE), the Senator from Oregon (Mr. PACKWOOD), the Senator from Kansas (Mr. PEARSON), the Senator from Illinois (Mr. PERCY), the Senator from Alaska (Mr. STEVENS), the Senator from Ohio (Mr. TAFT), the Senator from South Carolina (Mr. THURMOND), the Senator from Texas (Mr. TOWER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The result was announced—yeas 41, nays 6, as follows:

[Rollcall Vote No. 206 Leg.]

YEAS—41

Bartlett	Ford	Metcalf
Bayh	Glenn	Moss
Bellmon	Griffin	Muskie
Biden	Hart, Philip A.	Nelson
Brock	Hartke	Nunn
Burdick	Haskell	Proxmire
Byrd, Harry F., Jr.	Hatfield	Randolph
Byrd, Robert C.	Jackson	Roth
Case	Johnston	Schweiker
Chiles	Leahy	Scott, Hugh
Clark	Long	Sparkman
Dole	Magnuson	Stafford
Durkin	Mathias	Stevenson
	McGovern	Symington

NAYS—6

Allen	Hollings	Weicker
Domenici	Scott, William L.	
Garn		

NOT VOTING—53

Abourezk	Hansen	Morgan
Baker	Hart, Gary	Packwood
Beall	Hathaway	Pastore
Bentsen	Helms	Pearson
Brooke	Hruska	Pell
Buckley	Huddleston	Percy
Bumpers	Humphrey	Ribicoff
Cannon	Inouye	Stennis
Church	Javits	Stevens
Cranston	Kennedy	Stone
Culver	Laxalt	Taft
Curtis	Mansfield	Talmadge
Eagleton	McClellan	Thurmond
Eastland	McClure	Tower
Fannin	McGee	Tunney
Fong	McIntyre	Williams
Goldwater	Mondale	Young
Gravel	Montoya	

So the motion was agreed to.

The PRESIDING OFFICER (Mr. MCGOVERN). With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

NOMINATIONS OF DAVID LILLY AND GEORGE HENRY KUPER

The PRESIDING OFFICER. The Senate will now proceed to the consideration of the nominations of Mr. David Lilly, of Minnesota, to be a member of the Board of Governors of the Federal Reserve System, and of George Henry Kuper, of the District of Columbia, to be Executive Director of the National Center for Productivity and Quality of Working Life.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed immediately to the rollcall vote on Mr. David Lilly without debate, and that there be one rollcall vote for both nominations, the one rollcall vote to count for two rollcall votes in the RECORD.

The PRESIDING OFFICER. Is there objection?

The Chair hears none. Without objection, it is so ordered.

DAVID MATHER LILY

Mr. MONDALE. Mr. President, I would like to take this opportunity to speak in favor of the nomination of Mr. David M. Lilly of Minnesota. Mr. Lilly has been nominated to be a member of the Board of Governors for the Federal Reserve System and to fill the unexpired term of Robert C. Holland.

I wish to endorse this nomination for Mr. Lilly has certainly contributed a great deal to Minnesota and has been a distinguished and respected member of the Twin Cities community.

Presently Mr. Lilly is serving as the chairman of the board of the Toro Co., a Minneapolis-based equipment manufacturing firm.

After graduating from St. Paul Academy, he attended Dartmouth College and received his degree in economics. He joined the First National Bank of Minneapolis upon graduation in 1941 and then served as Assistant to the Under Secretary of the U.S. Treasury in 1942.

From 1942 to 1945, Mr. Lilly served in the U.S. Army and attained the rank of major. He was decorated with the Bronze Star for his military service.

In 1945 he joined the Toro Co. as the vice president and general manager. He became president in 1950 and the chairman of the board in 1968. At the present time, he is also director of the Dayton-Hudson Corp., General Mills, Inc., the First Bank System, the First National Bank of St. Paul and the St. Paul Companies, Inc.

Mr. Lilly serves the community as the chairman of the board of trustees of Carleton College, and is a member of the visiting committee to the Graduate School of Education, Harvard University; member-at-large, council of the alumni of Dartmouth College; and former chairman of the Board of Directors of the Federal Reserve Bank of Minneapolis.

Mr. Lilly is married and has three children: David, Jr.; Bruce, and Susanne.

I hope that the Senate will join me in supporting this nomination as Mr. Lilly has certainly evidenced his interest and dedication to the best interests of his community and will undoubtedly serve the Federal Reserve System with the same concern and deep commitment.

NATIONAL CENTER FOR PRODUCTIVITY AND QUALITY OF WORKING LIFE

Mr. JAVITS. Mr. President, last November the Congress enacted Public Law 94-136 which created the National Center on Productivity and Quality of Work-

ing Life reported out of the Government Operations Committee of which I am a member. The new National Center is the successor to the National Commission on Productivity which was originally created by Executive order, and legislatively sanctioned in the Economic Stabilization Act Amendments of 1971. From 1971 through 1975 the National Commission was continued on a year-to-year authorization.

I have, for a number of years been deeply concerned by the decline in the rate of productivity growth in the United States. This decline has been particularly distressing in contrast to the rapid productivity increases which a number of Western European nations and Japan have been experiencing over the same period. The Federal Government must take an active, leadership role in improving the productivity of American industry and its workers and in enhancing the quality of working life. The original National Commission, however, was to a large extent, unable to fulfill its vital mandate. To improve the Federal effort in this area the new National Center was established, and authorized on a 3 year basis.

The National Center for Productivity and Quality of Working Life was given authority to coordinate the activities of all other branches of the federal government aimed at productivity improvement.

One of the new Center's first orders of business is to take stock of the productivity related efforts currently being undertaken by all branches of the Federal Government. The lack of such a single coordinating body made it impossible for the Government Operations Committee to gauge the scope of diverse Federal efforts in this area, or to assess their effectiveness.

In order for this Nation to maintain its position of economic and industrial leadership, it is additionally essential that we develop legislative programs designed to stimulate the productivity of the American labor force, and to facilitate programs to improve their work environment. Renovation, improvement, and modernization of facilities also are vital factors here. Recently I introduced S. 3300, a bill which would permit collective bargaining over the establishment of joint labor-management trust funds which would, on behalf of the employees of a given company, be permitted to purchase with a stated percentage of the trust fund common stock in that company. This employee stock ownership proposal will help give employees a greater stake in the viability and profitability of the companies for which they work. This is one step in expanding the horizon of the American worker beyond the assembly line, manufacturing plant, or office in which he or she works.

There are already a number of experiments being undertaken by labor and management aimed at productivity improvement and in enriching the work environment. These initiatives range from industry wide productivity committees in the steel industry to local labor-management-public committees, as in the highly successful experiment in Jamestown, N.Y. It is my firm belief that new and innovative productivity improvement programs will be key to improved relations between labor and management in the coming years.

We are on the threshold of a new era in labor relations in this Nation, which, with proper assistance and stimulation, from the activities of the new National Center on Productivity and Quality of Working Life, and such additional legislative enactments as may prove desirable can lead to unprecedented levels of cooperation between labor and management with a common goal of improving productivity while simultaneously making the workplace safer and more rewarding.

This new National Center will have a key role to play in the shaping of national policy in the area of productivity improvement. In order to facilitate planning within the Federal Government of productivity related initiatives the Center was given authority to coordinate the activities of all other Federal agencies.

As I have noted earlier, the former National Commission on Productivity was legislatively sanctioned in the Economic Stabilization Act of 1970. That act was reported from the Senate Banking Committee. There can be no doubt that the Banking Committee has an important stake in economic planning for our Nation. But efforts at improving the productivity of American workers and enhancing their work environment are equally within the ambit of the Labor and Public Welfare Committee, where I serve as ranking minority member. In order to establish effective coordination between the activities of the National Center, and legislation on the labor side to facilitate productivity and stimulate the interest of American workers in their environment, the responsibility respecting the National Center should also be recognized in the Labor and Public Welfare Committee.

The President has recently announced his nomination of George H. Kuper, the former Executive Director of the National Commission on Productivity to be the new Executive Director of the National Center. I believe this appointment of Mr. Kuper, who is fully familiar with the efforts of that predecessor Commission, and the stumbling blocks which it encountered to be highly appropriate. Mr. Kuper was instrumental in working with the Government Operations Committee in fashioning the legislation which brought the new Center into being.

This nomination was initially referred to the Government Operations Committee which had reported the legislation creating the new National Center. However, on Monday it was rereferred to the Banking Committee.

I wish to reiterate that my statement is in no way meant to indicate the slightest dissatisfiaction with the appointment of Mr. Kuper to be Executive Director of the National Center. It is my belief however, that effective coordination between the executive and legislative branches, and proper oversight of the activities of the new Center requires also recognition of the responsibility of the Senate Labor and Public Welfare Committee with substantive jurisdiction over proposals which are likely to be forthcoming from the work of the Center, or which are likely to require implementation by the Center.

FEDERAL RESERVE SYSTEM

Nomination of David M. Lilly of Minnesota to be a member of the Board of Governors of the Federal Reserve System.

The PRESIDING OFFICER. The question is on the confirmation of the nomination of David M. Lilly of Minnesota, to be a member of the Board of Governors of the Federal Reserve System.

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

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Texas (Mr. BENTSEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HART), the Senator from Maine (Mr. HATHAWAY), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Wyoming (Mr. MCGEE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from North Carolina (Mr. MORGAN), the Senator from Rhode Island (Mr. PASTORE), the Senator from Rhode Island (Mr. PELL), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Mississippi (Mr. STENNIS), the Senator from Florida (Mr. STONE), the Senator from Georgia (Mr. TALMADGE), the Senator from California (Mr. TUNNEY), are necessarily absent.

I further announce that the Senator from Montana (Mr. MANSFIELD), the Senator from Alaska (Mr. GRAVEL), are absent on official business.

I also announce that the Senator from Iowa (Mr. CULVER), is absent attending the funeral of Congressman TORBERT MACDONALD.

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

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Maryland (Mr. BEALL), the Senator from Massachusetts (Mr. BROOKE), the Senator from New York (Mr. BUCKLEY), the Senator from Arizona (Mr. FANNIN), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Nevada (Mr. LAXALT), the Senator from Idaho (Mr. MCCLURE), the

Senator from Oregon (Mr. PACKWOOD), the Senator from Kansas (Mr. PEARSON), the Senator from Illinois (Mr. PERCY), the Senator from Alaska (Mr. STEVENS), the Senator from Ohio (Mr. TAFT), the Senator from South Carolina (Mr. THURMOND), the Senator from Texas (Mr. TOWER), the Senator from North Dakota (Mr. YOUNG), are necessarily absent.

The result was announced—yeas 51, nays 0, as follows:

[Rollcall Vote No. 207 Ex.]

YEAS—51

Allen	Garn	Metcalf
Bartlett	Glenn	Moss
Bayh	Griffin	Muskie
Bellmon	Hansen	Nelson
Biden	Hart, Philip A.	Nunn
Brock	Hartke	Proxmire
Burdick	Haskell	Randolph
Byrd, Harry F., Jr.	Hatfield	Roth
	Helms	Schweiker
Byrd, Robert C.	Hollings	Scott, Hugh
Case	Hruska	Scott, William L.
Chiles	Jackson	
Clark	Johnston	Sparkman
Curtis	Leahy	Stafford
Dole	Long	Stevenson
Domenici	Magnuson	Symington
Durkin	Mathias	Weicker
Ford	McGovern	

NAYS—0

NOT VOTING—49

Abourezk	Hart, Gary	Pastore
Baker	Hathaway	Pearson
Beall	Huddleston	Pell
Bentsen	Humphrey	Percy
Brooke	Inouye	Ribicoff
Buckley	Javits	Stennis
Bumpers	Kennedy	Stevens
Cannon	Laxalt	Stone
Church	Mansfield	Taft
Cranston	McClellan	Talmadge
Culver	McClure	Thurmond
Eagleton	McGee	Tower
Eastland	McIntyre	Tunney
Fannin	Mondale	Williams
Fong	Montoya	Young
Goldwater	Morgan	
Gravel	Packwood	

So the nomination was confirmed.

NATIONAL CENTER FOR PRODUCTIVITY AND QUALITY OF WORKING LIFE

The PRESIDING OFFICER. The question is on the confirmation of the nomination of George H. Kuper, of the District of Columbia, to be Executive Director of the National Center for Productivity and Quality of Working Life.

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

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Texas (Mr. BENTSEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Michigan (Mr. HART), the Senator from Maine (Mr. HATHAWAY), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Wyoming (Mr. MCGEE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from North Carolina (Mr. MORGAN), the Senator from Rhode Island (Mr. PASTORE), the Senator from Rhode Island Mr. PELL), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Mississippi (Mr. STENNIS), the Senator from Florida (Mr. STONE), the Senator from Georgia (Mr. TALMADGE), the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Montana (Mr. MANSFIELD), the Senator from Alaska (Mr. GRAVEL) are absent on official business.

I also announce that the Senator from Iowa (Mr. CULVER) is absent attending the funeral of Congressman TORBERT MACDONALD.

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

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Maryland (Mr. BEALL), the Senator from Massachusetts (Mr. BROOKE), the Senator from New York (Mr. BUCKLEY), the Senator from Arizona (Mr. FANNIN), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Nevada (Mr. LAXALT), the Senator from Idaho (Mr. MCCLURE), the Senator from Oregon (Mr. PACKWOOD), the Senator from Illinois (Mr. PERCY), the Senator from Alaska (Mr. STEVENS), the Senator from Ohio (Mr. TAFT), the Senator from South Carolina (Mr. THURMOND), the Senator from Texas (Mr. TOWER), the Senator from North Dakota (Mr. Y*Z&7) are necessarily absent.

The result was announced—yeas 51, nays 0, as follows:

[Rollcall Vote No. 208 Ex.]

YEAS—51

Allen	Garn	Metcalf
Bartlett	Glenn	Moss
Bayh	Griffin	Muskie
Bellmon	Hansen	Nelson
Biden	Hart, Philip A.	Nunn
Brock	Hartke	Proxmire
Burdick	Haskell	Randolph
Byrd, Harry F., Jr.	Hatfield	Roth
	Helms	Schweiker
Byrd, Robert C.	Hollings	Scott, Hugh
Case	Hruska	Scott, William L.
Chiles	Jackson	
Clark	Johnston	Sparkman
Curtis	Leahy	Stafford
Dole	Long	Stevenson
Domenici	Magnuson	Symington
Durkin	Mathias	Weicker
Ford	McGovern	

NAYS—0

NOT VOTING—49

Abourezk	Eagleton	Javits
Baker	Eastland	Kennedy
Beall	Fannin	Laxalt
Bentsen	Fong	Mansfield
Brooke	Goldwater	McClellan
Buckley	Gravel	McClure
Bumpers	Hart, Gary	McGee
Cannon	Hathaway	McIntyre
Church	Huddleston	Mondale
Cranston	Humphrey	Montoya
Culver	Inouye	Morgan
Packwood	Stennis	Tower
Pastore	Stevens	Tunney
Pearson	Stone	Williams
Pell	Taft	Young
Percy	Talmadge	
Ribicoff	Thurmond	

So the nomination was confirmed.

Mr. ROBERT C. BYRD. Mr. President, I ask that the President be immediately notified of the confirmation of the nominations.

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

LEGISLATIVE SESSION

THE ANTITRUST IMPROVEMENTS ACT OF 1976

The Senate continued with the consideration of the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session and resume the consideration of H.R. 8532.

ADDITIONAL STATEMENT SUBMITTED ON TITLES I AND III OF THE AMENDMENT

Mr. PHILIP A. HART. Mr. President, the Senate is now considering an amendment to substitute the text of S. 1284 for the provisions of H.R. 8532, the Antitrust Parens Patriae Act. This statement comments on the provisions of title I, the Declaration of Policy, and title III, the Miscellaneous Provisions of S. 1284.

TITLE I—DECLARATION OF POLICY

Mr. President, title I reaffirms this Nation's commitment to the private enterprise system and the free market economy. It does so in the belief that competition spurs innovation; promotes productivity; prevents the undue concentration of economic, social and political power and preserves a free democratic society. In April of 1975, President Gerald R. Ford told the White House Conference on Domestic and Economic Affairs:

Competition—I think it is good in politics, I think it is good in athletics, and I think competition is the key to productivity and innovation.

In *Northern Pacific Railway Company against The United States*, 356 U.S. 1 (1958), the underlying principles of the antitrust laws were described as follows:

The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic, political and social institutions.

President Franklin D. Roosevelt summed up the central political, social, and economic values antitrust policy expresses in our society when he observed in a 1944 letter to Cordell Hull:

The Sherman and Clayton Acts have become as much a part of the American way of life as the due process clause of the Constitution.

Title I goes on to describe some of the possible effects which the decline of competition in our economy can have. Title I states that the decline of competition can contribute to unemployment, inefficiency, underutilization of economic capacity, a reduction in exports, and an adverse effect on the balance of payments. In his message to Congress creating the Temporary National Economic Committee in 1938, President Franklin D. Roosevelt spoke of the decline of competition and its effects on employment as follows:

One of the primary causes of our present difficulties lies in the disappearance of price competition in many industrial fields, particularly in basic manufacturing where concentrated economic power is most evident—and where rigid prices and fluctuating payrolls are general.

Managed industrial prices mean fewer jobs. It is no accident that in industries like cement and steel where prices have remained firm in the face of a falling demand payrolls have shrunk as much as forty and fifty percent in recent months. Nor is it mere chance that in most competitive industries where prices adjust themselves quickly to falling demand, payrolls and employment have been far better maintained. By prices we mean, of course, the prices of the finished articles and not the wages paid to workers.

When prices are privately managed at levels above those which would be determined by free competition, everybody pays.

Mr. President, title I goes on to state that diminished competition and increased concentration have been important factors in the ineffectiveness of monetary and fiscal policies in reducing the high rates of inflation and unemployment. Traditional monetary and fiscal policies do not seem adequate to check inflation and reduce unemployment. Dr. Arthur Burns wrote me as follows on this subject back in 1973:

Since the catastrophic depression of the Thirties we have learned a great deal about Government's role in helping to stabilize economic activity—how to avoid depressions and to reduce the frequency and severity of recessions. Currently we are enjoying a brisk recovery. But we are plagued with continuing inflation, and stabilization policies that rely on management of aggregate demand do not offer assurance, of themselves, of success in restoring stable prices. Selective controls on wages and prices for a limited period will be helpful, but they are no substitute for vigorous competition.

Yet competition is weakened by an array of impediments that have become embodied in our economic structure. Some are doubtless needed to protect workers, consumers, producers, investors, and others against the varied risks inherent in a free market. But our economy grew strong because of our reliance on free enterprise and individual choice, and we need to make sure that the restraints on free markets that we impose or tolerate are worth their costs, including their effects on productivity and efficiency. The increased productivity that we must have in order to enjoy prosperity without inflation can be achieved only if we eliminate restrictive practices in both the private and public sectors, on the part of labor as well as management, that cannot meet this cost-benefits tests.

In his fiscal 1976 budget request, Assistant Attorney General Thomas E. Kauper elaborated on the economic consequences of artificial restraints on our economy as follows:

Undue concentration of industry and artificial restraints on normal market forces exerted by private combinations and conspiracies exacerbate the existing pressures for inflation. These influences can be restrained by effective antitrust enforcement. The higher prices achieved by concentrated industries or by such combinations and conspiracies provide profit margins which are the natural targets for wage demands which in turn foster still further price increases, and therefore have both a long-term and a short-run effect on inflation. A dynamic antitrust program must be geared to arrest these effects.

* * * * *

The ultimate target of antitrust enforcement has been estimated in terms of billions of dollars of inflated prices. The precise costs of non-competitive market structure and performance are elusive, but experts in the field of economic organization estimate the economic losses due to resource misallocation, inefficiency due to ineffective cost control, wasteful promotional efforts and excessive and inefficient capacity, at from 3 to 6.2 percent of the GNP—or as much as $80 billion in terms of 1973 GNP.

Title I further states that investigations by the Federal Trade Commission, Department of Justice and others have identified conditions of excessive concentration and anticompetitive behavior in various industries. Although there is debate in academic circles as to whether or not economic concentration is a problem of national concern or whether concentration is still increasing, there seems to be little doubt that concentration does exist in our economy and persisted for a number of years. The Neal White House Task Force Report on Antitrust Policy found as follows in 1968:

Highly concentrated industries represent a significant segment of the American economy. Industries in which four or fewer firms account for more than 70% of output produce nearly 10% of the total value of manufactured products; industries in which four or fewer firms account for more than 50% of output produce nearly 24%. An impressive body of economic opinion and analysis supports the judgment that this degree of concentration precludes effective market competition and interferes with the optimum use of economic resources. Past experience strongly suggests that, in the absence of direct action, concentration is not likely to decline significantly.

The Neal report went on to recommend specific legislation to deal with concentrated industries. The legislation we are presently debating, of course, does not deal directly with concentrated industries. It seeks only to strengthen our system of enforcement to prevent further concentration. In 1969, when the Federal Trade Commission submitted its staff report entitled "Economic Report on Corporate Mergers," Dr. Willard Mueller, the FTC's Chief Economist, testified as follows:

This centralization of industrial control represents a substantial increase over previous levels that earlier prompted major concern on the part of the Congress. Specifically, the share of manufacturing assets held by the 100 largest corporations in 1968 was greater than the share of manufacturing assets held by the 200 largest corporations in 1950, the year Congress enacted the Celler-Kefauver amendment to section 7 of the Clayton Act. The 200 largest manufacturing corporations in 1968 controlled a share of assets equal to the share held by the 1,000 largest in 1941, when the Temporary National Economic Committee submitted to Congress its final report and recommendations on an investigation of concentration of economic power.

Title I concludes simply by saying that vigorous and effective enforcement of the antitrust laws can make a contribution to reducing prices, unemployment, and inflation. It also goes on to state that antitrust can contribute to the preservation of our democratic institutions and personal freedoms. Last June, Attorney General Edward Levi made a speech commemorating the 85th anniversary of the Sherman Act. Several of his comments are applicable to the validity of the declaration of policy in title I. They reaffirm that the premise underlying the antitrust laws and the policy of the Sherman Act against concentration and monopoly are as political and social in nature as they are economic. The antitrust laws are premised not only on economic freedom, but on personal freedom as well. On that occasion, Attorney General Levi stated as follows:

The antitrust laws are an expression of the importance of a recognition that liberty is to be found not only in the first amendment, but in the ability to make choices free of intervention. The antitrust laws, in their basic theory, are built upon a view of enterprise and of choice which property and access to the market give, and I would claim them as among the most important civil liberties. This is an older view, often in disrepute. Although often violated, this view has been sufficiently strongly held to give our country unusual diversity and creativity. This view and its manifestations in the Sherman Act have shaped and protected our democracy.

Mr. President, title I does not attempt to lay the blame for inflation and unemployment on diminished competition and increased concentration in the marketplace, nor does it promise that enactment of this legislation will solve these difficult and continuing problems Title I merely states that vigorous and effective enforcement of the antitrust laws can make a contribution in this regard. It is difficult for me to believe that anyone would seriously quarrel over such an assertion.

TITLE III—GENERAL

Title III contains six sections, four of which amend various provisions of the existing antitrust laws on the books. The remaining two sections deal with severability and the effective date of title III.

TITLE III—SECTION 301

The purpose of section 301 is to make the jurisdictional reach of the various antitrust statutes uniform. That section amends sections 2, 3, and 7 of the Clayton Act (15 U.S.C. 13, 14 and 18), section 3 of the Robinson-Patman Price Discrimination Act (15 U.S.C. 13(a)), and section 6 of the Sherman Act (15 U.S.C. 6), to permit their application to the fullest reach of the commerce clause and to assure uniformity of application of the antitrust laws to all activities in or affecting commerce. Under section 301, decisions such as *United States against American Building Maintenance Industries*, 422 U.S. 271 (1975), and *Gulf Oil*

Corporation against Topp Paving Company, 419 U.S. 186 (1974), construing the intent of Congress to limit the reach of the antitrust laws, would no longer be applicable.

When Congress originally enacted the antitrust laws in 1890 and 1914, the full reach of the commerce clause was not as refined as it is today. Recent court decisions have construed some provisions of the antitrust laws to apply to activities "in commerce" and other provisions as applying to activities "in or affecting commerce." Section 301 substitutes the phrase "in or affecting commerce" or its equivalent for the phrase "in commerce" throughout the antitrust laws to assure that the antitrust laws reach activities directly in the stream of interstate commerce, as well as activities affecting interstate commerce. Legislation was enacted by the 93d Congress similarly extending the reach of the Federal Trade Commission Act to the fullest extent permitted by the commerce clause, that is, to activities in or affecting commerce. During the 94th Congress, the Senate passed S. 642 and S. 2935, which contain provisions identical to section 301 as regards section 3 of the Robinson-Patman Act and sections 2 and 3 of the Clayton Act.

Since 1890, section 6 of the Sherman Act has provided that:

Sec. 6. Any property owned under any contract or any combination or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of this act, and being in the course of transportation from one state to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure and condemnation of property imported into the United States contrary to law.

Section 301(c) of title III would amend section 6 of the Sherman Act by striking the words "and being in the course of transportation from one state to another, or to a foreign country," and inserting in lieu thereof the words "and being in or affecting commerce among the several states, or with foreign nations." Section 6 of the Sherman Act requires the institution of separate civil proceedings in rem. seeking the condemnation of goods which are the subject of a section 1 violation. Section 6 has been a virtual dead letter since 1890. It has never been utilized by the Department of Justice. Specifically, the question has been raised as to whether or not it is the intent of the Judiciary Committee and the sponsors of this legislation to breathe some life into section 6 of the Sherman Act. I think it is clear that this is not the intent of the Judiciary Committee or the sponsors. Section 301 simply attempts to make it clear that Congress intends that all of the various antitrust statutes have the same jurisdictional reach, namely, to activities "in or affecting interstate or foreign commerce."

TITLE III—SECTION 302

For a variety of reasons, antitrust cases take years and years to resolve. Section 302 is designed to provide the tools to expedite some of the more complex antitrust cases. A survey of section 2 Sherman Act cases shows that on the average from 23 to 39 years elapsed between the date of the violation and the final outcome of the litigation. That experience holds good for today. One of the most prominent antitrust cases filed by the Government since 1968 involves IBM, and that case has been six years just to get to the trial stage. Section 302 amends the Clayton Act (15 U.S.C. 12) by adding a new section 27, authorizing certain cases to be designated as complex antitrust cases. Cases so designated are to be expedited in every way, and special masters, economic experts, and other personnel may be appointed to assist in the expeditious and efficient trial of the case, and in expediting discovery and pretrial matters. Special masters, economic experts, and other personnel may be used by the court in all phases of the trial, including the preparation and analysis of plans for relief. They first, may be furnished with all the evidence introduced by any party; second, may provide additional evidence subject to objection by any party; third, may provide an analysis of issues with particular reference to proposed orders to restore effective competition; fourth, may recommend provisions for proposed orders to restore effective competition; and fifth, shall be subject to cross examination and rebuttal. The provisions of section 604 of title 28, United States Code, providing for payment of expenses and compensation are made applicable to complex antitrust cases in order to provide compensation to such masters, economic experts and other personnel.

TITLE III—SECTION 303—FOREIGN ACTIONS

An increasing number of antitrust cases are being filed against foreign companies, including multinationals. Problems have arisen with respect to such companies refusing to comply with subpenas or discovery orders on the basis of foreign nondisclosure laws; or on the basis that the relevant data is in the foreign home office and cannot be produced in the United States. Section 303 makes it clear that foreign companies and multinationals who choose to do business in the United States must comply with valid U.S. judicial orders, just as a domestic company must comply with such orders. Section 303 confirms the power of a Federal court to take appropriate remedial action to enforce its orders compelling discovery, evidence, or testimony in those cases in which litigants refuse to comply with such orders on the grounds that a foreign law or rule prohibits them from doing so.

The present state of the law tempts defense counsel in antitrust cases to protect their clients' interests by making overtures to foreign governments concerning the invocation of secrecy orders prohibiting compliance with valid U.S. discovery orders. (See note, 14 Virginia Journal of International Law, 747, 763-64 (1974)). The purpose of this provision is to insure that the jurisdiction and administration of our court system, and the enforcement of our regulatory and antitrust laws, are not thwarted by foreign governments. Section 303 is patterned after section 282(d) of S. 2255, the patent revision bill, which was passed by the Senate on February 26, 1976, which, in turn, was predicated upon a provision contained in the administration's patent reform bill—S. 1308. The provision also is patterned after rule 37 of the Federal Rules of Civil Procedure. Due to the decision in *Societe Internationale* v. *Rogers*, 357 U.S. 197 (1958), it is uncertain when that rule may be invoked in regard to foreign litigants. Section 303 is intended to supplement, and not replace, rule 37 with respect to such litigants.

TITLE III—SECTION 304—ATTORNEYS' FEES

Section 304 amends section 16 of the Clayton Act (15 U.S.C. 26) by providing that in any action under this section in which a plaintiff substantially prevails, the court shall award to such plaintiff the cost of suit, including reasonable attorneys' fees and other expenses of litigation. Under the recent Supreme Court decision in *Alyeska Pipeline* v. *Wilderness Society*, 421 U.S. 240 (1975), in the absence of express statutory authority courts may not award attorneys' fees to prevailing plaintiffs. Section 304 provides such statutory authority for courts to award attorneys' fees to a substantially prevailing plaintiff in equity actions under section 16 of the Clayton Act, just as section 4 of the Clayton Act authorizes the award of attorneys' fees to prevailing plaintiffs in damage actions.

In addition to reasonable attorneys' fees, section 304 provides for the award of other expenses associated with the litigation. The provision is intended to make substantially prevailing plaintiffs whole, and the phrase "other expenses of the litigation" is intended to encompass all other reasonable expenses associated with the litigation such as for expert witnesses, paralegals, transcript costs, necessary computer time, et cetera, in addition to the traditional awarding of costs.

The Alyeska decision creates a significant deterrent to potential plaintiffs bringing and maintaining lawsuits to enjoin antitrust violations. Without the opportunity to recovery attorneys' fees in the event of winning their cases, many persons and businesses would be unable to afford or unwilling to bring antitrust injunction cases.

The committee believes that the need for the awarding of attorneys' fees in section 16 injunction cases is at least equal to and probably greater than the need in section 4 treble damage cases. In damage cases, at least a prevailing plaintiff recovers compensation. In injunction cases, however, without the shifting of attorneys' fees, a plaintiff with a deserving case would personally have to pay very high price of obtaining judicial enforcement of the law and of the important national policies the antitrust laws reflect.

The antitrust laws clearly reflect the national policy of encouraging private parties—whether consumers, businesses, or possible competitors—to help enforce the antitrust laws in order to protect competition through compensation of antitrust victims, through punishment of antitrust violators, and through deterrence of antitrust violations. Litigation

by "private attorneys general" for monetary relief and for injunctive relief has frequently proved to be an effective enforcement tool. In Alyeska, the Supreme Court noted that:

It is true that under some, if not most, of the statutes providing for the allowance of reasonable fees, Congress has opted to rely heavily on private enforcement to implement public policy and to allow counsel fees so as to encourage private litigation. Fee shifting in connection with treble damage awards under the antitrust laws is a prime example.

Section 304 is the congressional response to the invitation of the Court to enact specific legislation authorizing the award of attorneys' fees when there is a strong public policy to be vindicated.

TITLE III—SECTION 305—SEVERABILITY

Section 305 is a standard severability provision. It provides that if any provision of this act, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

TITLE III—SECTION 306—EFFECTIVE DATE

Section 306 provides the effective dates for the several provisions of the act. Under section 306, section 301 applies to acts, practices, and conduct occurring after the date of enactment of this act; section 302 applies to all actions on file on the date of enactment of this act or hereafter filed; section 303 applies to all actions on file on the date of enactment of the act or hereafter filed, in respect of noncompliance with discovery orders hereafter entered. Unless otherwise specified, the effective date of this act is its date of enactment.

Mr. President, a number of questions have been raised, formally in debate and informally, on the Hart-Scott substitute. This statement is intended by Senator SCOTT and me to make available to those interested our view on these questions.

SUBSTANTIVE ANTITRUST STANDARDS

Question 1. Does the bill make any conduct illegal under the antitrust laws which would not be deemed illegal under existing law?

Answer 1. No. Substantive standards of what are or are not violations of the antitrust laws are not changed. In other words, enactment of the bill would not make illegal any conduct which is not presently illegal under existing antitrust law.

SUMMARY OF BILL

Question 2. What does the bill do?

Answer 2. The bill contains five interrelated, although separate, titles.

Many of its provisions have been the subject of direct or indirect hearings or discussions by the Antitrust and Monopoly Subcommittee over the past 17 years. Each in its own way is designed to overcome a particular and basic weakness of present antitrust law. The bill properly may be viewed as an enforcement bill, designed to make the existing antitrust laws work.

The essence of the bill is contained in titles II, IV, and V. Title II amends the Antitrust Civil Process Act, substantially improving the investigatory authority of the Antitrust Division of the Department of Justice. Title IV amends the Clayton Act, substantially improving the deterrent effect of its private damage provisions by authorizing State attorneys general to bring private treble damage actions to secure redress for damage done to natural persons residing in their States. Title V also amends the Clayton Act, substantially improving its merger provisions by providing for advance notification of large mergers and for improved procedures to enjoin mergers which are alleged to be illegal prior to consumption.

OPPONENTS OF BILL

Question 3. Why have we received so much mail in opposition to the bill?

Answer 3. That is difficult to answer with certainty. We, too, have received a substantial volume of mail in opposition.

We do know that the bill is strongly opposed by the Business Roundtable, the Chamber of Commerce, and the National Association of Manufacturers. They have asked member firms in all 50 States to write, telegram, and phone in opposition to the bill. Some have provided sample letters for that purpose. That is one reason that many of the communications received are almost identical.

We are aware that a number of large public corporations such as Hoover Ball Bearing and Standard Oil have sent letters to all shareholders, urging them to communicate their opposition to the Senate.

Finally, the Washington office of the National Association of Realtors communicated with real estate firms in the country, urging them to communicate with the Senate and express their opposition to the bill.

SUPPORTERS OF THE BILL

Question 4. Opponents of the bill term it a lawyer's bill with little public support. Who supports the bill?

Answer 4. We believe the bill has widespread support. It is supported in whole or in substantial part by Thomas E. Kauper, Assistant Attorney General in charge of the Antitrust Division; the Federal Trade Commission; the Natonal Association of State Attorneys General; each of the 50 State attorneys general; a majority of the Antitrust Section of the Federal Bar Association responding to a questionnaire soliciting their views; some 70 academic and practicing economists; a number of law professors; the Computer Industry Association; the National Congress of Petroleum Retailers; Consumer Federation of America; United Mine Workers of America; National Farmers Union; AFL/CIO; National Rural Electric Cooperative Association; United Auto Workers; International Ladies Garment Workers Union; Independent Gasoline Marketers Council; National Consumers League; Retail Clerks International Association; National Retired Teachers Association; American Association of Retired Persons; United Steelworkers of America; Energy Action Committee; Committee for Public Advocacy; National Consumer Congress; Public Interest Economics Center; Senior Citizens National Education Association; Amalgamated Clothing Workers of America; International Association of Machinists and Aerospace Workers; Congress Watch; and the American Federation of State, County, and Municipal Employees.

Mr. President, I ask unanimous consent that the following representative letters and editorials supporting the bill be printed in the RECORD.

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

[From The St. Petersburg Times, March 23, 1975]

OVERDUE REFORM

Much that is right about America—from its high standards of living to its great universities—is rooted in its strong, aggressive industries. And so is much that is wrong.

Safeguards against excessive power have lagged behind the emergence over three decades of multinational corporations, oil companies mightier than most nations, computer Goliaths, and other enterprising giants able to exercise monopoly powers, stifle competition, and buy government favors.

Regulatory agencies have proved to be a spotty defense against abuses, succeeding here, failing there. Just as weak have been anti-trust laws, too often a paper tiger against corporate pirates. Two senators, Philip Hart, D-Mich., and Hugh Scott, R-Pa., don't like it. They have proposed legislation to tighten the anti-trust laws.

That's an overdue reform. For 20 years, while some corporations have grown more bullying, anti-trust proposals have faltered. The Hart-Scott bill would incorporate many of those proposals, from study groups, consumer organizations, presidential task forces, academic experts and others. It is an idea that Congress should support.

Part of the bill's goal is to combat inflation caused by price fixing, corporate conspiracies and lack of competition. President Ford acknowledged that such causes of higher costs exist when, in his first economic message as President, he urged tougher antitrust action.

To jolt corporations into paying attention to anti-trust laws, part of the bill would allow states to recover for citizens damages equal to three times the economic loss suffered as a result of an anti-trust violation. Another provision would make a plea of "no contest" in a criminal anti-trust case admissible evidence in a private anti-trust case filed to collect damages.

"Currently one out of every four dollars consumers spend goes to buy products produced by a concentrated industry," Sen. Hart said. Too often that means paying prices illegally agreed to by would-be competitors or resulting from joint ventures, bought protection from prosecution and other misuses of economic muscle.

The number of firms engaged in such practices may be small numerically compared to the total number of corporate entities. But their power is outsized, and their activities discredit honorable industrialists and business leaders. The latter need have no fear of the Hart-Scott legislation.

Not just economic problems but social problems, such as welfare and crime growing from economic issues, are made worse in this country and abroad when some corporations grow too strong. Tough anti-trust legislation, enforced swiftly and fairly, is a major part of solving such problems.

[From The Charleston Gazette, April 2, 1976]

BYRD IS PRO-CONSUMER IN ANTITRUST EFFORTS

Legislation aimed at more effective enforcement of antitrust laws, a critical need for

American consumers in these inflationary times and particularly those in smaller states such as West Virginia, faces a critical test next Tuesday when it will be considered by the Senate Judiciary Committee.

The bill (S. 1284) has three major objectives: (1) it would authorize the attorneys general of the respective states to sue antitrust violators and recover triple damages on behalf of victimized consumers; (2) it would increase the investigatory powers of the Department of Justice to search out and prosecute antitrust violators more effectively; and (3) it would further provide an effective surveillance system for giant mergers so that the government receives 30-day advance notice, meaning that the government would have the power to stop an illegal merger before it occurs and before the public is harmed by it.

We're happy to report that West Virginia's Sen. Robert C. Byrd, assistant majority leader of the Senate as well as a member of the judiciary committee, is clearly on the side of the legislation—and therefore on the side of the consumers—with this unequivocal statement: "I support its enactment."

The big test, however, will be in how well Sen. Byrd can exert his considerable influence in warding off weakening amendments during the judiciary committee's consideration of the bill. In this regard, it's notable that the House passed a similar bill by voice vote on March 18—but only after adoption of several amendments that seriously limited its scope.

An encouraging indication that Sen. Byrd can be counted on to standard guard for the consumers in his perceptive recognition of the damaging effects of inflation—particularly for citizens living on low incomes—and its relation to violations of the antitrust laws.

This became apparent early in March when Sen. Byrd, addressing the Chicago Conference for Brotherhood, declared: "For many people, even the necessities of life are being priced beyond their reach. The soaring rate of inflation has many causes, but one major contributing factor is the extraction from consumers of unjustifiable and unlawful higher profits caused by infractions of the antitrust laws. Among the practices producing such illegal profits are restraints of trade and price fixing. It is estimated that as much as $80 billion a year is being overcharged nationwide as a result."

His answer to this problem was more stringent enforcement to make the antitrust laws work more effectively for the consumer, and he went on to cite other benefits of the pending legislation:

"Of equal importance . . . is the fact that these antitrust actions by the government could increase competition and help to lower the price of goods in the market. Lower prices will stimulate buying which, in turn, will stimulate production. The need for greater production will create jobs—jobs that pay real wages, jobs that will cut the rate of unemployment, jobs that will take people off unemployment compensation and welfare, jobs that will give disadvantaged men and women a chance to become economically independent."

We applaud Sen. Byrd for his views and for his logic. He gives us a feeling of confidence that he will fight for full implementation of those views by being on the alert to recognize and to put down any effort to erode the pending antitrust legislation through weakening amendments such as happened in the House.

[From the Knoxville News-Sentinel, Mar. 6, 1976]

PRICE-FIXING PENALTIES

Congress can help curb inflation by passing legislation to penalize price-fixers and foster more business competition.

A bill being considered in both the House and Senate would permit states to collect treble damages for consumers who've been hurt by illegal price-fixing arrangements. It also would give the Justice Department more power to investigate antitrust violations.

Both of these measures have presidential support, but the idea of letting states collect price-fixing damages for their citizens is running into stiff corporate opposition.

Such legislation is needed because individuals have no practical way to recover money they lose when the price of milk, or bread, or gasoline, or some other basic commodity is kept artificially high by company collusion.

This means, in effect, that price-fixers are able to retain millions of dollars in illegal profits even if they're later slapped with a Federal fine for breaking the law.

Most businessmen who believe in the free enterprise system should be in favor of more vigorous competition. But as Joe Sims, one of the Government's chief antitrust lawyers, pointed out in Dallas the other day, they often lobby against laws that would punish price-fixers and even against laws (in the trucking industry, for example) that would reduce Federal regulation.

To its credit, the Ford Administration has been a leading advocate of strong antitrust enforcement and a prime mover in repealing the so-called "fair trade" laws that stifled price competition in many of our states.

Requiring price-fixers to return their illegal profits, as Congress now proposes to do, would be a logical next step in making sure that consumers are getting the protection they deserve.

[From The Washington Post, April 4, 1976]

WAFFLING ON ANTITRUST LAWS

President Ford is getting himself into needless trouble over the antitrust legislation now moving through Congress. It's sadly reminiscent of the way he got himself into trouble over the common situs picketing bill. In each case the administration strongly committed itself to the legislation. Then some months later, after assiduous lobbying by businessmen, Mr. Ford began to think of reasons for backing away from it. When he reversed himself and vetoed the common situs bill, he lost his exceedingly able Secretary of Labor, John T. Dunlop. The damage in the antitrust waffle is not yet so great because the legislation is, fortunately, very much alive and the President may decide to think again and sign it. But the stakes are large and the outcome is very much in doubt.

This legislation would not expand the scope of the antitrust laws or create new penalties. It is aimed entirely at improving the enforcement of the present laws. The support is bipartisan; the sponsors in the Senate are Philip A. Hart, the chairman of the antitrust subcommittee, and Hugh Scott, the minority leader. Until a few weeks ago, this legislation, in general, was endorsed vigorously by the Justice Department. But in mid-March, Mr. Ford wrote a letter to Rep. John J. Rhodes, the House minority leader, reversing the administration's repeatedly stated position and setting out his "serious reservations" to one key provision.

That provision would authorize a state's attorney general to sue, under federal antitrust law, in federal courts, in behalf of all the state's citizens. Certain types of antitrust violations—particularly those involving consumers' goods—would suddenly become very much more dangerous to the perpetrators. A conspiracy to fix prices or share markets may add only a few cents to the price that a consumer pays for an item. But if it is one of the items that all of us use every day, the total gain to the conspirators can be huge. That is the anomaly in the present law: The profit is large, but no individual customer has lost more than a few dollars and, even with the traditional treble damages, no customer has enough of an interest to make a long and expensive suit worth his while. A wrong has been inflicted but, as a practical matter, there is at present no remedy.

Mr. Ford commented that, if states want to get into antitrust cases, they can pass their own laws. Some of them have done it already. But Mr. Ford's suggestion raises a threat to businessmen that even the most shortsighted of them ought to be able to see. If states are encouraged to proceed with their own laws, a firm accused of a violation might well find itself fighting suits in as many states as it does business in—with different legal requirements and definitions in each. Carrying on this kind of litigation under one common body of law, in the federal courts, seems clearly preferable from everybody's point of view.

The House has already passed its version of this provision, with a couple of amendments designed to respond to some of Mr. Ford's objections and avoid a veto. These amendments, unfortunately, went further than they ought to have gone. That makes it particularly important, when the Senate Judiciary Committee votes next week, that it report the bill in its stronger form.

It should be noted that Mr. Ford does not appear adamant on these issues. For example, another provision in this package of legislation would give the Justice Department the authority to take sworn testimony in pretrail investigations. It's an obscure point, perhaps, but an important one in strengthening the intricate process of fair and effective enforcement. Here the President has written a letter to Rep. Peter W. Rodino, the chairman of the House Judiciary Committee, "strongly" urging passage But it's the whole package that needs to be passed, not just excerpts.

As Mr. Ford considers this legislation further, there are a couple of points worth his particular attention. First, antitrust laws do not benefit consumers alone. Historically, they have always had strong support from enlightened businessmen who recognize them as necessary protection against predatory competition. They are not a threat to business but rather a necessary safeguard of free and open enterprise. It is a sorry commentary that the current opposition comes solely from businessmen.

Mr. Ford might also want to reflect that antitrust enforcement is a powerful weapon against inflation, a subject to which he is devoting much attention in the election campaign. Economists of all political persuasions agree in emphasizing the contribution that the antitrust laws can make to price stability. Mr. Ford seems to find all the pressures of the Republican primary elections pushing against a broader enforcement of the antitrust laws. But he might discover, on further reflection, that they actually ought to be pushing the other way.

[From The New York Times, March 20, 1976]

CONSUMER ANTITRUST

The House of Representatives this week approved a bill to permit states to file triple-damage price-fixing suits on behalf of their citizens against companies accused of violating the antitrust laws.

The Administration no longer supports the legislation, although Assistant Attorney General Kauper, head of the Antitrust Division, had said the bill would provide a "a workable mechanism for assuring that those antitrust violations which have the broadest scope and perhaps the most direct impact on consumers do not escape civil liability."

The heart of the problem is that antitrust violations that result in relatively small economic damage to a large number of people can be, in Mr. Kauper's term, "alluring" to businesses that realize that no single con-

sumer has a sufficient financial stake to bear the costs necessary to maintain a private suit for recovery of damages.

Class-action suits in such cases have been eliminated, for all practical purposes, by a Supreme Court decision requiring that class-action plaintiffs provide individual notice to all identificable members of the class—regardless of the cost, which obviously would be prohibitive. Further, when California claimed that consumers of sncak foods had been victims of a price-fixing conspiracy, the Ninth Circut Court of Appeals held that under present law the state could not recover damages on behalf of consumers.

The bill now passed by the House would fill these gaps. It does not change the substance of existing antitrust law. However, it is essential that the law not lead to unfair harassment of businesses. The amendments voted by the House to reduce triple damages to single damages where the defendant can show that he acted "in good faith" and to limit the bill to "willful price-fixing" should help prevent such misuse.

The charge that this bill would in fact lead to the destruction of businesses appears to us to be attacking a straw man. It is highly improbable that states—all of which are eager to attract and hold businesses and ensure jobs for their citizens—would embark on a wave of destructive antitrust suits. In approving this measure, the House has moved to safeguard the free market and the consumer in an important area. It is unfortunate that the Administration has reversed its original support of the bill, which now goes to the Senate Judiciary Committee, where another—and broader—antitrust bill will be acted on next week.

[From the Washington Post, Feb. 29, 1976]

THE ANTITRUST BILL

Three important improvements in the antitrust laws are now being pushed vigorously by an alliance of the administration and Sen. Philip A. Hart (D.-Mich.). The bill is sponsored by Mr. Hart, as chairman of the antitrust subcommittee, and Hugh Scott (R-Pa.), the minority floor leader. With that kind of support, you might think it would be coasting rapidly along toward a happy ending. But you would, of course, be underestimating the ferocious opposition mounted by a wide variety of businesses.

They are much the same business organizations that, on other occasions, come to Washington to tell us about the great virtues of the American free market system. But the market system stays free only through enforcement of the antitrust laws. This legislation addresses some of the specific difficulties that antitrust enforcement currently faces.

The first of these improvements would give the states' attorneys general the standing to sue for damages on behalf of a state's citizens as consumers. Consider a hypothetical example: Suppose several milk producers conspire to lift the price of milk half a cent a quart. In an average state that could easily bring the conspirators millions of dollars a year. But for any one family, even one that drinks a lot of milk, the damages would be only a few dollars. Who is going to embark on an expensive antitrust suit to recover three dollars? The present law entitles consumers to punitive damages but, as a practical matter, provides them with no effective way actually to collect. A state government, winning a suit of this nature, would work out with the judge a method to return the damages to the public. In this case, for example, it might use the money to expand its school lunch program. The effect is to make certain types of antitrust violations much more dangerous to the people who attempt them.

A second improvement would broaden the Justice Department's authority to require testimony under oath in civil investigations of antitrust cases. Under present law, it can demand only documents, and it can demand them only from the people who are the direct targets of the investigation. But an antitrust case requires evidence regarding the structure of a market and which products compete with which. Often the best sources are customers, competitors and trade associations; but they may well fear retaliation and resist testifying voluntarily. Expanding the government's power to compel testimony is not a thing to be done lightly. But the authority requested here is, in fact, narrower than that already in the hands of other federal agencies, including the Federal Trade Commission, and there is no record of abuse.

Finally, the administration, Sen. Hart and Sen. Scott want a rule requiring big companies to notify the Justice Department 30 days before a merger. It would be comforting to think that the Justice Department had X-ray vision, like Superman, and that not a sparrow could fall in the corporate world without its being noted in the Antitrust Division. But the reality is a bit more modest and the department, like the rest of us, sometimes first hears of a merger through the press release announcing it as an accomplished fact. De-merging a merger is, as the lawyers are fond of saying, like unscrambling an egg. The time to weigh the legality of a merger is before, not after, it happens.

As the bill was written, it would have given the Justice Department new authority to seek a court order staying a dubious merger. A few days ago the administration backed off its original support for this authority, claiming that the present law is adequate. The premerger notification rule is worth enacting even without this new injunctive provision, but it would clearly be more effective in its original form.

Within the Senate Judiciary Committee, Sens. Roman L. Hruska (R-Neb.) and Strom Thurmond (R-S.C.) have been leading an aggressive campaign to delay this bill as long as possible. They have been moderately successful. Under an agreement worked out this week, the bill will come to the Senate floor sometime around the beginning of May. It is certain to pass the Senate. But there will never be time to get it through the House, if it has to begin the whole legislative process there in late spring. The House should have been well advanced in its consideration of all three provisions by this time. But it is not.

The House Judiciary Committee is handling these issues in separate bills. One of them—the one permitting the states to sue and collect on behalf of their citizens—has been reported in good order and is about to come to the House floor. The other two, unfortunately, are in limbo—the victims, apparently, of lethargy and inattention. On the question of expanding the Justice Department's investigative authority, the hearings ended last summer. But the Committee has made no move to report a bill. As for the premerger notification rule, there has been, unaccountably, no action at all.

It is a strange performance. There is hardly any issue on which the House Democrats are more enthusiastically united than the Republican administration's alleged toleration of monopoly. But in this instance, the House is giving President Ford much less than he has asked in enforcement powers. Its own dilatory response threatens to award a considerably victory to the tactics of purposeful delay, as pursued by Sens. Hruska and Thurmond. Mr. Hart, the Senate's leading crusader on antitrust policy, and the administration are agreed on the need for this legislation. If other Democrats cannot rouse themselves to enact it, they are hardly entitled to keep complaining about the quality of the administration's antitrust enforcement.

A THREATENED FREE MARKET SYSTEM

(By Hobart Rowen)

OTTAWA.—More than ever before, the values of the free market system are being questioned in the western world. In the United States, presidential candidate Jerry Brown openly wonders whether the market system can produce full employment.

He told this reporter and some others that in any event, should he become President, there would be the kind of economic intervention not compatible with the hands-off ideology of Messrs. Ford and Reagan.

Here in Canada, Prime Minister Trudeau shocked the business community with a year-end interview in which he said that the Canadian wage-price control system made effective last Thanksgiving was a message to Canadians that "we haven't been able to make it work, the free market system. . . ."

Even at the end of a projected three-year controls period, Trudeau said, "we don't want to go back to the same kind of society with high unemployment and high inflation. . . . There's going to be not less authority in our lives, but perhaps more."

There will be long debates, both in Canada and in the United States before there is, in fact, a broader scope for economic controls for intervention. In both countries, there is a detectable swing to the right, and public sentiment may be slow to follow the lead of the Browns and the Trudeaus.

But there is a threat to the market system from another source, and it emanates from big business itself. I refer, of course, to disclosures of international corporate bribery, and the ugly suspicion that what we have learned so far is just the tip of the iceberg.

This threat is increasingly recognized in the upper echelons of the business establishment itself. In a speech here earlier this month before the Tri-lateral Commission—an influential group of top business, political and academic leaders in North America, Europe and Japan—Washington lawyer Lloyd Cutler laid it on the line speaking of corporate bribery:

"Nothing we have recently done to ourselves has helped more to discredit private enterprise, both in the U.S. and abroad—especially multinational private enterprise—and to speed the spread of the corporate state."

As he observed, the willingness of businessmen to engage in kickbacks and bribes makes a mockery of the pious protestations by many business leaders that the free market system is necessary "to make rational economic choices on the basis of price, quality, and service."

Cutler, who has many blue-ribbon corporate clients, and who knows the business community as well as anyone in Washington, says that many of the big bosses of the multinational companies did not know that their subordinates had approved of bribery techniques.

He cites as an example that some directors of British Petroleum were not aware of BP's political contributions in Italy.

If so, that's a new black mark on the shield of the multinationals. But at least everyone now knows and acknowledges the corrupting trend, and the question remains: What are they doing about it?

Stanley Sporkin of the Securities and Exchange Commission, one of a half dozen government agencies conducting investigations into bribery, says: "I have begun to fear that the word 'morality' is going the same way as 'detente.' "

But appeals to business moraltity are not the answer, in my view. Too many businessmen, openly and covertly, still support bribery as a tactical necessity of their business operations.

"If we really want to stop improper foreign payments by international firms," Cutler said in his Ottawa speech, "the key is not to

make them illegal or to read morality lectures to one another, but to work out an effective system of current disclosure of who pays what to whom, properly or improperly."

I can hear the howls now from businessmen who will say that such disclosure would impose the need to make yet another government report. And they will say that even if we adopt such a system, other governments won't impose the same disclosure standards on their companies.

They may be right on the latter point. But the SEC has the power to apply the same disclosure standards as imposed on U.S. firms on foreign-based companies whose securities are traded in this country.

So some such system is not only becoming critical, it is practical. Any businessman who mouths all of the platitudes about the free enterprise system, and who fails to advocate an effective in-house clean-up is feeding us pure bull.

MEMORANDUM

To: All Members of the United States Senate
From: Coalition in Support of S. 1284
Date: May 12, 1976

We, the undersigned, support the prompt passage of S. 1284, particularly Title IV, which we view as important consumer legislation needed to protect our free enterprise system and assure consumers the benefits which the system is designed to achieve. Title IV of the bill would authorize states to sue violators of antitrust law on behalf of their citizens and to recover money damages for them. Other provisions would expand the authority of the United States Department of Justice to issue civil investigative demands and would require large companies to notify the Justice Department and the Federal Trade Commission before a merger.

Public confidence in the ability of government to protect its citizens from unfair business practices is eroding. Price fixing and other antitrust violations cost consumers billions of dollars annually. The Department of Justice, for example, has pending more than 90 grand jury investigations into possible antitrust violations. Such "white collar" crime is as illegal as robbery and should not be allowed to flourish because of gaps in existing law.

S. 1284 would help restore public confidence in government by expanding both federal and state antitrust enforcement powers. Title IV would allow consumers to recover damages for price fixing and other antitrust violations. By broadening the scope of inquiry, the bill would permit the Justice Department to collect oral and written testimony from all persons and businesses before a suit is filed, thus aiding the complex task of extensive data collection in antitrust cases. Currently, the Department may only order documents from persons who are the direct targets of investigation. The premerger notification provision would give the Justice Department and the Federal Trade Commission an opportunity to review proposed mergers and assess their economic impact prior to the merger becoming effective.

We believe that vigorous enforcement of the antitrust laws will have an anti-inflationary impact on the economy. Strengthened enforcement is an effective means to lower consumer prices by promoting competition, since competitive prices result from competitive markets. The antitrust laws were designed to protect business, as well as consumers, from anticompetitive practices. Therefore, effective enforcement is beneficial to businessmen who wish to compete in a market free of artificial restraints.

Combatting antitrust violations will also help lessen unemployment. Leading industrial organization economists believe that competitive market conditions stimulate employment. Strong antitrust enforcement will therefore help to ease unemployment by eliminating deliberate industry restrictions on output in order to artificially raise prices. S. 1284, particularly Title IV, can help alleviate unemployment and rising prices which have threatened our country for the past 10 years.

Opponents of the bill claim that politically ambitious state attorneys would file groundless suits indiscriminately, thus forcing some companies out of business. Yet, they do not mention that these same officials are already authorized by existing law to file suits for injunctive relief and that no such claims of abuse of such authority have been made. Opponents claim also that expanded powers of the Justice Department would be excessive and that merger prenotification would block all mergers. We affirm our belief in the dignity and responsibility of the Office of Attorney General, as well as in the Justice Department and the Federal Trade Commission to enforce the law for all citizens, and we urge the Senate to reject these and the opponents' other false arguments.

If you share our belief that antitrust violations cost consumers billions of dollars yearly, that antitrust enforcement helps lower prices, raise employment, and enables businessmen to compete in a market free of artificial restraints, then we urge you to vote favorably for S. 1284.

Respectfully submitted.

National Consumer Congress, National Council of Senior Citizens, United Mine Workers of America, Congress Watch, United Steelworkers of America, Public Interest Economics Center, National Rural Electric Cooperative Association, National Association of Retired Persons, National Retired Teachers Association, Retail Clerks International Association, International Association of Machinists and Aerospace Workers, AFL–CIO, National Farmers Union, Consumer Federation of America, Independent Gasoline Marketers Council, National Consumers League, Amalgamated Clothing Workers of America, AFL–CIO, National Education Association, American Federation of State, County, and Municipal Employees, AFL–CIO, Computer Industry Association, Cooperative League of the U.S.A., Citizens for Class Action Lawsuits, International Union of Electrical, Radio, and Machine Workers, AFL–CIO, Oil, Chemical and Atomic Workers International Union, AFL–CIO–CLC, National Congress of Hispanic American Citizens, International Ladies Garment Workers Union, MCI Communications Corporation.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL,
Washington, D.C., May 14, 1976.

DEAR SENATOR: In addition to the broad spectrum of consumer, business and labor organizations which have expressed their enthusiastic support of S. 1284, this Association is also on record as strongly supporting the bill, particularly Title IV.

Price fixing and other antitrust violations cost consumers billions of dollars yearly. Although damage to each individual may be pennies, that damage multiplied by vast numbers of consumers is substantial. Individuals often lack the expertise and resources to initiate private actions for recovery. Further, existing law offers inadequate remedies for consumers and ineffective deterrents to price fixers and other antitrust violators. S. 1284 fills this gap and offers a legitimate solution to a serious problem.

Antitrust enforcement is intended to benefit both businessmen as well as citizens, and this legislation affords them the protection to which they are entitled by ensuring that their right to compete in a market free of restraints remains unaltered.

We urge you to support S. 1284 on the Senate floor and to oppose any amendments which will weaken this important consumer legislation.

Sincerely yours,

C. RAYMOND MARVIN.

MEMORANDUM

RE: S. 1284—Hart-Scott Antitrust Bill

The proposed antitrust bill, S. 1284, is urgently needed to strengthen state and federal antitrust enforcement. The following questions and answers may be useful to you in determining how the bill would enhance antitrust enforcement and thus, better protect citizens from anticompetitive and unfair practices.

1. *Does this legislation serve a legitimate purpose?*

The present law contains loopholes which allow price fixers and other antitrust violators to proceed undeterred and unpunished. The relatively infrequent prosecution of antitrust violators and the relatively small penalties which have been imposed encourage an atmosphere conducive to antitrust violations. As one businessman commented in Business Week of June 2, 1975:

"When you are doing $30 million a year and stand to gain $3 million by fixing prices, a $30 thousand fine doesn't mean much. Face it, most of us would be willing to spend 30 days in jail to make a few extra million dollars."

In a speech of February 26, 1976, at Southern Methodist University, Joseph Simms, Deputy Attorney General of the Antitrust Division, Justice Department, stated that his agency has pending more than 90 jury investigations into possible criminal antitrust violations. He commented also that field research has shown that price fixing is a common business practice. This legislation would provide an effective remedy for consumers as well as a deterrent to violators of antitrust law.

2. *What evidence is there that consumers will benefit from parens patriae legislation?*

Records of past antitrust cases show that consumers would experience direct financial benefits from parens patriae claims authorized by Title IV of the bill. For example, in the landmark Tetracycline case, a total of $28,003,075.33 was distributed directly to 1,027,265 consumers. These figures show that such a consumer class action suit envisioned under Title IV was indeed manageable and that there was direct repayment to consumers.

3. *What effect does restraint of trade have on the American economy?*

In his book, *Industrial Market Structure and Economic Performance*, F. M. Scherer, now Chief Economist at the Federal Trade Commission, estimated losses due to "collusion, the exercise of market power, and related breakdowns of competitive pricing processes" at 6.2 percent of the Gross National Product for 1966 (p. 408). Roughly, this would translate into approximately $80 billion lost from our economy due to restraint of trade. The Justice Department has made similar estimates.

S. 1284 is a step in the right direction to restore competition to the market place, thereby revitalizing our free market economy and insuring both consumers and businesses of the benefits the American system was designed to achieve.

4. *What is the Business Roundtable and why is it lobbying against S. 1284?*

The Business Roundtable, the lobbying arm of 158 Fortune 500 companies, includes the largest automobile manufacturers, the three largest banks, seven of the largest oil companies, as well as the American Telephone & Telegraph Company. Of the 158 cor-

porate members of the Roundtable, 72 have antitrust violations cases pending, have been found to have violated antitrust laws or agreed to cease and desist orders between 1965 and 1975. (See Congressional Record, March 18, 1976, H. 2072.)

5. *Why have realtors been actively opposing this legislation?*

The National Association of Realtors sent out an urgent call to members to contact their legislators urging opposition of this antitrust legislation. This bulletin resulted in a flurry of letters criticizing the bill.

It should be noted that numerous price fixing complaints by the Justice Department against Boards of Realtors are already on the public record and were settled by consent decrees. For example:

U.S. v. *Atlanta Real Estate Board*, Civil Action No. 14744 (CCH 1972, Trade Cases ¶73,787).

U.S. v. *Cleveland Real Estate*, Civil Action No. C70 731 (ND Ohio), (CCH 1972, Trade Cases ¶74,020).

U.S. v. *Long Island Board of Realtors, Inc.*, Civil Action No. 70C1418 (E.D.N.Y., 1970), (CCH 1972, Trade Cases ¶74,068).

U.S. v. *Los Angeles Realty Board*, Southwest Branch Hollywood-Wilshire Division, Pacific Palisades Division and Westwood Division, Civil No. 70-2855CC, (CCH 1973, Trade Cases ¶74,366).

U.S. v. Memphis Board of Realtors, Civil Action No. 72-218, (CCH 1972, Trade Cases ¶ 74.056).

U.S. v. The Real Estate Board, of New York, Inc. and Tenant Owned Apartment Association, Inc., Civil Action No. 73 civ. 2719, (CCH 1974-2, Trade Cases ¶ 73,350).

U.S. v. Multiple Listing Service, Portland Board of Realtors, Washington County Board of Realtors, Clackamas County Board of Realtors, Civil No. 72-68, (CCH 1972, Trade Cases ¶ 74,221 and CCH 1973-1, Trade Cases ¶ 74,515).

U.S. v. Prince Georges County Board of Realtors, Inc., Civil Action No. 21545 (MD) 1969, (CCH 1971, Trade Cases ¶ 73,393).

U.S. v. Real Estate Board of Rochester, New York, Inc., Civil Action No. 74-535, (CCH 1974-2, Trade Cases ¶75,355).

U.S. v. Real Estate Board of Metropolitan St. Louis, Civil Action No. 72-C-793 (3), (CCH 1973-2, Trade Cases ¶ 74,744).

U.S. v. Metro MLS, Inc., Civil Action No. 210-73-N, (CCH 1974-2, Trade Cases ¶ 75,137).

The cases charged that the realtors had among other things, argreed among themselves to charge a uniform commission and combined to keep "uncooperative" real estate brokers out of their multiple listing organizations.

6. *Does the proposed law carry the potential for abuse of power by state officials?*

Under present law, state attorneys general are empowered to file for injunctive relief in antitrust violations and no claims of abuse of such power have been made. State attorneys general also have the power to file antitrust lawsuits to recover damages incurred by states in their proprietary capacity and as representatives of consumers in consumer class actions. Additionally, under state antitrust statutes, states have filed both criminal and civil cases. In no instance, has any abuse of any such power occurred. Most state attorneys general are elected officials whose duty is to safeguard the public interest and enforce the law, and an attorney general who abuses that power will be responsible to his electorate. S. 1284 provides language which also serves as a deterrent against possible abuse by providing that a court may "award reasonable attorneys' fees to a prevailing defendant upon a finding that the state attorney general acted in bad faith, vexatiously, wantonly, or for oppressive reasons."

STATE OF OKLAHOMA,
THE ATTORNEY GENERAL,
Oklahoma City, May 24, 1976.

DEAR SENATOR: On May 19, the Southern Conference of this Association studied the progress of S. 1284 since the Association's winter meeting in December and noted that the Senate's debate and vote on the bill was imminent. Consequently, the Conference adopted unanimously the enclosed resolution urging your support for the bill as reported by the Judiciary Committee.

As you know, this bill, particularly Title IV, enjoys unusually wide support from numerous business, labor and consumer groups. This support is understandable in light of the benefits which will accrue to the public from its enactment. This nation is committed to the private enterprise system and a free market economy in the belief that competition spurs innovation, promotes productivity, stimulates full employment and best allocates our economic resources. The result is the achievement of "the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic, political and social institutions." See *Northern Pacific Railway Co. v. U.S.* 356 U.S. 1 (1958).

The success of this commitment is premised upon truly competitive markets which can only be achieved by vigorous enforcement of our antitrust laws. S. 1284 would enhance that enforcement and stimulate expanded compliance with these laws without cost to the taxpaying public. Accordingly, we urge you to review this legislation carefully and to vote "aye" when it comes to the floor in the next few days.

Sincerely,

LARRY DERRYBERRY,
Chairman, Southern Conference of Attorneys General.

RESOLUTION 2—S. 1284, PARENS PATRIAE, ADOPTED UNANIMOUSLY MAY 20, 1976, SOUTHERN CONFERENCE OF ATTORNEYS GENERAL

Whereas, the Southern Regional Conference of Attorneys General recognizes the vital importance of vigorous enforcement of the antitrust laws to a freely competitive economy and the consumers' interests therein; and

Whereas, this Conference observes that a loophole has emerged in the wake of *Hawaii v. Standard Oil* and *California v. Frito Lay* which gravely restricts the rights of consumers to recover damages for antitrust violations; and

Whereas, S. 1284, *inter alia*, provides a fair, necessary and workable method to protect consumers' rights by vesting authority with Attorneys General to represent their interests under the established doctrine of parens patriae; and

Whereas, this Conference believes that without parens patriae authority a substantial gap will continue to exist leaving the citizens of the states without the substantial protection of the law; and

Whereas, this Conference holds that the nature of the Office of Attorney General warrants the exercises of parens patriae authority on behalf of the citizens of the several states by the Attorneys General:

Now, therefore, be it resolved that:

1. This Conference strongly endorses passage of S. 1284; and

2. This Conference urges the Senate to act promptly and favorably on this legislation as reported out by the Senate Judiciary Committee, without weakening amendments; and

3. This Resolution be communicated to the Members of the Senate; and

4. The Washington Council of the National Association of Attorneys General is urged to take all reasonable and appropriate steps to communicate this Conference's strong support for passage of S. 1284 and to inform members of this Conference of the progress and results thereof; and

5. The Special Subcommittee on Legislation of The National Association of Attorneys General is urged to monitor and coordinate efforts of the Washington Council and members of the Conference in regard to said legislation.

6. This Conference commends the Senate Judiciary Committee for its thorough and responsible examination of the issues relating to this legislation and commends Senators Philip Hart and Hugh Scott, the co-sponsors of S. 1284, for their strong and capable leadership with respect thereto.

STATE OF CONNECTICUT,
HARTFORD, CONN., *May 12, 1976.*

Re Hart-Scott Antitrust Improvements Act of 1976.

Hon. PHILIP A. HART,
Chairman, Antitrust and Monopoly Subcommittee, Washington, D.C.

DEAR SENATOR HART: This letter is to assure you of my continuing support of S-1284, the Anti-Trust Improvements Act of 1976. I am pleased that it was favorably reported out of Committee and is now awaiting action on the floor of the Senate.

I have taken this occasion to write to our Senators Ribicoff and Weicker from Connecticut, strongly urging their support of this matter.

With best wishes,
Sincerely,

CARL R. AJELLO,
Attorney General.

NATIONAL FARMERS UNION,
Washington, D.C., May 14, 1976.

To: Members of the U.S. Senate.
From: Tony T. Dechant, President.

DEAR SENATOR: We urge your support of S. 1284, the Antitrust Improvements Act, a bill designed, not to alter the antitrust laws, but to strengthen their effectiveness. After years of debate and hearings, the Judiciary Committee has reported this omnibus measure to the full Senate for consideration.

In particular, we support Title II, the Antitrust Civil Process Act, Title IV "Parens Patriae" and Title V, a section designed to provide premerger notification.

The last section, "premerger notification" is particularly important. Many mergers, clearly illegal, cannot be stopped until after the merger is consummated. The "unwinding" process is laborious and expensive. This change in the law is designed to assist the Justice Department in spotting mergers which would be considered illegal, and halting them before they occur. There is not only a savings to the consumer, but this provision is advantageous to industry as well.

The only change in the law is procedural. Standards for mergers are not altered by passage of this legislation.

We understand that weakening amendments will be offered. We urge you to reject them and support the Committee bill as reported.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
Washington, D.C., April 15, 1976.

DEAR SENATOR: Soon after the recess, the Senate will consider legislation which would substantially improve the effectiveness of antitrust enforcement. The bill is S. 1284, and the UAW urges most strongly that you support it and oppose weakening amendments.

As reported by the Judiciary Committee, S. 1284 would require large companies to notify the government of planned mergers,

strengthen antitrust enforcement and investigation and permit state attorneys general to bring suits in federal courts on behalf of their citizens. This latter provision is the concept of *parens patriae*.

S. 1284 is a consumer bill deserving your enthusiastic support. We hope you will be counted among those taking a proconsumer position in votes on this important antitrust legislation.

Sincerely,

STEPHEN I. SCHLOSSBERG,
General Counsel.
DICK WARDEN,
Legislative Director.

NATIONAL COUNCIL OF SENIOR CITIZENS, INC.,
Washington, D.C., May 12, 1976.

DEAR SENATOR: The National Council of Senior Citizens actively supports the passage of S. 1284, the Anti-Trust Improvements Act. This is a bill that would amend the Clayton Act, not to change the laws surrounding anti-trust violations, but to facilitate prosecution of violators.

We are particularly in favor of Title IV of this bill, the so-called "Parens Patriae" provision. Under this Title, damages to individual consumers would be assessed in aggregate, thus avoiding the necessity of parading every consumer before the courts. The expense necessitated by assessing damages to each individual has been the primary cause for unsuccessful prosecution of anti-trust violations.

Another provision of the bill that is particularly significant is that of requiring the payment of treble damages by the violating corporations. We feel that this measure can act as a successful deterrent to future violators.

The National Council of Senior Citizens urges every member of the Senate to support S. 1284. In a time when the elderly and poor of this country are already overburdened by rising costs, the Anti-Trust Improvements Act is an attempt to give every consumer an even break.

Sincerely,

WILLIAM R. HUTTON,
Executive Director.

PUBLIC INTEREST ECONOMICS CENTER,
Washington, D.C., May 12, 1976.

DEAR SENATOR: This letter is to express our support of S. 1284, a bill to improve enforcement of antitrust laws. The Public Interest Economics Center is a non-profit corporation which fosters public policies for the purpose of enhancing the efficiency and equity of the economic system. Improved enforcement of antitrust laws would serve both efficiency and equity goals, and S. 1284 would increase the efficacy of the existing antitrust statutes.

At least three sections of the bill would make vital contributions to governmental anti-monopoly efforts. They are: (1) Title II, which would correct the Department of Justice's current lack of adequate authority to gather information vital to antitrust cases; (2) Title IV, which would greatly increase the resources available for discovering and prosecuting antitrust violations; (3) Title V, which would create a more effective check on anti-competitive mergers. We believe all of these provisions of S. 1284 are constructive and significant.

The economic basis for this proposed legislation is clear. Monopoly power tends both to exascerbate inflation by producing excessively high prices to both consumers and business and to increase unemployment by restricting total output. Thus, the current conjunction of high unemployment and high inflation rates strongly recommends increased emphasis on legislation to encourage competition, without which a market system cannot function efficiently. A measure such as a S. 1284, designed to improve the current antitrust enforcement, is one logical and necessary response.

We urge you, therefore, to support S. 1284 vigorously and to oppose all weakening amendments, when this legislation is considered by the full Senate.

Sincerely,

ALLEN R. FERGUSON,
President.
LEONARD LEE LANE,
Director, Governmental Relations.

CONSUMER FEDERATION OF AMERICA,
Washington, D.C., May 12, 1976.

Re S. 1284—Hart-Scott Antitrust Improvement Act.

DEAR SENATOR: Consumer Federation of America, the nation's largest consumer organization, takes this opportunity to express its active support of S. 1284, particularly Title IV which encompasses the Parens Patriae provisions.

Antitrust violations, including price-fixing, cost consumers incalculable sums of money everey year. In addition, they contribute to the increasing erosion of public confidence in industry and in the ability of the federal government to enforce antitrust laws. Obviously it is unrealistic to rely exclusively on the federal government for adequate and comprehensive antitrust enforcement, particularly when the annual funding for federal antitrust enforcement approximates the sum expended by just one large corporation in defending itself against an antitrust action.

Individual consumers usually lack the expertise and resources to bring private antitrust actions. Within the past year, seven individuals did bring an antitrust action for price-fixing against a major food chain resulting in a jury award in excess of $32.7 million. Unfortunately, however, private citizen action is very much the exception, not the rule.

S. 1284 is a practical and much needed approach to this consumer problem, it represents a logical complement to other consumer legislation including increased appropriations for antitrust enforcement, industrial reorganization, strict limitations on exemptions from antitrust laws, etc.

By allowing state Attorneys General to bring civil actions for an antitrust violations on behalf of the citizens of their states, the law increases the ability of state Attorneys General to afford consumers the protection and economic benefits they deserve.

Opponents argue that politically ambitious state Attorneys General could abuse their power to the detriment of industry and consumers alike. This position is unpersuasive for at least three reasons:

(1) Under the present law state Attorneys General are empowered to bring injunctive actions for antitrust violations. There has been no showing of an abuse of this power and it is recklessly speculative to assume that a broadening of that power will result in abuse.

(2) State Attorneys General are normally elected officials whose duty it is to promote the public interest. The accountability factor built in to the electoral system assures consumers that an Attorney General who abuses that power will be responsible to the electorate.

(3) The language of S. 1284 (Sec. 4 C.(f)) provides a safeguard and deterrent to such abuse by providing that a court may ". . . award reasonable attorney's fees to a prevailing defendant upon a finding that the state Attorney General acted in bad faith, vexatiously, wantonly, or for oppressive reasons."

At its most recent annual meeting in January of 1976, CFA's membership voted overwhelmingly in support of the following resolutions:

"Anticompetitive actions which constitute antitrust violations cost consumers billions of dollars annually, contribute significantly to high rates of unemployment, inflation, inefficiency, underutilization of economies and productive capacity, a reduction in exports, and adversely affect the balance of payments. Furthermore, they blunt the effectiveness of monetary and fiscal policies. Immediate measures must be taken to equip federal and state governments, public interest groups, and individuals, with sufficient resources and expanded legal rights to enforce strong antitrust laws.

"Price-fixing conspiracies and other antitrust violations increase the price of bread, milk, gasoline and numerous other consumer items. Existing remedies such as consumer class actions are insufficient because the courts have insisted on strict and expensive notice requirements and have demanded that the amount of each individual's damages be proven in courts. Accordingly, CFA urges enactment of legislation which would allow state governments to sue antitrust violators on behalf of all citizens (*parens patriae*). The majority of states do not have the economic capacity or expert staff to prosecute antitrust violations. Therefore, legislation should assure state Attorneys General with maximum flexibility including the option to hire qualified private attorneys to bring such suits on a contingency fee basis (such fees to be subject to court approval)."

As this bill is discussed on the Senate floor, we urge you to oppose any weakening amendments. Their devasting scope could include the elimination of the Antitrust Division's subpoena power to third parties, compulsory process to investigate violations of the antitrust laws and elimination of treble damages. In addition, proposed amendments could adversely affect notice requirements and the ability of state Attorneys General to utilize the services of attorneys on a contingency fee basis in bringing antitrust suits. In short, all such amendments which make the bill unworkable should be vigorously opposed.

Very truly yours,

CAROL TUCKER FOREMAN,
Executive Director.
KATHLEEN F. O'REILLY,
Legislative Director.

PUBLIC CITIZEN,
May 14, 1976.

DEAR SENATOR: The Senate will soon consider S. 1284, the Antitrust Improvements Act. Even though this legislation does not alter substantive law, it is one of the few and the most significant antitrust bills to be voted upon by the Senate in years. Attempts are expected to be made to eliminate the essential powers this bill provides for the antitrust enforcement agencies, reducing the bill to an innocuous list of unobtainable goals. Most of these amendments were raised in committee and were roundly defeated. They have not improved with age.

Title IV of S. 1284 permits state attorneys general to recover damages for violations of the antitrust laws on behalf of residents of their states, known technically as parens patriae actions. This provision is intended to assure compensation for the victims of antitrust offenses, to prevent antitrust violators from being unjustly enriched, and to deter antitrust violations.

The economic burden of most antitrust violations is borne by the consumer in the form of higher prices for goods and services. Frequently, such antitrust violations as price-fixing injure thousands or even millions of consumers in relatively small amounts but often on a continuing basis. When everyday consumer purchases are involved (e.g. bread, dairy products, gasoline, etc.), the individual dollar amounts are so

small that, as a practical matter, an individual antitrust law suit for price-fixing is out of the question. Yet, if a price-fixing conspiracy results in an overcharge of but 10 cents on a relatively low-priced consumer item, and 500 million such items are sold, the aggregate impact of the conspiracy upon the consumers and the illegal profits of the price-fixers are hardly insignificant—in this example $50 million; in other cases, much more. This title provides a practical remedy for these consumers.

Because consumers do not keep records of small purchases, computing damages by using the defendant's books is the most accurate (and manageable) way to remedy the violation. Under Title IV, individual consumer claims are then paid out of the aggregate recovery. S. 1284 requires that the plaintiff prove the violation and the fact and amount of damage with the same degree of proof required under present law. However, a requirement of individual proof of damages would delay recovery for years while each claimant proves his damages.

Any amendment limiting this application of aggregated damages to price-fixing cases is completely illogical. The proponents of this idea can make no rational distinction between price-fixing and other antitrust violations which also raise prices, such as restriction of output, division of territories and customers, and bid-rigging. Since collusive actions are not easily pigeon-holed into one of these categories, courts would be forced to waste time defining price-fixing rather than focusing on whether the law has been broken.

Currently, the bill permits state Attorneys General to hire private counsel to handle these suits on a contingency fee basis. A prohibition against these arrangements would leave small and medium-sized states unable to use the authority granted to them under Title IV. Since few Attorneys General employ skilled antitrust lawyers, and since paying private lawyers on a "win or lose" basis would be expensive and would encourage questionable suits, contingent fees are needed to assure effective use of the authority to file suits on behalf of consumers. Existing case law provides strict guidelines for the determination of proper compensation for such fees and is free of percentage requirements.

Title II merely seeks to put the Antitrust Division on equal footing with all other government agencies in its ability to obtain interrogatories and depositions. These requests for information will be supervised by the Court. If this provision is amended to impose any additional burdens upon the Justice Department, such amendment would only slow down an already slow judicial process. Some have expressed a concern that the civil liberties of corporations will be jeopardized by this reform. In fact, civil liberties are threatened by the overreliance of the antitrust division on grand juries which do not permit the presence of a judge or counsel, because the antitrust division now cannot use depositions and interrogatories. Rather than indicating a genuine concern for civil liberties, this argument exposes a desire to see the antitrust laws lamely enforced.

Removal of the Antitrust Division's right to a Civil Investigatory Demand for regulatory hearings would be an unwarranted restriction at a time when the Antitrust Division is participating increasingly in regulatory proceedings, as is only proper since cartelization of regulated industries costs consumers millions of dollars a year, and many regulatory laws have specialized antitrust provisions.

The pre-merger injunction provision of Title V is necessary if the government is to have an effective remedy to merger which have an illegal impact of competition. In virtually every case, the government has been unable either to obtain a pre-merger injunction or to separate the companies after the court has declared the merger illegal. If an injunction could be obtained by the government, it would be a simple task to remedy the effect of the merger: the status quo could be maintained and the companies could carry on as before. Once the two companies merge, the defendants can mire enforcement agencies in Court proceedings until the agency ends the pursuit of a remedy in frustration. The *Pillsbury* case took eight years from complaint to divestiture; six years after that the FTC gave up. The *El Paso Pipeline* case has been to the Supreme Court six times and taken 17 years even though the merger was unanimously held by that Court to be illegal.

A presumption in favor of the government's case would appear to be warranted just from a comparison of the government's success rate (over 80% of the mergers it seeks to enjoin are declared illegal) to its ability to get pre-merger injunctions in only about 15% of these cases. This shift of the burden of proof is also justified by the restrictions corporations wish to place on the amount of time the Justice Department or the FTC has to bring suit after it has been notified of a merger. If the corporation wants a *speedy* preliminary *determination* of the legality of its merger, then it should accept the burden of proving that it will probably suceed on the merits of its case. (The position of merging corporations as defendants in a civil *injunction* proceeding is not analogous to the position of a defendant in a trial on the merits of the issue.)

Mergers affected by this provision are restricted to those companies of extremely large size, and even those are not presumptively considered against the public interest, as they well might be.

The Antitrust Improvements Act has received scrutiny accorded few pieces of legislation. We urge you to oppose all weakening amendments to this landmark legislation.

Sincerely,

MITCHELL ROFSKY.

NATIONAL CONSUMERS LEAGUE,
Washington, D.C., May 12, 1976.

DEAR SENATOR: The National Consumers League, the nation's oldest consumer organization, would like to express its support for proposed legislation, S. 1284, which would strengthen antitrust enforcement on both state and federal levels.

S. 1284 would authorize states to sue antitrust violators on behalf of consumers and recover damages. Consumers now lose billions of dollars yearly from price fixing and other antitrust violations. Existing antitrust legislation contains gaps which allow antitrust violators to proceed undeterred and unpunished. S. 1284 is essential legislation to close these gaps.

Other provisions of the bill would strengthen federal enforcement by expanding the civil investigative demand authority of the United States Department of Justice in civil antitrust investigations, as well as by requiring large companies to notify the Justice Department and the Federal Trade Commission before a merger, so that its economic impact can be assessed.

The National Consumers League believes that our American economy is based on competition and that steps must be taken to preserve our competitive marketplace. This legislation represents a step in the right direction.

We hope that you share our belief that government has a responsibility to protect its citizens from unfair business practices. Therefore, we urge you to vote favorably for this crucial consumer legislation and to reject any weakening amendments.

Sincerely,

ROBERT R. NATHAN,
Chairman of the Board.

NATIONAL CONSUMERS CONGRESS,
Washington, D.C., May 12, 1976.

DEAR SENATOR: This letter is to express our support of the Hart—Scott Antitrust Improvements Act (S. 1284). The National Consumers Congress is a grass roots consumer organization made up of consumers and consumer groups across the country. Our work in food, agriculture and energy frequently focuses upon aggregation of power and control of markets. Antitrust enforcement is essential to the efficient and equitable functioning of our economy. This bill would be a major step in improving the enforcement of antitrust laws.

We are particularly concerned with titles II, IV and V which respectively, contain provisions to the Antitrust Civil Process Act, Parens Patriae, and premerger notification requirements. These provisions would not alter the content of Sherman Antitrust but rather would increase its effectiveness, manageability and accessibility.

The bill would be a major step in restoring consumer confidence in the marketplace. It is an example of well designed legislation and provides not only good antitrust enforcement powers but also sufficient safeguards to prevent abusive or frivolous use of the powers.

We urge you to support this vital legislation in its present form and to oppose any weakening amendments proposed on the Senate floor.

Most sincerely,

AILEEN GORMAN,
Executive Director.

COMPUTER INDUSTRY ASSOCIATION,
Rosslyn, Va.

DEAR SENATOR: As you are aware from recent correspondence, the Computer Industry Association represents some 40 independent manufacturers of computers and related products. Our member companies are located throughout the entire United States and employ over 75,000 people.

As participants in an industry which is totally dominated by one corporation, we have a great interest in antitrust reform. We have closely followed the progress of the Antitrust Improvement Act of 1975 since its introduction last year by Senator Hart and have presented testimony before the subcommittee stating our views.

Our members, as corporations, are keenly aware of the urgent need for this legislation. Some member companies are currently facing litigation with IBM and have been confronted with the inadequate system currently open to them. Title VII of this bill would serve to expedite these, and future, antitrust cases. The provision for appointment of experts, special masters and other personnel, is critically important to properly resolve the problems which arise in a technically oriented area such as the computer or communications industry.

Our strong support of this legislation, however, is not limited to our concern in the corporate arena. As the employers of thousands of consumers, and as consumers ourselves, we are greatly interested in Title IV of this bill which will protect all of us from antitrust violations by providing the state attorneys general the means to prosecute offenders. Testimony on this legislation has indicated that this provision will act as a deterrent and eventually assist in slowing inflation and curing the economic ills our country faces.

Taking into consideration the fact that our present antitrust laws are substantially the same as they were 85 years ago—when the Wright brothers had not yet made their historic flight—and the fact that today we have the proven capability to send men to walk on the moon we strongly believe the time has come to modernize the antitrust laws to conform to the new era in which we live. It is the collective opinion of our membership that

only giant corporations representing narrow interests must fear such legislation. Those of our members who might be considered "giants" in any other industry, have no such fears. Free and open competition is the back bone of our nation's greatness—the building of the better mousetrap, the American dream. Monopolistic tactics, illegal trade restrains and other antitrust violations should not prohibit our progress toward these goals.

COMMONWEALTH OF VIRGINIA,
Richmond, Va., February 18, 1976.

Re S. 1284, Title IV, *Parens Patriae.*

Hon. PHILIP A. HART,
Member, Senate Judiciary Committee, Washington, D.C.

DEAR PHIL: I am Chairman of the Antitrust Committee of the National Association of Attorneys General and I am informed that Senator Eastland has scheduled a meeting of the Judiciary Committee for Wednesday and Thursday of this week for the purpose of considering the final form of this bill. In connection therewith, we understood that a number of amendments may be proposed which we believe would do substantial damage to the fundamental purposes of this Title.

1. FLUID CLASS RECOVERY

The very essence of the Title is to enable recovery of treble damages on behalf of the fluid class of consumers. Without it, the Title is meaningless. The factual assumption used to test the bill has generally been the small but widespread price-fix wherein each consumer of a basic commodity such as milk or bread had been damaged to the amount of $2.00 or $3.00 over the course of a year. Since consumers do not save receipts for such purchases and since it would be impossible to prove each consumer's individual claim, the subject legislation would permit recovery and distribution along the lines of fluid class recovery. It should be understood that we are discussing the last event in a long trial, *i.e.*, it has been found as a matter of fact and law that the defendants have engaged in a price-fix. To eliminate fluid class recovery would be to cripple this bill entirely.

2. CONTINGENCY FEE

Another way to cripple the effectiveness of this bill would be to deny the Attorneys General, the right every other citizen enjoys, to contract for legal services on whatever basis, in his judgment, suits the needs of a particular case. At this point, substantial antitrust staff are not widespread at the State level. Furthermore, undertaking one major *parens patriae* suit can absorb the time of numerous staff persons for several years. Accordingly, this bill will go unused, and the rights created unenforced to the fullest extent possible, if the Attorneys General are not permitted to contract for expert antitrust counsel whose fees will be paid out of subsequent settlement or judgment, if any. We share the concerns of those who believe that attorneys' fees should be kept within reasonable limits. Therefore, we would support an amendment which would require the approval of the district court for any attorney fee arrangement according to standard attorney fee criteria.

3. RECIPROCAL ATTORNEY FEE PROVISIONS

We understand that some are proposing that attorneys' fees be allowed against either side. The result of this is that no Attorney General will be able to afford the risk of initiating a lawsuit since the attorney fees in such case would possibly exceed his own appropriated budget and open the tax dollars for which he is the trustee to a contingent liability inconsistent with his duty as a law enforcement officer. Furthermore, reciprocal attorney fee provisions have never been a part of the American system but find expression only in the British experience. I believe that it would be very unwise to adopt any such arrangement.

4. SINGLE DAMAGES

It is not surprising that there are efforts by those who oppose this bill to cut it back to a provision for single damages rather than treble damages. Such an arrangement will not work. It could create an inconsistency in the provision allowing those who opted out of the class to follow on its coat tails and obtain treble damages while those consumers who are represented by the Attorney General would have to settle for single damages. Furthermore, it would treat consumers in a discriminatory fashion while allowing wholesalers and middlemen the opportunity for standard antitrust recovery, treble damages. We strongly oppose any effort to deny to all consumers the full protection of the antitrust laws which have 80 years of sound experience behind them.

I wish to thank you for taking the time to consider these points and to urge you, on behalf of the National Association of Attorneys General, to reject any crippling amendments to S. 1284.

With kindest regards, I remain

Sincerely yours,

ANDREW P. MILLER,
Attorney General.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
Trenton, N.J., April 14, 1976.

Re S-1284—The Hart-Scott Antitrust Improvements Act of 1975.

Hon. PHILIP A. HART,
Committee on the Judiciary, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR HART: Please accept my sincerest congratulations for your success in moving this very important legislation to the floor of the Senate. It was extremely gratifying to see the bill reported out without the damaging encumbrance of many of the amendments offered to weaken it in Committee.

I am certain that this could not have been accomplished without your leadership and perseverance during this long fight.

Sincerely,

WILLIAM F. HYLAND,
Attorney General.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
Trenton, N.J., April 1, 1976.

Re The Hart-Scott Antitrust Improvements Act of 1975 (S. 1284)—Analysis of Proposed Amendments.

Hon. PHILIP A. HART,
Committee on the Judiciary, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR HART: As this important legislation approaches mark-up, I wish to inform you once again on behalf of myself and Governor Brendan T. Byrne of our wholehearted support for S. 1284 in its present form.

I have followed your deliberations closely and am distressed by certain amendments which have recently been proposed. These amendments, if adopted, make this necessary legislation utterly useless. I have enclosed a memorandum explaining exactly how these proposed amendments will affect S. 1284.

I trust that after giving this analysis serious consideration, you will reject these amendments.

Sincerely,

WILLIAM F. HYLAND,
Attorney General.

MEMORANDUM, APRIL 1, 1976

To: All Members, Committee on the Judiciary, United States Senate.

From: William F. Hyland, Attorney General, State of New Jersey.

This will advise you of my wholehearted support for S. 1284 in its present form. A series of amendments to S. 1284 have recently been proposed, however. The design of these amendments is clear. S. 1284 expands the powers of state attorneys general to prosecute violations of the antitrust laws on behalf of state residents and the states themselves. These powers are critical to the full enforcement of the antitrust laws, a task beyond the capacity of the federal government. The proposed amendments seek to emasculate these powers. All of the proposed amendments which would have this effect should be rejected. Time does not permit a detailed recitation of my objections to each of the proposed amendments. In the following pages I shall set forth my objections to the most pernicious of the proposed amendments and defend the bill in its present form.

PROPOSED AMENDMENTS LIMITING PARENS PATRIAE SUITS TO PRICE FIXING BY COMPETITORS

The proposed amendments to Section 4 C (a) (1) limiting these suits to horizontal price fixing are unacceptable. Horizontal price fixing, *i.e.* price fixing among competitors, although the most notorious antitrust violation, is not the only volation which gives rise to monetary injury. Vertical price fixing, *i.e.* price fixing within the same distribution chain, and group boycotts, *i.e.* the boycotting of one group of competitors by another group of competitors, may lead to similar results. The bill, in its present form, allows monetary recovery for all violations of the Sherman Act which give rise to pecuniary injury.

Anticompetitive conduct of a type other than horizontal price fixing may lead the residents or economy of the states to suffer pecuniary injury. The attorney general should be allowed to recover for both the residents and the state in such situations.

PROPOSED AMENDMENTS ELIMINATING TREBLE DAMAGES

The proposed amendments to Section 4 C(a) (2) of the Bill, eliminating treble damage recoveries in antitrust suits, strike directly at the incentive for bringing these enormous actions. Without treble damages, the state will have to be certain that the extent of potentially provable damages is sufficiently large to, by itself, justify the suit, and this is rare. In addition, it would put the states in the anomalous position of being able to do less for their citizens as a group than the citizens could do for themselves since, as individuals, they are invariably permitted to recover treble damages. Of course, it should be well understood that even with treble damages available, the little individual who has suffered $5 in damages because of the price fixing of a product he uses does not presently have an adequate incentive to sue. Thus, the only individuals now who can sue effectively are rich individuals and corporate interests. To accept this amendment, then, would do little to improve the status quo and would not allow this bill to achieve its purpose of allowing the states to represent effectively hundreds of citizens at a time each of whom had been damaged slightly, but who together had been damaged greatly. The incentive to sue its thereby minimized. More important, the threat of treble damage suits of this type will be a deterrent to the anticompetitive behavior to a greater degree than at present.

PROPOSED AMENDMENTS COMPELLING INDIVIDUAL NOTICE

The proposed amendments to 4C(b) (1) eliminate notice by publication as the notice of first choice. The bill in its present form, while permitting notice by publication, nevertheless allows the court to choose another form of notice should notice by publication be manifestly unjust. Where the

state is representing substantially all, or a sizeable minority of its residents in an antitrust case, notice by publication is the only feasible mechanism. To require individual notice to identifiable residents or any other form of individual notice will prevent these suits from being instituted. The burden and expense of identification and mailing would be enormous and would militate against commencing the litigation.

PROPOSED AMENDMENTS REQUIRING EACH INDIVIDUAL RESIDENT TO INCLUDE HIMSELF IN THE LITIGATION

The proposed amendment to 4C(b)(2), providing that persons receiving notice must indicate their desire to "opt-in" or be included in the adjudication, will make commencing such a suit impossible. (Currently, under the federal class action rules, either the class is formed by the court once and for all or it is formed subject to a class member's desire to "opt-out" of the class. An "opt-in" requirement is clearly unreasonable and contrary to accepted procedural practice.) Should this amendment be approved, these cases will be the great antitrust gamble—for the state will know neither the number of residents on whose behalf it is acting nor the potential size of recoveries. In short, the state will not have the information needed to decide whether to bring such a suit until after the litigation is commenced.

PROPOSED AMENDMENTS AWARDING COSTS AND FEES TO THE PREVAILING PARTY RATHER THAN THE PREVAILING PLAINTIFF

The effects of these amendments is made more pernicious by the proposed amendments to Section 4C(a)(2) of the Bill seeking to award costs and fees to the prevailing party. This proposal, when combined with the previously discussed amendments, produces the untenable result that when the state commences an action, it will not know until well into the action who is to be represented and what the potential damages are. If the state then discovers through the unprecedented and unworkable "opt-in" procedures that there are insufficient claims to justify the litigation and withdraws, it is forced to pay defendant's costs and fees. This would not result because the defendants were blameless, but only because the state could not know with reasonable certainty in the beginning whether to commence an action.

ADVANTAGES OF THE PRESENT BILL

To these amendments which gut the Bill are juxtaposed its present provisions. As presently constituted, the Bill provides an adequate incentive, through its treble damage provisions, to stimulate the commencement of the kind of major antitrust litigations needed to reduce the harm to individuals resulting from violations of the Sherman Act. The notice provisions of the Bill afford a reasonable means of informing residents of the existence of a litigation and a means of disassociating themselves from it if they wish. The award of costs and fees to the successful plaintiff provides further incentive to commence the action and is a deterrent to the illegal practices. More important, the Bill places the states in a position to determine whether a suit should be instituted and does not force them to undertake expensive gambles.

PROPOSED AMENDMENTS ELIMINATING STATISTICAL PROOF OF DAMAGES

The proposed amendments to Section 4 C(c) of the Bill effect both the proof of damages as well as the distribution of sums recovered. These amendments make statistical proof of damages unacceptable, require proof of both the fact and amount of individual damages and restrict the amount of any recoveries which may be distributed. Where the state is representing a number of its residents in an antitrust action, which may approach the state's entire population, statistics are the only practical and reliable means of proving both the fact and the amount of damages suffered by the individuals represented. To require them to prove the fact and amount of individual damage will render these suits unworkable. How, in an action where one million residents are represented, would one prove individually the fact of individual injury? Although simple solutions suggest themselves—affidavits of individuals—individual bills for purchases, the use of these will produce an administrative nightmare for both the parties and the court. They will also be expensive. And more important, uncertainty of the type previously discussed is inserted into the proceedings, as the state will have no way of knowing the extent of possible recoveries until the litigation is in an advanced state.

PROPOSED AMENDMENTS LIMITING THE AMOUNT OF DAMAGES WHICH CAN BE DISTRIBUTED TO VICTIMS OF ANTICOMPETITIVE PRACTICES

The proposed amendments to Section 4C (c)(2) limiting the amount of payment by a losing defendant to the amount of proven individual claims, except in egregious circumstances, are also unacceptable. Thus, in the absence of these egregious circumstances, this amendment would prevent payment of the aggregate damages determined to have resulted from the anticompetitive conduct and would limit recovery to the amounts of damages actually proven by the state to have been sustained by various individuals. The violator is thus allowed to retain a portion of the unjust profits derived from his illegal activity. Moreover, since aggregate damages will not be paid unless the circumstances are aggravated, the state is, once again, placed in the position of not knowing what the potential recoveries will be until after the litigation is completed and a finding is made that circumstances surrounding the violation and the past history of the defendant warrant the payment of aggregate damages.

ADVANTAGES OF THE PRESENT BILL

To these amendments are contraposed the provisions of the Bill in its present form. The Bill provides a reliable mechanism for assessing both the fact and extent of individual damages—statistical analysis. Statistical analysis is a reliable means of proof—the science is simply too far advanced for there to be substantial doubt as to its validity. Moreover, it is the only practical means of demonstrating both the fact and amount of damages in cases involving basic products, such as gasoline, antibiotics and the like, purchased by numerous persons. The distribution provision of the Bill should also be left intact. The entire amount of treble damages should be distributed to the residents of the state or to the state. The damages awarded in these cases resulted from illegal activity which caused the residents to pay higher prices. Allowing the defendant to keep any portion of these damages is to allow him to profit from his illegal activity. Further, if treble damages are not awarded and distributed, the business risks involved in engaging in anticompetitive activity are substantially minimized.

PROPOSED AMENDMENTS LIMITING THE NECESSARY EXPANSION OF EXISTING ANTIMERGER LAWS

The proposed amendments to Section 701 of the Bill seek to limit the reach of the Clayton Act. Given the degree of concentration in the American economy, these amendments are wholly inappropriate. Many state antitrust laws do not reach mergers which violate the Clayton Act. For similar reasons, the proposed elimination of Title V of the Bill is also inappropriate.

PROPOSED AMENDMENTS LIMITING THE NECESSARY EXPANSION OF THE ANTIMONOPOLIZATION PROVISIONS OF THE SHERMAN ACT

The proposed amendment to Section 704 of the Bill would eliminate a beneficial change in the law curbing attempts to monopolize. For a plaintiff to succeed in an attempt case, he must prove that the defendant's market share is large and that there is a dangerous probability that monopoly will result. This burden of proof is too high and makes the probability of succeeding in such an action minimal. Moreover the provision of the Sherman Act covering attempts to monopolize is the only section applicable to unilateral anticompetitive action. This section should be strengthened, not limited, as suggested by the proposed amendments.

CONCLUSION

While there are other amendments which are objectionable, specific comments will not be made. The Bill in its present form provides a reasonable, fair, and needed overhaul of the antitrust laws. I urge you to pass the present bill and to reject the proposed amendments.

STATE OF KANSAS,
OFFICE OF THE ATTORNEY GENERAL,
Topeka, Kans., October 10, 1975.

Senator PHILIP A. HART,
Chairman of the Subcommittee on Antitrust and Monopoly, Senate Office Building, Washington, D.C.

DEAR SENATOR HART: Senate Bill 1284 is of great importance to State Attorneys General in allowing them additional enforcement powers with Antitrust prosecutions. We urge you and fellow members of the Senate to support this legislation.

Of particular interest to us is Title IV of S. 1284. This parens patriae provision would greatly increase a State Attorney General's ability to recover the overcharges which result from illegal price-fixing activities for the average consumer.

We are following the activities of your Subcommittee on Antitrust and Monopoly with great interest, and we are urging our Kansas Congressional delegation to support S. 1136 and S. 1284.

Very truly yours,
CURT T. SCHNEIDER,
Attorney General.
By: THOMAS H. BRILL,
Assistant Attorney General.

STATE OF CALIFORNIA,
OFFICE OF THE ATTORNEY GENERAL,
Los Angeles, Calif., September 30, 1975.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: We are writing to you to express our strong support for S. 1284, the Hart-Scott Antitrust Improvements Act of 1975. Title IV of that Bill would provide state Attorneys General with authority to represent their citizens through parens patriae representation in antitrust actions.

The proposed bill, now pending before your Committee, would fill an important gap in the existing scheme of antitrust enforcement. For example, low cost consumer products affected by an antitrust conspiracy are generally purchased in small quantities by consumers who seldom keep receipts of their purchases. The tremendous expense and time involved in the litigation of the antitrust cases totally precludes individual consumers from bringing their own private lawsuits. Even if a class action is brought, this is at best only a partial solution. Practically speaking the amount of claims proven by class members will be small compared to the total damages inflicted by the antitrust violator upon consumers and compared with the illegal profits they obtained. To the extent

that millions of class members could not or would not prove their claims, the violator will have committed the "perfect crime" by being able to retain their illegal profits.

We were thwarted in our attempt to recover such damages acting as parens patriae on behalf of the citizens of California in California v. Frito-Lay Inc., 475 F 2d 774 (9th Cir., 1973). The Court acknowledged that we provided a viable answer to this problem, "perhaps the most suitable yet proposed," and felt that the present statutory scheme did not permit us to bring the parens patriae action and suggested a legislative solution.

We urge you and the Judiciary Committee to give S. 1284 your earliest consideration. The proposed legislation is important and necessary, and we would be most happy to give you our assistance or further views.

Very truly yours,

EVELLE J. YOUNGER,
Attorney General.

CATHOLIC UNIVERSITY LAW SCHOOL,
Washington, D.C., October 10, 1975.

Hon. JAMES O. EASTLAND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EASTLAND: As both a practitioner and professor of antitrust law, I am writing to support a strong parens patriae bill. I believe such a bill is extremely desirable in order to have effective enforcement of the antitrust laws. Without a strong bill, large corporations will often find it financially profitable to violate rules against price fixing or other rules which help maintain the competitive economy to which the United States is committed. Such violations would also be worthwhile to large corporations because the possibility of future injunctions against violations holds no terror sufficient to deter present, highly lucrative anticompetitive conduct. Nor does the possibility of criminal penalties sufficiently deter violations, since, regardless of the fact that the maximum penalties have recently been increased, the monetary penalties are still minimal in amount for large companies when compared to the profits of violation and usually the judiciary is almost insuperably reluctant to send businessmen to jail for antitrust violations.

Many of the arguments in favor of a parens patriae bill have been set forth in excellent fashion in the majority report submitted by the Committee on the Judiciary of the House of Representatives. There would be no point in reiterating those arguments here. Thus, I shall rest content with criticizing the one portion of the House Committee's bill about which I have serious question, and with answering a number of the arguments raised in the minority report of the House Judiciary Committee.

A. HIRING OUTSIDE LAWYERS ON A CONTINGENCY FEE BASIS

As reported by the House Judiciary Committee, the parens patriae bill would not allow a parens patriae suit to be brought if a state attorney general hired an outside lawyer on a contingency basis. The objective of this limitation is said to be to encourage states to develop their own in-house antitrust capability. But states are already hard pressed financially, and many states, particularly small or poor ones, might find it difficult to spend the tremendous sums of money which are involved in building up a significant in-house antitrust capability. Such sums could easily run to many hundreds of thousands or millions of dollars annually.

However, I do not think it is correct to say that an inability to utilize outside lawyers on a contingency fee basis will necessarily result in an absence of parens patriae suits by states which cannot afford to build up in-house capability. While any one of these states acting alone may be unable to afford the tremendous fees involved when outside counsel are hired to conduct an antitrust suit on an hourly fee basis, a number of states might jointly hire lawyers on an hourly basis, with each state bearing a part of the cost.

While this would likely be the practical solution to the problem, I would caution that this solution has an ironic drawback: it would necessarily reduce competition in the field of plaintiffs' antitrust litigation. If financial constraints cause five or ten states to have to band together to hire attorneys on an hourly basis, rather than each state being able to hire lawyers itself on a contingency basis, then there will be room for fewer attorneys in the field of plaintaiffs' antitrust litigation. Many may feel that the fewer lawyers, the better. But if competition is a goal to be striven for, if competition in the legal field is desirable as a means of securing better work at cheaper cost, as is the case in other fields, and if excellent legal work at a reasonable cost for plaintiffs is desirable in order to deter antitrust violations, then Congress should think carefully before taking a step that will reduce competition in the plaintiffs' antitrust field by reducing the number of persons who will be providing the necessary legal services.

B. THE ARGUMENTS OF THE MINORITY OF THE HOUSE JUDICIARY COMMITTEE

Now I shall turn to the arguments made in the minority report of the House Judiciary Committee. Frankly, most of these arguments are very weak. My purpose in replying to them is to show their weakness in case they are reiterated before the Senate Committee on the Judiciary.

The minority report argues that damages in parens patriae suits will constitute a criminal fine of astronomical but irreducible proportions, without regard for the interests of justice. However, the treble damages will not be a criminal fine at all. They are a civil penalty whose base is derived from the amount of injury the violator has caused. Moreover, the damages will be neither more nor less reducible than treble damages in a non parens patriae case. For in any legal case the courts have authority to reduce damage awards which are not supported by law.

In any event, the minority's argument concerning the compatibility between allegedly irreducible damages and the interests of justice must fail because it is totally inconsistent with the existing and well accepted situation concerning compatibility. Essentially the minority is complaining because treble damages in a parens patriae case will not be reduced on the basis of a defendant's degree of culpability, ability to pay, or ability to continue in business. Yet treble damages are not reduced on the basis of such factors in a non parens patriae case, even when such a case is a class action or other litigation involving damages of tens or scores of millions of dollars. Obviously Congress thought full scale treble damages in such cases, although huge in amount and unreduced by the factors mentioned by the minority, are consistent with justice. How, then, can it be inconsistent with justice if full scale treble damages, unreduced by the minority's factors, are also imposed in a parens patriae case?

The plain fact is that Congress has felt that unreduced treble damages are necessary to preserve our competitive economy, with the freedom of opportunity which a competitive economy gives to individual citizens. Therein lies the long run interests of justice, rather than in allowing price fixers to escape with the fruits of violations which have bilked millions of persons out of hundreds of millions of dollars.

The minority also argues that a treble damage award in a parens patriae suit will be an improper civil remedy because the damages will not be used to compensate victims even though such compensation is the goal of antitrust damages. However, the goal of treble damage awards is as much to deter violations as to compensate victims. In fact, since only one-third of treble damages is necessary to compensate victims, the only possible goal of awarding the extra two-thirds is to deter illegal conduct.

Furthermore, the parens patriae bill does in fact provide for efforts to be made to give individual victims an opportunity to come forward and receive compensation out of a damage award. And to the extent that there is a fund left over to be used for public purposes connected with the field in which the violation occurred, many of the victims will be personally benefitted.

The minority further asserts that large amounts of treble damages should not be awarded in parens patriae suits because the victims have no interest in bringing the case, the known and provable victims are few, and only a few persons will make a claim against the award. It is not necessarily correct to assert that only a few persons will make a claim against the award. As Judge Lord has shown in a recent settlement in the tetracycline cases, when the distribution of an award is handled properly, numerous consumers may come forward to make a claim. Furthermore, in regard to the provability and interest in suit of the victims, the whole point behind a parens patriae suit is that it is perfectly clear that hundreds of thousands or millions of people have each been victimized. To let the defendant escape is to reward him for engaging in a violation whose effects are so widely spread that individual victims will not sue. Such a result is wholly inconsistent with law and justice.

The minority also objects because the needs of a particular public purpose for which an award is used—e.g., the needs of a drug clinic—will not define the amount of the award. Of course the objection is wrong because the amount of an award should be defined by calculating the amount of damage which the defendant has caused and then trebling it, as will occur. But more than this, surely there is more than one public purpose for which an award can be used. Surely, there are many public purposes which are starving for funds and which could well utilize the monies awarded because of antitrust violations. Surely it is better for an award to be used for these public purposes than for ill gotten monies to be retained by price fixers. To argue that treble damages are undesirable because the need for funds of a particular public purpose will not define the award is to overlook the fact that many public purposes have a need for funds.

Finally, I take issue with the minority's assertion that parens patriae suits are undesirable because they will give politically ambitious state attorneys general an opportunity to make political capital by bringing antitrust cases which may prove not to be meritorious. In the first place, many cases will prove to be meritorious rather than unmeritorious and most attorneys general will act on wholly proper grounds in determining whether or not to bring cases. Also, state attorneys general are already permitted to bring class actions, even when using outside counsel on a contingency basis. Thus if an attorney general is determined to improperly make political capital in the antitrust field, he already can do so.

Moreover, state attorneys general have so wide ranging an opportunity to take highly publicized actions, whether properly or improperly, that it seems trivial to think that parens patriae suits present a danger which does not already exist in far greater degree due to other causes. State attorneys general can crack down on drug traffic or crime, can bring highly publicized environmental

suits, can prosecute politicians, and so on. If it becomes known that they have done such things without a justifiable basis, but wholly for political reasons, then such knowledge should redound against them regardless of what political office they happen to be occupying at the time. In the long run, of course, our system relies upon the voters to turn charlatans out of office and keep good people in office. Given the many opportunities for official misfeasance by attorneys general, and our reliance upon the vote to purge miscreants, it is clutching at a weak reed indeed to argue against parens patriae suits on the ground that they afford an opportunity for misconduct.

In conclusion, I hope that the foregoing comments may be of some aid to your Committee. If I can be of help in any other way, please do not hesitate to ask.

Very truly yours,

LAWRENCE R. VELVEL,
Professor of Law,
Catholic University Law School.

THE UNIVERSITY OF WISCONSIN,
Madison, Wis., December 2, 1975.

Senator PHILIP A. HART,
Chairman, Subcommittee on Antitrust and Monopoly, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR HART: I read in the latest issue of Business Week that your bill requiring premerger notification and approval is in deep trouble. Business Week states that the bill will "kill off most mergers before they get started." This is nonsense. If there are compelling reasons for a merger, the prospective merger partners can afford to hold off for a time.

The simple truth is that, in most cases, the parties realize that under present law the cards are stacked against the government. Once a merger is consummated realistic relief becomes well nigh impossible.

Premerger notification and clearance is likely to present, for business, the most difficult problem in unfriendly takeover attempts. Not only are there relatively few such mergers, but such mergers should also be evaluated by the government on the merits before such precipitous actions are consummated. The recent flurry of such unfriendly tender offer mergers seems to have left the antitrust agencies stunned by the rapidity of the takeovers, some of which in my judgment violated Section 7. But the agencies stand mute.

Good luck and best wishes in your efforts to strengthen the antimerger law. We may well be on the eve of another burst of extensive merger activity.

Cordially,

WILLARD F. MUELLER.

P.S. Enclosed is a speech I gave which may interest you.

CENTER FOR RURAL STUDIES,
San Francisco, Calif., May 19, 1975.

Hon. PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: Please accept our commendations on your introduction of S1284 and S1136.

As is apparent from the name of our organization, we are particularly interested in the aspects of anti-trust legislation which would prevent the further agglomeration of land and water rights by large corporations which by virtue of their size and tax status are able to compete unfairly in agricultural production and which by virtue of their vertical integration are in a position to set prices at both the production and consumption end of the food chain.

It is interesting to note that according to some figures we have seen, the American food bill was 132 billion dollars in 1973, of which farmers received only 50 billion. Certainly much of this tremendous gap is due to the incursions of vertically integrated agribusiness corporations, many of them now operating on a multi-national scale.

Your two bills, if enacted, should be able to have a dampening effect on further concentration of power in agriculture as well as in other sectors of the economy.

Sincerely,

JAMES L. DRAPER.

THE UNIVERSITY OF UTAH,
Salt Lake City, June 16, 1975.

Hon. PHILIP A. HART,
Chairman, Senate Antitrust and Monopoly Subcommittee, Committee on the Judiciary, Senate Office Building, Washington, D.C.

DEAR SENATOR HART: I fully understand and appreciate the reasons beyond your control for the cancellation of the Hearings on S.1284, scheduled for June 5 and 6, 1975. The Subcommittee staff kindly invited me to return on June 12 to testify on S. 1284. Unfortunately, prior commitments precluded acceptance of the staff's thoughtful offer to return and it was agreed that any questions you or the staff may have about my prepared statement could be handled by correspondence. Your letter of June 6 propounded six questions which I shall attempt to answer in the order asked:

1. With regard to Title I and my proposal to make it the preamble of the Sherman Act, I would strongly urge the Subcommittee to do so. A Congressional declaration of policy is often relied upon by the courts in determining the substantive scope of a statute. The antitrust laws are broadly and vaguely worded and are particularly subject to judicial expansion or contraction depending upon the decision-maker's conception of their purposes. Judicial discretion is relatively uncontrolled at this point, except perhaps for the force of precedent, and there is a rising tendency to narrowly interpret the purposes of the antitrust laws.

Several factors are contributing to the frustration of the obviously broad social, political and economic goals of the antitrust laws that Congress had in mind when these laws were passed. Mayor Alioto's testimony touches upon one such factor—the appointment of judges with little understanding of and even outright hostility to antitrust policy. In a number of cases, judges have read in limitations upon the scope of antitrust policy that have no basis in the literal language of the statute or the clear legislative history of the statute. The "in commerce" decisions of the Clayton Act, the *parens patriae* decisions, recent merger decisions, and cases like *Telex v. I.B.M.* are examples of this trend. To some extent, the trend may be partially explained by incompetence; in other cases it is simply a matter of outright hostility to antitrust policy instilled by years of representing antitrust defendants by the judges deciding the case. While I believe the judiciary is benefitted by a pluralism of background among appointees to the bench, the past few years have seen a conscious program of appointing judges with specific biases in the area of economic regulation and constitutional law. The growing "tilt" that results have been away from a broad interpretation of antitrust policy and a frustration of Congressional intent.

A second factor contributing to the trend is the overriding compulsion of many courts—with Chief Justice Burger in the lead—to limit the caseload of the courts. Clearly, judicial caseloads and backlogs have become a problem in some areas of the country and in some courts. Controlling caseloads for the sake of controlling caseloads can, of course, lead to injustice and the frustration of the policies of laws enacted by the Congress. It has always been my belief that the first duty of the courts is to see that justice be done; not that judges can begin their day at 10:00 A.M. and be on the golf links by 4:00 P.M. or enjoy a three-month summer recess. It has become rather obvious that the Supreme Court and many circuits are controlling the caseload problem by narrowly construing such laws as the Clayton Act, class actions and the securities laws to restrict the number of claims that may be filed in federal court. Frequently, this is done in contradiction to Congressional intent, to the injury of justice, and to the great expense of litigants.

Congress is partially to blame for this state of affairs by creating new causes of action without assessing their impact upon the judiciary and by a reflex reaction that most problems can be resolved by throwing the matter into a court. Rather than face the issue as one of manpower and the expense of creating additional judgeships, however, the courts are increasingly frustrating Congressional attempts to right wrongs by narrowly construing the laws Congress passes. This process is facilitated where Congress passes statutes without a general declaration of policy that can guide and restrain judicial discretion to manipulate the concepts Congress employed in passing a law in order to limit those intended beneficiaries of the law from asserting rights in federal court.

A third factor contributing to a narrow construction of the antitrust laws is the rise of "economic positivism"—a narrow and reactionary school of thought seeking to restrict the scope of antitrust policy by the deification of a form of economic analysis devoid of reality and based on unexamined presumptions. A recent example of this kind of analysis is Posner, Antitrust Policy and the Supreme Court: An Analysis of the Restricted Distribution, Horizontal Merger and Potential Competition Decisions, 75 *Colum. L. Rev.* 282 (1975). In my statement, I attempted to explain why I consider this kind of analysis superficial, jurisprudentially unsound, and clearly contrary to the Congressional purpose in enacting the antitrust laws. In addition, it is at odds with the realities of the marketplace and human conduct as anyone who has participated in the grubby world of antitrust litigation can testify.

It also is having an impact upon judicial decision-making, however, as courts rely upon the superficially facile analysis—accompanied by charts, formulae, and mechanical manipulation of economic concepts in a belief that ultimate truth is at hand—to narrowly construe antitrust policy. The net result is a form of economic positivism insisting that the scope of antitrust policy be determined solely by the proponents' peculiar perception of "economic efficiency" and the validity of the mechanical methods and theories for examining "economic efficiency."

My quarrel with all this is far deeper than a dispute over the intracacies of economic theorizing and analysis with which I am reasonably familiar. As my statement indicates, the issue is at bottom a jurisprudential issue about the "can" and "ought" of decision-making that rejects positivism as a realistic or desirable possibility. The decision-making process in law is far more complex than this and it is necessary that the realistic and humanistic side of analysis be identified and recognized as such. If Congress wishes to avoid the stripping of antitrust policy of its social and political goals—a real possibility as the fad of mechanical economic analysis continues to spawn one-dimensional scholarship and decision-making—Congress should make clear the broader objectives underlying the enactment of the antitrust laws by making Title 1 of S. 1284 a preamble to 15 U.S.C. § 1. In this way, courts will not be able to avoid or ignore Congressional intent.

The issue may be subtle and the impact of making Title I an express declaration of policy may not be immediately evident. But if

the reality of what Mayor Alioto was complaining of and what I have experienced, and if the drive to limit access to the courts by narrow interpretation of laws contrary to Congressional intent is to be reversed, inserting Title I as a declaration of policy will have a substantial long-term effect in remedying these very real and growing impediments to the enforcement of the antitrust laws.

2. My views on the use of immunity to compel testimony are based on a fundamental hostility to giving the state the power to explore one's mind through the compulsion to threatened contempt proceedings. In my scheme of things, the policy of the Fifth Amendment is a guarantee of individual integrity and privacy at its most fundamental level—the protection of an individual's mental processes, knowledge and associations. One might even cite the trial of Jesus Christ as an example of the dangers in giving the state too broad an authority to compel testimony in violation of these fundamental human values.

The appropriate balance to be struck has become more difficult as the function of grand juries has evolved from that of an agency to control prosecutorial authority and discretion to a tool for prosecutors to investigate and prosecute. At common law, grand juries were created as a check on prosecutors and as a device to shield potential defendants from unjust prosecution. Today, the situation is reversed and grand juries can be manipulated since witnesses appear without the benefit of counsel, are usually under control of the prosecutor, and the authority to grant immunity may often induce witnesses to testify to that which the prosecutor wishes to hear—and not to the truth.

The rising fear of crime and continued hard-core violations of antitrust policy should not dull our sensitivity to the import of an individual being charged with a crime and the coercive impact of immunity. Reputations are destroyed, catastrophic costs are incurred, family relationships are disrupted—often permanently—and the individual's future is placed in great doubt and ofttimes destroyed. I have no sympathy for those who would violate the law—particularly clear mandates of the antitrust laws, since the policy is basic, the damage is often frightful—even though dispersed—and the perpetrators are usually not ignorant of the law, driven by poverty or bereft of competent legal counsel. But, indictments premised upon compelled testimony by witnesses receiving immunity and by grand juries under the control of prosecutors, I find inherently suspect.

While it is perhaps unrealistic to substantially reform grand jury functions and procedures and restrain the lust for a free hand in granting immunity, I believe the Subcommittee should carefully weight the discretion being granted by § 201(K)(3) of S. 1284 (page 10 of the bill) to grant immunity in oral depositions. The authority is granted before the investigation has reached the formality of a firm suspicion of an actual antitrust violation and before empanelling a grand jury or filing a complaint. I do not think it wise or consistent with fundamental liberties to vest such authority to compel testimony at that point, if at all, and would therefore simply delete lines 10-23, page 10, S. 1284.

3. My comments with regard to S. 1136 and the suggestion that the Antitrust Division utilize special counsel to litigate significant cases reflect my basic belief that the Division is geared to negotiation rather than litigation; staff trial expertise is hired away by private interests before becoming institutionalized reflected by the high turnover rate among trial attorneys; and, my experience indicates that the Division's bureaucratic structure is incompatible with efficiently litigating significant antitrust cases. I did have occasion to listen to Mr. Handler's testimony criticising the practice of some state Attorney Generals hiring special counsel to maintain state antitrust litigation. As was the case with most of the rest of Mr. Handler's testimony, I found his observations confused, client advocacy or simply humorous. On this issue, for example, much of Mr. Handler's business as an antitrust defense counsel is the result of corporate defendants hiring special counsel to handle antitrust litigation. In any significant litigation, most major corporations do not rely on house counsel but turn to outside counsel with particular expertise in the field involved and with the expertise of well trained trial lawyers in the area—an emminently sensible course of action. If Mr. Handler's criticism of states hiring special counsel were applied to the long-standing practice of large corporations doing the same thing, Mr. Handler's firm would be out of business. Thus, I found Mr. Handler's criticism somewhat humorous, if not hypocritical, on this issue and could not really detect any rational basis for his objection. If there is a rational basis, I would guess that Mr. Handler—speaking as a representative of the class of special counsel hired primarily to represent antitrust defendants—finds the job at bit tougher when he is faced by the expertise of special counsel retained to represent antitrust plaintiffs. It is far easier to deal with young and relatively unskilled counsel for the state or federal government, subject to political and bureaucratic restraints, and looking to move on after a few short years—than it is to deal with experienced, independent and long-term special counsel with expertise in actually litigating a case rather than negotiating a settlement.

Retaining special counsel at the federal level could bring much needed litigation expertise to the Antitrust Division. Moreover, selection of such counsel can even be tailored to the particular industry involved. For example, I know one private plaintiff's lawyer who has filed and successfully litigated more cases in the oil industry in the past five years than the entire Antitrust Division has handled in the last decade. Special counsel would also be relatively immune to any political and bureaucratic incentives within the Division and may be expected to handle cases with more expedition and decisiveness than has been exhibited by the trials by committee the Division has managed in recent years.

I doubt we shall ever be able to cure completely the turnover problem in Division trial personnel and build up a dedicated force of highly skilled litigators. It is worth a try, but in the interim I would support a program of hiring special counsel to handle significant cases, assign them adequate support staff, and tell the special counsel to go do the job. I'm confident the job will get done effectively and efficiently—and at less cost and waste of resources than that presently expended on spectacles like *U.S. v. I.B.M.* Who knows, "Special Counsel Handler for the Defense" might even consider becoming "Special Counsel Handler for the Prosecution." While it might not pay as well under present G.S. salary schedules, Mr. Handler may wish to do so for the honor of the thing. He is clearly one of our most experienced, rewarded and honored "Special Counsel" in the antitrust field and might wish to try the other side for the sheer joy of the experience.

4. My support of Section 703 of S. 1284 is premised on a belief that foreign companies doing business in the United States and United States companies doing business in other nations should be treated no differently in our courts than other litigants. Persons invoking or consenting to the jurisdiction of our courts must conform to our practice and while "comity" may be a problem to be ironed out at State Department cocktail parties in the arcane world of diplomacy, it is not relevant in litigation under American laws in our courts.

United States v. Bristol Myers (D.D.C. Civ. No. 822-70) is an example of the problems encountered in this area. The Beecham Group Limited is the owner of a U.S. Patent on Ampicillin and has granted an exclusive license to Bristol Myers, a subsidiary, to market the product in the United States. The government has charged fraud in obtaining the patent and is seeking discovery of documents in the United Kingdom to prove its case. An order by a British agency enjoins release of the documents—documents necessary to determine the validity of a United States Patent. Litigation has been going on over whether sanctions should be applied under the "mushy" standard of *Societe Internationale v. Rogers*, 357 U.S. 197 (1958) requiring a balancing of interests and "comity." Allowing the validity of a U.S. Patent to be determined by "comity" to the laws of a foreign country leaves the defendants in the position of wanting our law like any other litigant (a U.S. Patent), but wanting it free of the claims of justice (discovery of whether the Patent is valid or was procured by fraud). *First National City Bank v. Republic of China*, 348 U.S. 356, 362 (1959).

The simple solution to these kinds of cases is that proposed by § 703—enter summary judgment against the party refusing to produce—thereby meeting the demands of justice while preserving "comity" by not requiring the disclosure in violation of foreign law. A declaration of this policy by Congress cannot help but resolve these kinds of problems by moving courts to a more positive stand in favor of the integrity of the judicial process of American courts and the integrity of our laws absent vague references to meaningless concepts like "comity."

5. My main statement outlines instances of where the "in commerce" standard of the Clayton Act has caused injustice and frustration of the Congressional goal of remedying a variety of anticompetitive conduct "in any line of commerce" in any part of the country." For example, competing retail gasoline dealers in the same market are presently treated differently under the Robinson-Patman Act depending upon whether they obtained their refined product in an unbroken flow across state lines or not. Thus, one set of dealers can be victimized by predatory local price-cutting while competitors are not because of Robinson-Patman Act restraints.

The outmoded and bizarre commerce standard developed recently by the courts is further potential evidence of a drive to limit access to the courts for the sake of controlling docket loads. While the legitimate concern for efficiently managing the increasing load of courts should be confronted and dealt with directly, resurrecting artificial 1900 standards for tests of "commerce" will only create further litigation to avoid the standard or arcane record building to find a nexus to the physical flow of commerce across state lines. This process is now beginning to take place as litigants seek to expand other laws to reach anticompetitive conduct formerly within the reach of the Clayton Act or engage in extended discovery to build a record or find a "hook" establishing the outmoded commerce standard. Thus, I support amending the Clayton Act standard to reflect economic reality, avoid the waste of resources that is now inevitable and resolve the practical difficulties of the law not being applied equally to those in the same competitive circumstances. As an addendum, I believe the full Judiciary Committee should look into the caseload of our courts and propose remedies for any legitimate complaints that may be discovered so we can eliminate the process of lightening caseloads by narrowly construing laws in frustration of legislative policy.

6. Title IV has received much misleading and just plain false criticism. In my judgment, Professor Rose's statement and testimony completely and fully responds to the criticism. Thus, I endorse his excellent and objective analysis of Title IV.

Mr. Handler's testimony I found to be quite confusing. In fact, I could not believe we were reading the same bill. In rather plain and straightforward language, Title IV vests a cause of action in the state—it is the state's claim—it is not a class action. Mr. Handler's testimony, however, is based upon the assumption that the claim created by Title IV is a class action and then proceeds to raise several defects of allegedly constitutional dimensions. The bill does not take away a private citizen's right to maintain a claim; deprive one of property rights; create horrendous damage issues; trample upon some concept of "privity;" dispense with proof of a nexus between violation of the law and injury nor the fact of damage; violate due process; besmirch motherhood; insult the flag; and the host of other charges raised against Title IV. Most of these charges are based on the same erroneous assumptions: That Title IV authorizes a class action rather than vesting an independent cause of action in the state with a right to opt out of the action by those whose claim would be foreclosed.

I believe the Committee can make this thrust of Title IV clearer so that the courts will not mistake the substantive change being proposed by Title IV and mistakenly analyze it as a class action provision. By making this issue clear, such problems as notice requirements take on a different focus since notice is intended primarily for the benefit of potential damage claimants rather than wrongdoing defendants in the *parens patriae* suit. Aggregate damages and passing on become problems between the state and beneficiaries of the monies collected rather than some imagined rape of constitutional rights of wrongdoing defendants. Mr. Handler's unsupported assertion that the aggregate damage provision is plainly unconstitutional because there will be no requirement to prove actual injury is clearly fallacious. A state will still be required to prove a violation of the law, a nexus between violation and injury, and the amount of injury. Whether the proof is sufficient to sustain the claimed damage is a damage issue which may be proved in a number of ways and defendants (many of whom now retain the fruits of their illegal conduct) will be free to attack the formula relied upon and show how much of the damage is not attributable to the defendant's conduct and how much was not passed along. For example, it is frequently possible to prove the amount of damage by proof of the amount of overcharge. A defendent is not deprived of any rights because the state is able to prove all of the ill-gotten gain. It is truly odd to suggest that that defendant is entitled to retain some of the ill-gotten gain because of difficulties in apportioning a recovery among the intended beneficiaries. That is like claiming in a wrongful death action that the defendant conferred a benefit on the deceased because he killed him rather than only maiming the victim. Reliance upon the "privity" and passing on cases is also anomalous since the courts rejected the passing on defense asserted by a defendant because it would allow the defendant to retain part of the ill-gotten gain resulting from a violation of the law—not because of any imagined lack of confrontation with victims. Relying on the "passing on" defense to defeat *parens patriae* turns the reason for adoption of the rule on its head. Apportioning damages among different classes of claimants may entail questions of "passing on" among beneficiaries once the damage fund is established but will hardly be of concern to the defendant; except to the extent that the confusion created by interjecting the issue as one between the state and the defendant rather than among the beneficiaries of the fund, might well allow a defendant to escape having to disgorge all of the ill-gotton gain. "Privity", a hallowed and meaningless legal conception we all may meet one day in Von Jhering's heaven of legal concepts, is a catchword for establishing a level of proof of nexus between violation and injury. I see nothing in Title IV which will relieve the state of this burden in treble damage litigation and Mr. Handler and others have shed little light on what they may be talking about by incantation of the concept of privity—a concept which ought to be consigned to that graveyard of legalisms which contains proximate cause, demurrers, fee tails and other encrusted and useless concepts of a bygone era.

Once the state establishes a violation, the nexus between violation and injury, and the fact of damage, a defendant is, of course, free to attack each element of the case, enjoy many days in court, prove how much of the damage claimed was not really suffered and so on. Thus, I foresee no substantial constitutional difficulties with Title IV other than those mentioned in my statement—all of which may be easily corrected. The time has come to take the profit out of antitrust violations causing widespread consumer injury presently beyond remedy and the Subcommittee should not be misled by fulminations based on a fundamentally incorrect reading of Title IV.

If I may respond to any other inquiries of the Subcommittee or its staff, please do not hesitate to write. It is my hope that the Subcommittee will seriously consider including Part A of Senator Bayh's amendment as modified in my prepared statement for the reasons stated therein. With regard to the remainder of my testimony, I stand by it as written. Although biased and possibly erroneous in many places, it at least is straightforward and direct. I must confess it was also an honor to participate in the deliberations of your Subcommittee and renew old acquaintances with members of the Subcommittee, its majority staff and its minority staff. Hopefully, the markup on S. 1284 can proceed apace and we can get meaningful reform of a number of difficulties which have plagued effective antitrust enforcement for too many years.

Sincerely,

JOHN J. FLYNN,
Professor of Law.

NATIONAL ASSOCIATION
OF ATTORNEYS GENERAL,
Lexington, Ky., July 11, 1975.

Hon. PHILIP A. HART,
Chairman, Subcommittee on Antitrust and Monopoly, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN HART: At the request of Attorney General Andrew P. Miller, Virginia, Chairman of the Antitrust Committee of the National Association of Attorneys General, I am forwarding to you for your information copies of Resolutions IV and V adopted at the 69th Annual Meeting of the National Association of Attorneys General in Boston, Massachusetts, June 28, 1975. The Resolutions are as follows:

Resolution IV—Resolution in Support of the Antitrust Enforcement Authorization Act.

Resolution V—Resolution in Support of the Parens Patriae Bill.

Thank you so much for your consideration of these materials. With best wishes, I am.

Sincerely,

FRANK H. BAILEY,
Secretary.

[Andrew P. Miller, Attorney General of Virginia, Antitrust Committee]

RESOLUTION V—RESOLUTION IN SUPPORT OF THE PARENS PATRIAE BILL

Whereas, the National Association of Attorneys General has previously supported in principle the parens patriae bill pending in Congress, then known as H.R. 12921; and

Whereas, the Ninety Fourth Congress currently has pending before it two similar bills, H.R. 6786 and S. 1284, which, in concept, are the same in principle as the parens patriae bill previously endorsed by the Association; and

Whereas, more than thirty Attorneys General, individually, have expressed support for these bills and this Association's Antitrust Committee, through its chairman, has testified in support thereof; and

Whereas, these bills, with certain recommended amendments, will be a major deterrent to antitrust violations and will create a means of recovering damages inflicted upon the public and the States; and

Whereas, the need for parens patriae legislation in view of recent Supreme Court decisions has been well documented and the desirability of this Association's supporting such legislation is clear.

Now, Therefore, let it be *Resolved* that the National Association of Attorneys General reemphasizes its previous positions of support for the parens patriae provisions contained in both H.R. 6786 and S. 1284 and respectfully urges that the House and Senate Judiciary Committees give full consideration to this important legislation at the earliest opportunity; and

Be it further *Resolved* that the National Association of Attorneys General, on the recommendation of its Antitrust Committee, supports the position of the Chairman of such committee as regards Title VI of S. 1284; rather than restructuring the status of nolo contendere pleas to give them prima facie effect, particular consideration should be given to statutory provisions which would require implementation of methods for an exchange of information by the Department of Justice with the various State Attorneys General to the end that a more effective rational antitrust deterrence can be achieved.

TWO WORLD TRADE CENTER,
New York, N.Y., May 29, 1975.

Hon. PHILIP A. HART,
Chairman, Antitrust and Monopolies Subcommittee, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR HART: I understand that the proposed *parens patriae* amendments to the federal Clayton Antitrust Act, as set forth in Title IV of S. 1284, are now under consideration by the Senate Antitrust and Monopolies Subcommittee of which you are the Chairman.

I regret that I will be unable to appear in person before the Committee and testify in favor of the bill. I nevertheless wish to express my strong support for the Title IV proposals, and I am therefore submitting herewith a written statement for the Committee's consideration that I request be included in the official record.

I believe that passage of the *parens patriae* proposals, as set forth in S. 1284, will provide a very important and much needed addition to the present arsenal of governmental antitrust enforcement weapons.

Best wishes.

Sincerely yours,

LOUIS J. LEFKOWITZ,
Attorney General.

STATEMENT OF JULIUS C. MICHAELSON, ATTORNEY GENERAL OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

On behalf of the Department of Attorney General of the State of Rhode Island, I would

like to heartily endorse S1284, the Antitrust Improvements Act of 1975.

As one of the seven states in the nation with no antitrust statute, I cannot overemphasize the importance of Title 4 of the Antitrust Improvements Act which broadens the authority of state attorneys general to sue under federal antitrust law on behalf of the consumers of their states.

When I was elected Attorney General of Rhode Island in the fall of 1974, the No. 1 issue in my campaign was whether or not the Attorney General was going to be an advocate for the people. To be an effective advocate for the people and to make the mandate that I received in 1974 a reality, it is important that we have federal antitrust laws which allow for state enforcement on behalf of consumers.

Moreover, since it has not always been the case that state attorneys general have been sympathetic to the concerns of the consumer, I would also endorse the provision which allows the United States Attorney General to sue on behalf of the consumers of a state if the state Attorney General fails or declines to bring such an action within a reasonable period of time.

Antitrust enforcement has been too long a neglected stepchild of state and federal enforcement efforts. We need to give as equal attention to white collar crime as we do to street crime; and I commend Senator Hart and Senator Scott for their initiative with this legislation.

STATE OF MINNESOTA,
St. Paul, May 27, 1975.

Re: Title IV of the Hart-Scott Antitrust Improvements Act of 1975 (S. 1284).

Hon. PHILIP A. HART,
Chairman, Senate Judicial Antitrust Subcommittee, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR HART: I heartily support Title IV of S. 1284, which would authorize state attorneys general to commence antitrust actions under Section 4 of the Clayton Act to recover money damages on behalf of classes of consumers.

The provisions of Title IV—often referred to as the parens patriae provisions—would surely enhance treble damage actions as a means of enforcing our antitrust laws.

I therefore urge the prompt enactment of this important legislation.

Very truly yours,

WARREN SPANNAUS,
Attorney General.

STATE OF ARKANSAS, OFFICE OF THE ATTORNEY GENERAL,
Little Rock, Ark., May 20, 1976.

Re: In Support of the Policies Enunciated in Title 4 of S. 1284.

Hon. PHILIP A. HART,
U.S. Senator, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR HART: Arkansas is one of those states in the United States which has a constitutional prohibition against monopolies (Article II, Section 19, Constitution of Arkansas). Although the Arkansas General Assembly has provided by statute for the protection of its citizens from antitrust violations, I am convinced that this bill will allow our office to more fully and fairly represent the interests of Arkansas and its citizens in antitrust litigation.

It is my sincere hope that you and your Committee will be able to complete work on this Bill and recommend it to the floor for favorable consideration in the near future.

Respectfully,

JIM GUY TUCKER.

STATE OF NEW MEXICO,
DEPARTMENT OF JUSTICE,
Santa Fe, N. Mex., May 29, 1975.

Re S. 1284, Hart-Scott Antitrust Improvements Act of 1975.

Hon. PHILIP A. HART,
U.S. Senate, Chairman, Subcommittee on Antitrust and Monopoly, Washington, D.C.

DEAR SENATOR HART: I wish to thank your Subcommittee for the opportunity to comment on S. 1284, and, in particular, Title IV of that bill.

The illegal and undesirable restriction of free trade and competition is a real and threatening practice in New Mexico. In fact, it may be said in all candor that its tip is only beginning to become apparent to interested law enforcement agencies. Perhaps the primary reasons it has not surfaced in the past are not only due to the lack of recognition by law enforcement officials but also due to the paucity of the substance or our State's antitrust laws. Because of this second reason, I must voice my support for the passage of S. 1284.

S. 1284 is needed as an effective antitrust tool by this office since, unless specifically provided by statute its common law powers are often limited by our courts. Although the New Mexico antitrust laws offer the consumer some protection, their scope, their remedies, and their penalty provision are limited and, in my view, inadequate to meet the exigencies of our present economy. With the increase in effectiveness which S. 1284 offers, I believe that it would be a welcome and potentially productive addition to the antitrust arsenal of my office.

In particular, I welcome the addition of "natural persons" within the scope of the Antitrust Civil Process Act, and the inclusion of State Attorneys General as "parens patriae" authorities under Title IV. This latter inclusion should provide us with the desired, additional means for detering and remedying unlawful competition.

Sincerely,

TONEY ANAYA,
Attorney General.

THE COMMONWEALTH OF MASSACHUSETTS,
Boston, Mass., June 19, 1975.

Hon. PHILIP A. HART,
Chairman, Subcommittee on Antitrust, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR HART: I am writing to express my strong support for Title IV of S. 1284, the "Antitrust Improvement Act of 1975", and to ask the Committee to consider drafting an amendment to permit state attorneys general to obtain divestiture remedies.

This legislation would substantially aid effective antitrust enforcement by granting wider authority to the state to initiate antitrust actions. At the present time, as the Committee is aware two judicial decisions bar state attorneys general from bringing *parens patriae* suits. *Hawaii v. Standard Oil Co.* 405 U.S. 251 (1971) and *California v. Frito Lay* 472 F. 2d 774 (9th Cir. 1973); cert. denied, 412 U.S. 908. As a result of these decisions, our ability to fully protect the citizens of Massachusetts from anticompetitive practices has been impaired.

The legislation is needed for several very sound reasons. First, consumers who are victimized by anticompetitive practices are ill equipped as a practical matter to initiate or conduct expensive, broadscale antitrust litigation. We in Massachusetts are particularly sensitive to the high cost of food in our grocery markets. Where these prices are the result of collusive activity, we believe the state should serve as the vehicle for recovering any illegal overcharges. While the damage to each individual consumer may be small, the aggregate damages to the citizens of the Commonwealth may run into the thousands or millions of dollars. Title IV gives us that authority.

Second, the government's role in antitrust enforcement, particularly at the Federal Trade Commission, has increasingly been concentrated on several major cases. It is my understanding that approximately twenty percent of the Bureau of Competition's budget is devoted to the *Exxon* case alone.

At the present time, serious questions exist whether a state attorney general may seek a divestiture remedy in federal court. See *International Telephone and Telegraph Corp. v. General Telephone & Electronics Corp. and Hawaiian Telephone Co.* Trade Reg. Report ¶60,291 (9th Cir., April 25, 1975). Since we believe the ultimate goal of antitrust enforcement is the promotion or restoration of competition, state attorneys general should expressly be granted this authority.

Regional and local mergers and acquisitions as well as monopolies are important subjects for state attorneys general scrutiny. In at least one instance, our litigation plans are in flux because we are uncertain whether the federal courts would be receptive to granting a divestiture order. Basically, the contemplated litigation involves a structural rather than a behavioral problem which cannot be adequately remedied by treble damage relief alone. Consequently, we believe it would be highly desirable to incorporate language into the legislation expressly granting state attorneys general the power to seek divestitures. Of course, defendants would be amply protected in such proceedings by the courts. Additionally, if the Antitrust Division of the Department of Justice desires to submit its views, it could easily intervene in the litigation or participate as an amicus curiae.

Treble damage actions serve an important function in deterring would be antitrust violators. But, treble damage actions, in themselves, cannot restore competition to the marketplace. In this sense, broader authority is needed, if the states are to truly assume a more active role in antitrust enforcement.

In conclusion, I respectfully urge that the Senate Judiciary Subcommittee favorably report Title IV of S. 1284 incorporating the foregoing suggestions.

Sincerely yours,

FRANCIS X. BELLOTTI,
Attorney General.

OFFICES OF THE ATTORNEY GENERAL OF MISSOURI,
Jefferson City, Mo., May 22, 1975.

Re: S. 1284, Title IV—Parens Patriae Legislation

Hon. PHILIP A. HART,
Chairman, Antitrust Subcommittee, Senate Judiciary Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR HART: I would like to express my support for Title IV of S. 1284, which, if enacted, will give the states the authority to bring antitrust damage actions on behalf of their citizens. I believe that the bill in its present form is much improved over the proposal as it was introduced in the House last year as H.R. 12528 and this year as H.R. 38.

Four major changes appear in this bill, each designed to eliminate a substantial objection to the House bill from the standpoint of state attorneys general. First, the addition of Section 4C(a)(3) adds political subdivi-

sions of the groups of people on whose behalf the state attorney general may sue. The right of the state to sue on behalf of its subdivisions has generally been upheld, but a recent decision casts doubt on that power. *Illinois* v. *Ampress Brick Company*, 712 ATRR A-15 (E.D. Ill. 4/28/75). It will be useful if this controversy can be resolved through this legislation.

The second major change is the addition of Subsection 4C(b), which requires publication of notice and allows people in various states the right to "opt out" of litigation. This eliminates one of the major objections to the bill, particularly as it applies to potential antitrust suits involving businesses as well as consumer groups.

A third major improvement in the bill is the allowance to state attorneys general of attorneys' fees in Section 4C(c)(2). Many states, including Missouri, have inadequately funded Attorney General's offices, and the maintenance of one or more major antitrust suits can be a substantial drain on the office's resources. By the allowance of attorneys' fees, this litigation can become self supporting, and the states will be able to conduct much more of it.

The final major improvement in this bill over H.R. 38 is the change in Section 40(b) which now permits but does not require the United States Attorney General to bring suits if the state attorney general fails to. This is a step in the right direction, since requiring these suits would have been both an infringement on the power of the states and an unwise burden on the United States Department of Justice.

My support for your bill as it was introduced is tempered by the presence of two provisions which I believe are of dubious merit. The first of these grants the power, under Section 4C(a)(2) to sue "with respect to damages to the general economy of that State. . . ." As I expressed in my letter to Chairman Rodino last summer, commenting on H.R. 12528, "to paraphrase Shakespeare, this bill would allow Richard III to sue a conspiracy of horse sellers for the loss of a kingdom, trebled. The section places a tremendous and unforeseeable burden on antitrust violators which would, if enforced literally, simply bankrupt all but the wealthiest corporations. Considering that most suits are already settled for much less than the three times direct damages presently allowed, I believe this section represents an unnecessary and unwarranted extension of antitrust law principles."

The other major problem with the bill is Section 4D. The weakness in this section is that the Attorney General of the United States is not required to provide the states with either particulars of the suit or the evidence on which he relies. Indeed, in cases involving a criminal prosecution, he may not be able to provide very much information to the states. Nonetheless, under Section 4D, the state attorney general is required to decide within ninety days if he wishes to bring a suit on behalf of the citizens of his state. This section should be changed in several ways. First, the Attorney General of the United States should be required to provide more complete information to the states to enable them to decide whether to bring a suit. Second, the bill should clearly state that the ninety-day deadline spoken of in Section 4D(b) is not a statute of limitations with respect to actions brought by the state attorney general under Section 4C. Third, Section 4D(b) should be changed to correspond to Section 4C(a)(1); as the bill now reads, the Attorney General of the United States is not authorized to bring an action with respect to damages to the general economy or on behalf of political subdivisions of the states.

Once again, however, I would like to reassert my support for the basic thrust of this legislation, and I hope it receives favorable consideration both by your Subcommittee and by the entire Congress.

Very truly yours,

JOHN C. DANFORTH,
Attorney General.

COUNCIL ON ANTITRUST AND TRADE REGULATION,
FEDERAL BAR ASSOCIATION,
Washington, D.C., July 1, 1975.

Re S. 1284 and S. 1136.

Hon. PHILIP A. HART,
Chairman, Subcommittee on Antitrust and Monopoly, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In connection with the Subcommittee's consideration of the Antitrust Improvements Act of 1975 (S. 1284) and the Antitrust Enforcement Authorization Act of 1975 (S. 1136), the Council on Antitrust and Trade Regulation of the Federal Bar Association has polled its members to ascertain and present, for your possible interest, their views regarding these bills.

The Federal Bar Association is a nationwide organization of lawyers who have served or currently serve in the Federal government and/or who have a substantial and continuing interest in Federal law. The Council on Antitrust and Trade Regulation has some nine hundred members and, as its name suggests, is composed of members of the bar interested in problems of competition and consumer protection.

It is then with pleasure that I attach hereto a copy of the survey which the Council undertook that reflects numerically the views of those responding to the questionnaire. This presentation, however, should not be construed necessarily to reflect the views of the Federal Bar Association or of the Council on Antitrust and Trade Regulation. Nevertheless, I hope this reflection of the individual views of the responding members will be of interest to the Committee.

Sincerely,

EUGENE J. MEIGHER,
Chairman.

[From the Federal Bar Association, Council on Antitrust and Trade Regulation]

SURVEY ON PENDING ANTITRUST LEGISLATION

S. 1284—ANTITRUST IMPROVEMENTS ACT OF 1975

Sponsors: Senator Philip A. Hart and Senator Hugh Scott.

Provisions

Title I—Declaration of Policy—

"It is the purpose of the Congress in this Act to support and invigorate effective and expeditious enforcement by improving and modernizing antitrust invesigation and enforcement mechanisms, to facilitate the restoration and maintenance of competition in the marketplace and to prevent and eliminate monopoly and oligopoly power in the economy."

Title II—Antitrust Civil Process Act Amendments—

Would permit the issuance of antitrust civil process to individuals and to third parties as well as to corporations, partnerships or associations:

Do you favor such a change? Yes, 72. No, 30.

Extend the issuance of antitrust civil process to facilitate investigations of mergers:

Do you favor such a change? Yes, 73. No, 29.

Would permit the taking of depositions, the propounding of written interrogatories as well as the required production of documentary evidence:

Do you favor such a change? Yes, 65. No, 34.

Title III—Federal Trade Commission Act Amendments—

Would increase to not less than $1,000 but not more than $5,000 (in the Court's discretion) the amount of daily penalties for failure to obey FTC orders or subpeonas or for failure to file required annual or special reports required by the Commission:

Do you favor such a change? Yes, 61. No, 41.

Would articulate definite criteria (*e.g.* service of a notice of default and probable success on merits) under which the accumulation of such daily penalties could be stay:

Do you support such an amendment? Yes, 79. No, 18.

Title I—Parens Patriae—

Would enable State attorneys general to file treble damage actions (1) as parens patriae of the citizens residing in their particular states; (2) as parens patriae, with respect to damages to the general economy of the state or of subdivisions therein; or (3) on behalf of any or all of the subdivisions in a state:

Do you favor such an amendment? Yes, 50. No, 51.

Would sanction the aggregation and allocation of damages based on statistical or sampling methods, on pro rata allocation of illegal overcharges or excess profits to sales ocurring within the state or on any other reasonable system of estimating aggregate damages which the Court permits:

Do you support such a provision? Yes: 53. No: 48.

Would permit the Attorney General of the United States to sue on behalf of any state whose attorney general fails to bring an action after notification from the United States Attorney General that cause exists for bringing such action:

Do you approve of such a procedure? Yes: 39. No: 62.

Title V—Premerger Notification—

Would preclude the consummation of certain large mergers or acquisitions prior to notification of the FTC and the Antitrust Division of the proposed transaction and the expiration of a waiting period:

Do you support such a provision? Yes: 64. No: 37.

Would authorize the antitrust enforcement agencies during the waiting period to obtain information thought necessary to evaluate the transaction, to extend the waiting period if the desired information was not forthcoming:

Do you approve such a procedure? Yes: 58. No: 40.

Would enable the antitrust enforcement agencies, if they proceeded against the acquisition, to require the entry of an order enjoining consummation of the transaction pending resolution of the proceeding if the enforcement agency certified to the Court that such relief pendente lite was the public interest:

Do you favor such a procedure? Yes: 49. No: 51.

Would permit the antitrust enforcement agencies to require the entry of a hold-separate order pending resolution of the proceeding:

Do you support such a change? Yes: 47. No: 50.

Would require, in the event of the entry of an order of divestiture, that the purchase price of the unlawfully acquired stock or assets be no greater than the purchase price paid by the original acquiring company:

Do you approve such a requirement? Yes: 32. No: 57.

Title VI—Nolo Contendere—

Would provide that the entry of a plea of nolo contendere would be prima facie evidence in a civil action brought by any person as to all matters in the indictment necessary to sustain a judgment of conviction upon a jury verdict that the defendant was guilty of offense charged in the indictment:

Do you approve of the charge? Yes 37. No 63.

Would permit, in a civil damage suit, the use of a bill of particulars to construe the indictment and would permit the use of any statements made on behalf of a defendant in a proceeding in which the defendant entered a plea of nolo contendere as admissions against such defendant:

Do you favor this provision? Yes 39. No 56.

Title VII—Miscellaneous—

Would extend the jurisdiction of Section 2, 2a, 3 and 7 of the Clayton Act to acts "affecting commerce" as well as those done "in commerce":

Do you support such an amendment? Yes 65. No 35.

Would require procedures for handling and expediting complex antitrust cases similar to those provided in the Manuel for Complex and Multidistrict Litigation:

Do you favor such a requirement? Yes 77. No 20.

Would permit the imposition of certain penalties, such as dismissal of claims or striking defenses, against any person who fails or refuses to obey an order of a United States court on the ground that a foreign statute, regulation or decree, etc. prohibits compliance with such order:

Do you approve of such a provision? Yes 41. No 49.

S. 1136—ANTITRUST ENFORCEMENT AUTHORIZATION ACT OF 1975

Sponsors: Senators Philip A. Hart, Hugh Scott and 41 other Senators.

Provisions

Section 2—Policy—

"It is the purpose of the Congress in this Act to support and invigorate a national antitrust enforcement program by authorizing sufficient appropriations to the Federal Trade Commission and the Department of Justice to permit vigorous and effective enforcement of the antitrust laws and to restore and maintain competition in the marketplace, and to prevent and eliminate monopoly and oligopoly power in the economy."

Section 3—Federal Trade Commission—

Would authorize the appropriation for use by the Bureau of Competition of the Commission in addition to any other sums otherwise authorized an amount not to exceed $25,000,000 for the fiscal year ending June 30, 1976; $6,250,000 for the period July 1, 1976 through September 30, 1976; $35,000,000 for the fiscal year ending September 30, 1977: and $45,000,000 for the fiscal year ending September 30, 1978:

Do you support such a provision? Yes 50. No 39.

Section 4—Department of Justice—

Would provide for the Antitrust Division the same level of authorizations as provided for the Bureau of Competition of the Federal Trade Commission:

Do you favor this provision? Yes 58. No 38.

NEW YORK
STATE CONSUMER PROTECTION BOARD,
New York, N.Y., May 20, 1975.

PHILIP A. HART,
Chairman, Subcommittee on Antitrust and Monopoly, Committee on the Judiciary, U.S. Senate, Washington, D.C.

MR. CHAIRMAN: As Executive Director of the New York State Consumer Protection Board, I appreciate this opportunity to offer my comments on S. 1284, "The Antitrust Improvements Act of 1975," (the Act). Anticompetitive activities cost consumers as much as $80 billion each year in higher prices, according to the Bureau of Economics of the Federal Trade Commission (FTC). It is therefore time we stopped viewing a strong antitrust policy as "antibusiness" and started realizing that such a policy is essential to our economic health in this time of double-digit inflation. You are to be commended for introducing such comprehensive legislation aimed at closing the loopholes in our present antitrust laws.

Title II of the Act would amend the Antitrust Civil Process Act to expand the scope of antitrust investigations conducted by the Department of Justice. As it exists now, the law authorizes the Attorney General to institute antitrust investigations against legal entities not natural persons in order to determine whether a violation of the antitrust laws has been committed. Civil investigative demands may be served on parties under investigation in order to obtain documentary information prior to the issuance of a civil complaint. Because of the apparent need for more vigorous enforcement of the antitrust laws, Title II would permit civil investigative demands to be served on natural persons who may be in possession of relevant information prior to the commission of an unlawful act. Furthermore, oral testimony and written interrogatories could be demanded in addition to documentary material.

I strongly support these amendments with the following suggestions. As written, Section 201(g) of the Act which amends Section 3 of the Civil Process Act appears to apply only to legal entities rather than natural persons in that it permits "persons having actual knowledge" of the information sought to respond to requests for documentary material and written interrogatories instead of requiring the person served with the civil investigative demand to respond. I doubt this result was intended by the drafters of this section, and I suggest that language be added to insure that the natural person served with the demand be required to certify the response thereto.

In addition, Section 201(k)(1) of the Act states that the antitrust investigator "may" exclude the public from the place where oral testimony is given. I believe the public must be excluded from these proceedings. While expanded investigatory powers are necessary to effective enforcement of our antitrust laws, the civil liberties of those subject to process must be carefully guarded.

Title III would amend the FTC Act to increase civil penalties for failure to comply with TFC orders for annual or special reports or subpoenas. It would also restrict judicial orders to stay the accumulation of these penalties. We support these provisions. After all, it is quite clear that a penalty scheme devised in 1914 has few, if any, teeth left by 1975.

Title IV of the Act authorizes state attorneys general to bring class action-type suits to recover damages sustained by residents resulting from monopolistic practices as *parens patriae* or as the representative party in a class action under Federal Rule 23.

When suit is brought pursuant to the *parens patriae* provision above, Section 4C(b)(1) would seem to indicate that notice of the action by publication would be sufficient. Such a provision may give rise to constitutional questions as to the adequacy of this form of notice and the viability of the opt-out provision which follows. Furthermore, the section would appear to authorize state attorneys general to disregard state notice requirements even though superior to notice by publication. This would hardly be a desirable result. I would suggest that this section be redrafted to require notice in conformity with state law.

Section 4C(c) greatly simplifies the serious problems of proof of individual damages which arise in class actions by permitting statistical or sampling methods of computation. Absent such a provision, violators of antitrust laws would be able to retain the profits derived from their unlawful conduct.

While the above section would appear to solve problems of proof, Section 4C(a)(2) would appear to create such problems. This section would authorize state attorneys general to recover damages to the general economy of the state resulting from anti-competitive activity. I question whether harm to the sate can be measured independently of harm to its citizens. Since recovery for individual harm is provided for elsewhere, double recovery would seem to be unavoidable.

Title V, Premerger Notification, requires companies of significant size to notify the Department of Justice and the FTC prior to effecting a merger; establishes a waiting period during which the government is to scrutinize the proposed merger; and if any action is instituted, authorizes the government to seek a stay of the merger pending a final judgment on the merits. Title V is particularly critical during a period of recession in that attendant losses suffered by businesses leave them predisposed to merger. These provisions should eliminate the difficulties which result from orders requiring post-merger divestiture by enjoining illegal mergers before they are consummated. Additionally, they would eliminate the reaping of profits from an illegal merger during the investigatory period. Both government and industry would benefit inasmuch as costly and time-consuming litigation might well be avoided.

Title VI, *Nolo Contendere*, recognizes the need to facilitate individual prosecution of antitrust violations as well as public prosecution. It does so by permitting pleas of *nolo contendere* entered in criminal proceedings to be used as prima facie evidence of guilt in subsequent civil actions. Such a provision is highly beneficial in that it would relieve the plantiff of the senseless burden of proving a violation which has already been admitted.

Thank you again for the opportunity to support this fine legislation. I hope my comments have been helpful.

Yours truly,

ROSEMARY S. POOLER,
Executive Director.

NATIONAL CABLE
TELEVISION ASSOCIATION,
June 6, 1975.

HON. PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: Recently I have had occasion to review S. 1284 and S. 1637, the bills designed to improve enforcement of the antitrust laws. I find the ramifications of these bills to be terribly important. Therefore, I am taking the liberty of writing to you to express my organization's support for this effort.

The cable television industry has endured a sustained assault from broadcast and common carrier interests over the years. The results have been injurious and have often resulted in the adoption of repressive regulation. Much documentation of this has been submitted to your Sub-committee in recent hearings. It seems that the guardians of the *status quo* do not move aside graciously when competition from a new industry is perceived. We view much of this conduct as questionable anti-competitive activity, perhaps falling within the purview of the antitrust laws. As you know, both government and private enforcement of the antitrust laws is often cumbersome and expensive. It is thus a remedy which is of limited immediate value to our struggling industry. For this reason, anything that can be done to strengthen and streamline the application of the antitrust laws would indeed be welcome. We read this intent into S. 1284 and S. 1637, and we, therefore, support your efforts and urge prompt action on these bills.

If I can be of any aid to you in this effort, please do not hesitate to call upon me.

Sincerely,

STUART F. FELDSTEIN,
Vice President,
Legal/Government Relations.

AUTOMOTIVE SERVICE COUNCILS, INC.
Elmhurst, Ill., June 5, 1975.

Hon. PHILIP A. HART,
Chairman, Antitrust and Monopoly Subcommittee, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the members of this association, I wish to express our strong support for S. 1136 and S. 449, increasing appropriations for the Antitrust Division of the Department of Justice and the Federal Trade Commission.

Effective, fair enforcement of the antitrust laws is essential to the survival of the small and medium-size independent businesses.

Vigorous antitrust enforcement ensuring a free and open competitive enterprise system will be a bulwark against the artificial pressures of inflation.

Best wishes.

Sincerely,

DONALD A. RANDALL.

UNIVERSITY OF MINNESOTA,
Minneapolis, Minn., May 27, 1975.

Senator PHILIP A. HART,
Chairman, Subcommittee on Antitrust and Monopoly, Old Senate Office Building, Washington, D.C.

DEAR SENATOR HART: I would like to expresses my appreciation for your efforts as reported recently in the Wall Street Journal to reform and improve our antitrust laws. I am especially interested in the proposals involving the right of attorneys general to initiate treble-damage suits on behalf of the citizens of a state, since I have written quite a bit on treble-damage suits.

As you can see from the enclosed article "The Profitability of Violating the Antitrust Laws . . ." taken from the Antitrust Law and Economics Review, it is generally profitable to violate the antitrust laws, even given the prospect of paying treble damages. As discussed in the article, the reasons are:

(1) what must be assumed to be a low probability of discovery of the violation;

(2) the low coverage ratios (percentages of sales and/or profits affected by a violation that ultimately enter into a treble-damage suit). Lack of willingness of some customers to sue, the disappearance of old records, etc. mean that in the typical treble-damage case only a small portion of sales on which profits are made enter a treble-damage suit. Thus, the violator may, even if successfully proscuted, pay out damages equal only to a fraction of the profits associated with the violation;

(3) the long time lag between the discovery of a violation, the typical Department of Justice or FTC trial, the subsequent treble damage case and the eventual collection of the damages by customers or competitors. During this period—often a decade or more—the violator enjoys, interest free, the use of the profits associated with the violation.

Consequently, as Table A-1 in the enclosed article points out, in most cases it is highly profitable to violate the antitrust laws. (Exceptions are in cases where the violation is unprofitable—e.g. an unsuccessful attempt to eliminate a competitor through a price war.)

Given these circumstances, if the treble-damage provisions are to be made effective, two reforms appear to be highly desirable. First a system of interest payments needs to be incorporated into the treble-damage provisions so that the violator in addition to paying treble-damages would be required to pay interest to those damaged by the violation for the use of the funds between the time the illegal profits were acquired and the treble-damages were paid. This suggestion would have the effect of discouraging antitrust violations by tending to reduce or eliminate the profitability of antitrust violations and would be equitable to those who are hurt by the violation (who lose the use of funds even if treble damages are collected). I also believe it would have the salutary effect of speeding up treble-damage litigation; under current procedures there is obviously every incentive for the violator to delay the litigation.

Second a provision allowing plaintiffs in treble-damage suits to recover damages based on sales to non-participants to the suit and based on estimates of sales where documentation of individual contracts is not available would be helpful in increasing the coverage ratio, and hence tend to reduce or eliminate the profitability of antitrust violations. (Perhaps such estimates could be based on general accounting statements, sales ledger data, etc.) Thus based on data generated through series of individual contracts over several years, plaintiffs would be allowed to apply the derived damage estimates to sales that were known to have taken place but for which individual contracts are not available.

Fifteen years ago as a graduate student in economics I had an opportunity to work briefly for the Subcommittee, and I have always been grateful for this early experience. Having served as an expert witness on a number of private treble-damage cases, I am convinced that incorporating interest expanding coverage ratios (as well as discovering and prosecuting more antitrust violators) are crucial to making the treble-damage provisions more effective. I hope these suggestions may be as helpful to the Subcommittee as the Subcommittee was to me at an early stage in my career.

If I can be of further help, please let me know.

Cordially,

W. BRUCE ERICKSON,
Associate Professor of Government and Business.

NATIONAL RETIRED TEACHERS ASSOCIATION; AMERICAN ASSOCIATION OF RETIRED PERSONS,
Washington, D.C., May 24, 1976.

U.S. SENATE,
Washington, D.C.

DEAR SENATOR: The National Retired Teachers Association and the American Association of Retired Persons, the largest national organizations for older Americans with a membership in excess of nine million persons, urge you to vote for the passage of S. 1284, a bill to strengthen present antitrust enforcement thereby helping to ensure competition in the marketplace.

As Associations representing older Americans, we are only too aware of the effects of anticompetitive practices by business on the fixed incomes of older persons. The really unfortunate fact is that most consumers, including the elderly, are unaware of their victimization through illegal practices such as price fixing. They do know what it means, however, to pay the higher prices which result when competition either does not exist or is thwarted.

Title IV of S. 1284 would strengthen present antitrust law enforcement mechanisms by allowing States Attorneys General to sue violators on behalf of the citizens of their states and to recover treble damages. These provisions would help to protect older consumers, as well as all consumers, from the excessive prices charged for products and services as a result of anticompetitive practices. In addition, Title IV would help to preserve the integrity of our free enterprise system and to encourage those business principles and ethics around which such a system must be based.

Our Associations view S. 1284 as important consumer legislation. In addition to Title IV, other provisiosn which broaden the civil investigative demand authority of the U.S. Department of Justice and which require big companies to notify the Justice Department and the Federal Trade Commission before a proposed merger would help to ensure marketplace competition, keep prices low and restore consumer faith in a government which looks out for the interests of all its citizens not just those of the business community.

We have joined in a coalition supported by a wide cross-section of consumer, labor and small business interests to seek the passage of S. 1284. We urge you to consider our statements in support of the legislation and to vote for its passage without any weakening amendments.

Sincerely,

CYRIL F. BRICKFIELD,
Legal Counsel.

ADMINISTRATION POSITION

Mr. PHILIP A. HART. Question 5. What is the position of the administration on the Hart-Scott substitute and what are the results of the negotiations between the White House and Senators SCOTT and HART?

Answer 5. Assistant Attorney General for Antitrust Thomas E. Kauper testified on behalf of the administration in support of the legislation. Thereafter, Deputy Attorney General Harold Tyler reaffirmed the administration's support for the bill with one exception: The revised premerger injunction procedures—subsection (d)—of title V. Secretary of the Treasury William Simon also informed us of his Department's opposition to subsection (d) of title V. We have not received any other communications from the administration with respect to its position on the bill. However, Senators SCOTT and HART attended a meeting at the White House prior to the April 6 markup of the bill in committee. At that meeting, we were lead to believe that the administration supports title II—the Antitrust Civil Process Act amendments; title V—the premerger notification and stay provisions—with the exception of the injunction provision of subsection (d)—and title IV—parens patriae—if modified to limit the scope of the offenses to something less than all of the Sherman Act and to eliminate the rights of consumers to file their own action if a State attorney general does not.

We discussed possible middle ground on points of disagreement and were lead to believe that further discussions would take place to iron out the differences. We are prepared to pursue those discussions with the White House.

CIVIL LIBERTIES AND TITLE II

Question 6. Does title II encroach upon individual or corporate civil liberties?

Answer 6. In our judgment, it does not. Title II amends the Antitrust Civil Process Act, originally enacted in 1962. It provides the Antitrust Division of the Department of Justice with the most basic of investigatory tools utilized by virtually every Federal regulatory agency, including the Federal Trade Commission, and by many State attorneys general.

The Antitrust Civil Process Act authorizes the Antitrust Division of the Department of Justice to issue compulsory process—called a civil investigative demand or CID—to investigate violations of the antitrust laws prior to the filing of a case. Under present law, the Division may issue a civil investigative demand to obtain only documentary evidence and then only from nonnatural persons—for example, corporations—suspected of committing an antitrust violation. Relevant evidence may not be obtained pursuant

to a CID from natural persons or from third parties such as competitors, suppliers, customers, or employees. Nor may the Antitrust Division take oral testimony or written interrogatories in the course of such an investigation or issue a CID to investigate the legality of a proposed merger or acquisition until it is consummated—even though it may be publicly announced.

Title II merely rectifies these deficiencies in the Division's investigatory powers by authorizing the Antitrust Division to:

First, issue a civil investigative demand to investigate mergers and acquisitions prior to consummation;

Second, issue a civil investigative demand to obtain relevant evidence from natural persons and third parties;

Third, take oral testimony and written interrogatories, in addition to obtaining documentary evidence, pursuant to a CID; and

Fourth, issue a civil investigative demand to obtain relevant competitive evidence for use in ongoing regulatory agency proceedings.

Opponents of title II argue that the power to issue civil subpenas should not be vested in the prosecutorial arm of Government. That the Antitrust Division is a unit of the Department of Justice, in their view, is a critical element distinguishing all the other Federal agencies and the approximately 20 States that have this power. But overlooked is the fact that the Department currently has this power in enumerated areas. Title II would broaden the areas of the Division's basic investigatory authority.

The Judiciary Committee has carefully considered the issue of whether or not the safeguards contained in the Antitrust Civil Process Act as amended by section 201 are sufficient to protect the legitimate interests of the public against unreasonable Government intrusion. The original Antitrust Civil Process Act of 1962 provided for a number of procedural safeguards to protect the public against the potential for abuse of the Department's precomplaint discovery process for corporate documents. These procedural safeguards have been continued and expanded by this title. The provisions in the 1962 act have been extended to protect natural persons against an unreasonable demand for documents. These procedural sageuards have also been expanded to accord the same protection to any person who receives a civil investigative demand for the taking of an oral deposition, or for answers to written interrogatories.

We are confident that the provisions of the amended Antitrust Civil Process Act strike a fair balance between the rights of persons under investigation and third parties against unreasonable Government intrusion and the need for effective and efficient enforcement of the antitrust laws.

Among the safeguards included in title II is the requirement that documents or information subject to compulsory process must be in the "possession, custody or control" of the subpenaed party. The subpenaed documents or information must be relevant to the antitrust investigation. The subpena must describe with "definiteness and certainty" the material to be produced. A reasonable period of time is allowed before production is required, and the subpena must state the nature of the investigation and the provision of law applicable thereto.

Just as in the present law and following essentially the same procedures, the recipient of such process has an absolute right of court review before having to comply with such process. He is in no jeopardy until a judge either quashes the process or orders compliance. Full protection against disclosure of information which would be privileged from disclosure, or which would be unreasonable or impose an undue or oppressive burden is in title II. Similarly, the information which would be privileged from disclosure or held to be unreasonable if demanded in a grand jury subpena is protected in this bill just as it is protected under present law.

Additionally, persons may be accompanied by counsel to oral examinations and full fifth amendment rights apply.

Once any objection to a CID is raised, the Division's investigation may not proceed and the CID need not be answered, unless and until the Division persuades a Federal judge in the course of an adversary, de novo proceeding that the CID is proper under all these many standards that are revealed in the reported cases.

Here is what really happens if an objection to a CID is raised:

The CID witness does not answer, and the CID oral examination comes to a halt; or the recipient refuses to comply with the document demand.

Either the recipient moves to quash or the Antitrust Division goes to a U.S. district court and seeks enforcement of the CID.

After an adversary, de novo hearing on the nature of the investigation and all the objections to it, the district court will uphold, modify, or entirely set aside the disputed CID.

This decision by the district court is a "final order." Whoever loses—either the CID recipient or the Division—has an absolute right to appeal this ruling to the appropriate U.S. court of appeals, which must rule on the appeal.

While the appeal is pending, nothing happens: No documents are produced, no interrogatories are answered, and no oral testimony can be compelled.

Whoever loses in the court of appeals can ask the U.S. Supreme Court to review that ruling. The Supreme Court, in its discretion, may review the ruling by granting certiorari, or may refuse to review it, by denying certiorari. In any event, the Division cannot compel one word of testimony or obtain involuntarily any document until this entire review process has finally concluded with a ruling in favor of the Division.

Additionally, every single objection that is available under the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure can properly be raised against any CID. This is borne out by a review of the massive case law on permissible objections to grand jury subpenas, and a review of the reported cases dealing with objections to CID's issued since 1962 under the present ACPA. Both these two lines of precedent will be squarely applicable to any future CID, 15 U.S.C. section 1312(c).

These cases reveal that the Federal courts will limit, set aside, and refuse to enforce a CID if it is too *broad* and sweeping; if it seeks irrelevant or immaterial information; if it is not limited to a reasonable time period; if it is not sufficiently definite; if compliance with the CID would be too burdensome; if the CID is oppressive; if the CID is issued in the course of a "fishing expedition" or "an unlimited exploratory investigation" by the Division; if the CID is unreasonable in any respect; or if the Division is not seeking the information "in good faith."

Elaborating on this requirement of "good faith," other courts have rules that objections will be sustained if the Justice Department issued the CID "with fraudulent and improper motives;" if the CID "was inspired by and was in aid of an inquiry of a legislative and a political nature being pursued by an individual Member of Congress, since issuance and service of the CID therefore was an abuse of process and an improper use of the ACPA;" if the CID was "part of a plan to utilize the full forces of the U.S. Government and the Department of Justice to intimidate and harass" the CID recipients; or if the CID "was a product of political interference and pressure, and a subversion of the ACPA."

The argument that the Department of Justice is a prosecutor and therefore should have less investigatory authority than an agency has been rejected by the courts. In 1964, the ninth circuit stated:

> In this case, Hyster makes much of the fact that the Attorney General, whose duties include prosecution, is the party on whom the power to demand is conferred. The theory is that while it may be proper to confer such authority upon the Federal Trade Commission, or the Administrator of the Wage and Hour Division of the Department of Labor, or on other "quasi-judicial" or "administrative bodies or offices, it is not proper to confer it upon the Attorney General.

But, the opinion continues:

> We are not convinced. The F.T.C. and the Administrator have investigative and enforcement powers and duties, primarily civil in nature. So do many other commissions and administrators. So does the Attorney General under the antitrust laws. He also has the duty to institute prosecutions.
>
> We have no doubt that it is within the power of administrators or administrative boards or commissions, if in the course of authorized investigations they uncover evidence of the commission of crimes, to refer that evidence to the Attorney General. In some cases, Congress has expressly conferred such authority. In our case the [Antitrust Civil Process] Act authorizes delivery of [CID] documents to an attorney authorized to apepar before a grand jury in a proceeding involving antitrust violations.
>
> The fact that the Attorney General can himself institute a prosecution, instead of referring the information to someone else, may be a distinction, but we do not think that it makes a constitutional difference. He is still a public officer, exercising functions conferred upon him by law. There is no presumption that he will abuse his powers, quite

the contrary, and there certainly is no showing that he is doing so in this case. Hyster Co. v. U.S., 338 F. 2d 183, 186 (CA 9 1964)

TITLE IV—PARENS PATRIAE

Question 7. Exactly what does title IV do?

Answer 7. Title IV amends the Clayton Act to permit State attorneys general to recover damages for violations of the Sherman Act on behalf of natural persons, consumers, residing in their State. The title is intended to provide compensation for the victims of antitrust offenses, to prevent antitrust violators from retaining the fruits of their illegal activities, and to deter antitrust violations.

Substantive standards as to what are or are not violations of the antitrust laws are not changed by title IV. In other words, enactment of title IV would not make any conduct illegal which is not presently illegal under the antitrust laws. Title IV merely creates an effective mechanism to permit consumers to recover damages for conduct which is prohibited by the Sherman Act, by giving State attorneys general a cause of action against antitrust violators.

State attorneys general are not supplanting the Attorney General of the United States in enforcing the antitrust laws. The U.S. Attorney General always has had and will continue to have exclusive authority to enforce the antitrust laws on a civil and criminal basis. Title IV relates to a private right of action to recover for damage to consumers. State attorneys general always have had the right to bring private actions for damages under the antitrust laws for damage done to the State and its agencies in their proprietary capacities, for injunctive relief as parens patriae, and as representatives of consumers in consumer class actions.

Title IV is a necessary extension of this private right of action—available to all damaged persons under the antitrust laws—to make manageable such lawsuits on behalf of large numbers of consumers through the principle of aggregation.

The economic burden of most antitrust violations is borne by the consumer in the form of higher prices for goods and services. Frequently, such antitrust violations as price-fixing, group boycotts, division of markets, exclusive dealings, tiein arrangements, fraud on the Patent Office, monopolization, attempts to monopolize, conspiracies to limit production, and other violations of the antitrust laws, injure thousands or even millions of consumers, each in relatively small amounts but often on a continuing basis. When every day consumer purchases are involved—for example, bread, dairy products, gasoline, and so forth—the individual dollar amounts are so small that, as a practical matter, an individual antitrust law suit is out of the question. Similarly, consumers have found little relief under the class action provisions of the Federal rules because of restrictive judicial interpretations of the notice and manageability provisions of rule 23 and practical problems in the proof of individual consumers damages under section 4 of the Clayton Act. If tens of thousands of consumers are in a class action, courts throw up their hands and say "unmanageable"—and dismiss the case under the manageability standards of rule 23. Yet, if an antitrust violation results in an overcharge of but 10 cents on a relatively low-priced consumer item, and 500 million such items are sold, the aggregate impact of the conspiracy upon the consumers and the illegal profits of the conspirators are hardly insignificant—at least $50 million.

FEDERAL ENFORCEMENT BY STATE OFFICIALS

Question 8. Are there any precedents for authorizing officials to enforce Federal law?

Answer 8. Title IV does not provide for enforcement of Federal laws by State officials.

Title IV provides a private right of action to recover damages for violations of the antitrust laws. This authority has existed since 1890, and State attorneys general have used it often. Title IV is necessary to make manageable the representation of large numbers of consumers by State attorneys general through the principle of aggregate damages. Without title IV, as a class representative State attorneys could represent small numbers of consumers seeking damages for antitrust violations—but not large numbers.

In 1972, Federal district court judge Jack B. Weinstein wrote in the "New York Law Journal":

The matter touches on the issue of the credibility of our judicial system. Either we are committed to make reasonable efforts to provide a forum for adjudication of disputes involving all our citizens—including those deprived of human rights, consumers who overpay for products because of antitrust violations and investors who are victimized by insider trading or misleading information—or we are not. There are those who will not ignore the irony of courts ready to imprison a man who steals some goods in interstate commerce while unwilling to grant a civil remedy against the corporation which has benefited, to the extent of many millions of dollars, from collusive, illegal pricing of its goods to the public.

When the organization of a modern society, such as ours, affords the possibility of illegal behavior accompanied by widespread, diffuse consequences, some procedural means must exist to remedy—or at least to deter—that conduct.

AGGREGATE DAMAGES

Question 9. Is it not unfair to impose liability without having to prove that consumers were in fact damaged?

Answer 9. Yes, but title IV does not do that.

The very essence of title IV is the provision in section 4C(c)(1) authorizing proof of consumer damage in the aggregate, without separately proving the fact or amount of each consumer's individual injury or damage.

Title IV cannot work without this provision because of both the impracticability and impossibility of bringing before the court thousands or even millions of consumers to prove, individually and separately, the fact of his or her injury and the amount of his or her damage. Under title IV, however, the State attorney general still would have the burden of proving that:

First, defendants violated the Sherman Act;

Second, consumers were damaged by such violation; and

Third, the amount of consumer damage.

Instead of adding up thousands or millions of claims, however, the total amount of consumer damage could be proved in the aggregate from the records of defendants and other entities in the chain of distribution or by other evidence. After the violation by defendants and the fact of damage to consumers have been proved, the aggregation provisions of section 4C(c)(1) would be utilized to determine the amount of defendant's liability.

The aggregation provisions of section 4C(c)(1) are necessary to make cases involving large numbers of consumers manageable and to deter and render unprofitable antitrust violations affecting consumers. Without it, antitrust violators would be able to continue to damage consumers with impunity.

Section 4C(c)(1) acknowledges the obvious reality that "it is far simpler to prove the amount of damages to the members of the class by establishing their total damages than by collecting and aggregating individual claims as a sum to be assessed against the defendants."

Section 4C(c)(1) is patterned after the landmark procedures used in the *Tetracycline* litigation, in which Federal District Court Judge Miles Lord stated:

The court would be hesitant to conclude that conspiring defendants may freely engage in predatory price practices to the detriment of millions of individual consumers and then claim the freedom to keep their ill-gotten gains which, once lodged in the corporate coffers, are said to become a "pot of gold" inaccessible to the mulcted consumers because they are many and their individual claims small.

The court's tentative conclusions concerning the trial of the damage issue eases management problems considerably. Damages would be awarded on a class-wide basis, if and when liability was established, and individual claims could then be processed administratively after entry of judgment. *In re Antibiotics Antitrust Litigation*, 333 F. Supp. 278, 282–83 (S.D.N.Y. 1971).

The section is fully consistent with long-standing Supreme Court precedent permitting damages to be proved in antitrust cases by a "just and reasonable estimate of the damages based on relevant data." As the Supreme Court put it in *Story Parchment Co.* v. *Paterson Parchment Paper Co.*, 282 U.S. 555, 562–63 (1930):

It is true that there was uncertainty as to the extent of the damage, but there was none as to the fact of damage; and there is a clear distinction between the measure of proof necessary to establish the fact that petitioner had sustained some damage, and the measure of proof necessary to enable the jury to fix the amount. The rule which precludes the recovery of uncertain damages applies to such as are not the certain result of the wrong, not to those damages which are definitely attributable to the wrong and only uncertain in respect of their amount.

* * * * *

Where the tort itself is of such a nature as to preclude the ascertainment of the amount

of damages with certainty, it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts In such case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence shows the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. The wrongdoer is not entitled to complain that they cannot be measured with the exactness and precision that would be possible if the case, which he alone is responsible for making, were otherwise.

DISTRIBUTION OF DAMAGES TO CONSUMERS

Question 10. Is it realistic to expect that the damages will ever be distributed to consumers.

Answer 10. Yes.

Section 4C(c)(2) provides that in any action brought under subsection (a)(1), the court shall distribute, or direct the distribution of, any monetary relief awarded to the State either in accordance with State law or as the district court may in its discretion authorize. In either case, any distribution procedure adopted shall afford each person in respect of damage to whom the relief was awarded a reasonable opportunity to secure his appropriate portion of the net monetary relief.

In the settlement of the tetracycline litigation, more than $28 million was distributed directly to more than 1 million consumers. The average consumer recovery amounted to $200, with some claimants receiving as much as $12,000. The first settlement resulted in $8 million being distributed to 36,000 consumers. The second settlement by the remaining States in tetracycline benefited from the experience and experimentation of the first distribution effort. In settlement No. 2, improved techniques resulted in $20 million being distributed to 1 million consumers in 6 States. Through additional experience, further improvements will be made in distribution techniques. It should be possible for many victims of white collar crime to share in the distribution of the States' recovery if district court judges remain committed to finding the innovations necessary to dispense equal justice to the rich and poor alike. In the words of the special master:

It is well understood that the numerical size of consumer response, regardless of its magnitude, is not by itself the sole and definitive test of manageability. It is important as well that the response be meaningful, i.e., that there be some assurances that the claims were not fraududently filed and were reasonably based upon actual purchases.

Special Master David Lebedoff concluded:

The administrative procedures described above permitted this distribution to be successfully completed. Each of the five goals described at the outset was achieved. The total administrative costs involved were only slightly greater than the monies earned in interest by the settlement fund.

The success of this project illustrates that the distribution of refunds to very large numbers of consumers following true class action settlements is a "manageable" enterprise and that neither fairness nor due process nor economy need be sacrificed in the effort to reach very substantial numbers of consumers. When a court is willing to make available to such a task the resources and encouragement necessary to support it, the task can be done.

In his June 25, 1975 order approving the special master's distribution, Judge Miles Lord stated:

In approving the plan of distribution and allowance and disallowance of claims, the Court takes note of the on-going argument on manageability of fluid class actions. The Court has been hearing for years that this type of settlement, and this type of class action, are unmanageable and will not work. It has strenuously been argued for years that the consumers were not interested in such litigation and that they would not come forward to "lay claim" to the proceeds.

At the hearing to approve the fairness and adequacy of this settlement, counsel for the defendants suggested that a distribution of such magnitude was not manageable:

"If, for example, California can come into Court against us with the weight of possibly 10,000,000 purchasers, and in fact it turns out that the active, interested members of the class consist of 30,000 or 40,000 people, it seems to me that the author ought to consider the question of public policy of whether the scales of the adversary contest have not been unfairly weighed on the side of the plaintiff in that sort of suit. The real hard question between us, I think, and these negotiations and the question that kept us, at least this defense counsel, awake at night was not trying to assess the odds on liability, that lawyers do all of the time, but this great unknown mass of consumers. T. p. 51, February 13, 1974; 4-71 Civ. 435, 4-71 Civ. 392, et al."

This prediction of 30,000 or 40,000 consumers has been proven wrong. The question was removed from the arena of judges', lawyers' and scholars' minds and put to the test in the only practical way possible. The consumers themselves were asked to come forward and express their interest. Instead of 30,000 or 40,000; nearly 1,000,000 showed their interest by filing a claim. Claims were filed even though the amount to be recovered was small and known to be small. Speculation and conjecture need no longer cloud our thoughts on this question. The consumer is in fact interested. Fluid class actions on behalf of consumers insofar as the interest of the class is concerned are as viable and "real" as any other type of litigation and should be treated accordingly.

With the use of computers and the other disciplines, along with the assistance of very capable lawyers, this class action has proven to be not only manageable but a great benefit to the consumers involved. The Court again states that this case has always been and continues to be manageable. (*State of Washington* v. *Chas. Pfizer & Co.*, 4-71 Civ. 395 (June 25, 1975), pp. 30-32).

It is interesting to see the 17 sequences in the *Tetracycline* case.

There being no objection, the letter and table were ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL,
Washington, D.C., February 27, 1976.

Hon. PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: I understand that the record has recently become confused concerning the direct financial benefits which consumers would experience individually as a result of Title IV of S. 1284. We believe that arens patriae claims authorized under the Title would result in wide-spread repayment of overcharges to large numbers of consumers in those instances where an attorney general proved to the court that a violation occured and that liability existed. We believe that the record of antitrust cases supports this view.

The landmark Tetracycline cases are instructive. A total of $28,003,075.33 was distributed directly to 1,027,265 consumers throughout the nation. Inclosed is a tabulation of that information by state, city, and county. The fact that the $28 million was part of a settlement between the parties rather than a jury verdict is entirely immaterial to the issue of individual consumer reimbursement.

These figures support the view that the type of case envisioned by Title IV *does* in fact result in repayment to consumers. The figures also show that the later group of states, the Minnesota group, learning from the frontier experience of the first group in New York, achieved a significantly higher consumer response and lead to the conclusion that efficient methods of identifying injured consumers are already being developed. In the most fundamental sense, then, this legislation is for the benefit of consumers and they will be affected directly and personally by the Judiciary Committee's action on this Title.

Wholly apart from the $28,003,075.33 which was paid directly to consumers, the Tetracycline case is also evidence for the point that unclaimed consumer funds can be administered under traditional fiduciary concepts fairly and efficiently and for such public purposes as the court may find appropriate in the circumstances of each case.

Respectfully submitted,

C. RAYMOND MARVIN.

Summary of consumer recovery in tetracycline litigation, southern district of New York

Entity	*Consumers*	*Amount Paid*	*Entity*	*Consumers*	*Amount Paid*
Alabama	280	$74,417.00	Florida	828	$183,262.35
Alaska	6	1,003.53	Tampa	11	3,753.18
Arizona	543	126,663.97	Georgia	319	87,634.23
Arkansas	143	47,618.12	Honolulu (city and county)	45	12,235.96
Colorado	178	40,870.69	Idaho	80	16,019.12
Denver	135	18,873.12	Illinois	585	127,474.85
Connecticut	793	141,556.75	Chicago	263	71,688.10
Delaware	100	22,404.00	Indiana	201	44,247.36
Washington, D.C.	289	66,373.54	Iowa	819	94,882.34

Summary of consumer recovery in tetracycline litigation, southern district of New York— Continued

Entity	Consumers	Amount Paid
Kentucky	103	$36,268.69
Louisiana	328	145,554.61
Maine	67	7,839.42
Maryland	609	130,528.48
Baltimore City	84	16,055.76
Massachusetts	452	107,655.31
Boston	66	20,441.85
Michigan	3,575	710,453.25
Dearborn	106	17,594.56
Detroit	714	201,386.02
Lansing	99	25,181.09
Madison Heights	14	3,635.87
Township, Redford	1	400.00
Minnesota	413	76,483.83
Mississippi	163	66,293.39
Missouri	566	127,779.97
Montana	81	17,668.32
Nebraska	128	25,599.09
Nevada	30	8,362.31
New Hampshire	33	16,253.31
New Jersey	987	202,455.19
New Mexico	192	54,097.63
New York State	4,056	887,222.29
City of Buffalo	47	10,620.39
Erie County	63	10,763.96
New York City	5,229	1,220,070.11
North Dakota	142	$17,037.09
Ohio	780	173,630.95
Akron	13	9,826.59
Cleveland	80	30,508.20
County of Summit	3	969.31
Oklahoma	264	62,942.85
Pennsylvania	1,286	264,492.82
Allegheny County	175	48,393.67
Philadelphia	1,086	282,144.08
Pittsburgh	394	91,441.63
Puerto Rico	67	11,954.53
Rhode Island	293	60,058.17
South Carolina	62	6,413.94
South Dakota	125	24,392.09
Tennessee	69	31,516.46
Nashville/Davidson County	29	6,966.95
Memphis	17	5,239.68
Texas	4,359	1,186,412.28
Vermont	70	14,105.53
Virginia	1,988	142,916.28
West Virginia	97	24,401.69
Wisconsin	1,171	131,738.26
Wyoming	26	5,228.81
Total	36,414	[1] 7,956,849.78

[1] An additional 41 checks totalling $17,342.23 were written to consumers who surfaced after distribution.

Exhibit A-1 to Schedule 1, next to the "Report of Special Master Kissam, dated December 9, 1975, Recommending Termination of Settlement Proceedings, Filed in the United States District Court for the Southern District of New York, in the action entitled, *The State of West Virginia* v. *Charles Pfizer and Co., Inc., et al.* (68 Civ 240)

Summary of consumer recovery in tetracycline litigation, Minnesota case

Entity	Consumers	Amount Paid
Washington	78,701	$2,162,799.69
Oregon	61,683	1,038,428.77
California	746,653	14,300,309.41
Utah	28,101	646,244.92
Kansas	73,268	$1,792,757.81
Hawaii (except Honolulu)	2,445	105,684.95
Total	990,851	20,046,225.55

On file with District of Minnesota, Judge Miles W. Lord *State of Washington et al.* v. *Charles Pfizer & Co., Inc. et al.* (471 Civ. 435)

CONTINGENCY FEES

Question 11: Will not lawyers get most of the funds through the typical one-fourth, one-third, or one-half contingency fee?

Answer 11: Absolutely not. The committee was aware of this potential and adopted an amendment to prevent it from occurring.

Section 4C(e) requires court approval of plaintiff's attorneys' fees awarded under section 4C(a)(2). The committee included this provision to assure both the reasonableness of the fees and that the bulk of the State recovery would be distributed to consumers—not lawyers. Both section 4 of the Clayton Act and rule 23 of the Federal Rules of Civil Procedure require court approval of attorneys' fees under generally accepted standards articulated in *Lindy Bros.* v. *American Radiator and Standard Sanitary*, 487 F.2d 161 (3d Cir. 1973) and *City of Detroit* v. *Grinnell*, 495 F.2d 468 (2d Cir. 1974). It is the committee's intention that attorneys' fees in section 4C cases be approved under the same criteria and the court is directed to look behind any fee arrangements which may be made between the State and its counsel. The criteria established by the court in *Lindy Brothers* for approving attorneys' fees are set forth below. In short, the fee is determined primarily on the basis of the number of hours spent on the case.

In awarding attorneys' fees, the district judge is empowered to exercise his informed discretion:

In detailing the standards that should guide the award of fees to attorneys successfully concluding class suits, by judgment or settlement, we must start from the purpose of the award: to compensate the attorney for the reasonable value of services benefiting the unrepresented claimant. Before the value of the attorney's services can be determined, the district court must ascertain just what were those services. To this end the first inquiry of the court should be into the hours spent by the attorneys. * * * After determining, as above, the services performed by the attorneys, the district court must attempt to value those services. * * * A logical beginning in valuing an attorney's services is to fix a reasonable hourly rate for his time—taking account of the attorney's legal reputation and status (partner, associate). Where several attorneys file a joint petition for fees, the court may find it necessary to use several different rates for the different attorneys. Similarly, the court may find that the reasonable rate of compensation differs for different activities. * * * While the amount thus found to constitute reasonable compensation should be the lodestar of the court's fee determination, there are at least two other factors that must be taken into account in computing the value of attorneys' services. The first of these is the contingent nature of success. * * * In assessing the extent to which attorneys' compensation should be increased to reflect the unlikelihood of success, the district court should consider any information that may help to establish the probability of success. * * * The second additional factor the district court must consider is the extent, if any, to which the quality of an attorney's work mandates increasing or decreasing the amount to which the court has found the attorney reasonably entitled. In evaluating the quality of an attorney's work in a case, the district court should consider the complexity and novelty of the issues presented, the quality of the work that the judge has been able to observe, and the amount of the recovery obtained. * * * The value to be placed on these additional factors will, of course, vary from case to case. (487 F.2d at 166–169)

The committee concluded that this provision was fair and equitable to all concerned parties. It considered and rejected an amendment to prohibit all contingency fees. Such a prohibition would severely limit the usefulness of title IV for several reasons. First, most States have a small attorney general's office, and an even smaller antitrust staff. States simply do not have the in-house capability of sustaining a complex multiyear antitrust trial. Nor do many

State attorneys general's offices have the budget to advance upward of several hundred thousand or even million dollars in attorneys' fees to outside counsel, or to pay such fees if judgment is rendered for the defendant.

The committee emphatically rejected the notion that a court-approved contingency fee is either immoral or unethical, particularly when, as is the case here, the amount is subject to court approval upon prescribed criteria. To the contrary, it is often the only way to secure effective representation. As put by Virginia Attorney General Andrew P. Miller:

Another way to cripple the effectiveness of this bill would be to deny the Attorneys General, the right every other citizen enjoys, to contract for legal services on whatever basis, in his judgment, suits the needs of a particular case. At this point, substantial antitrust staff are not widespread at the State level. Furthermore, undertaking one major *parens patriae* suit can absorb the time of numerous staff persons for several years. Accordingly, this bill will go unused, and the rights created unenforced to the fullest extent possible, if the Attorneys General are not permitted to contract for expert antitrust counsel whose fees will be paid out of subsequent settlement or judgment, if any. We share the concern of those who believe that attorneys' fees should be kept within reasonable limits. Therefore, we would support an amendment which would require the approval of the district court for any attorney fee arrangement according to standard attorney fee criteria.

Those who advocate prohibiting contingent fees contend that a contingency arrangement will encourage the filing of frivolous suits and unnecessarily subject defendants to harassment and to substantial legal and other fees incident to defending suits filed in bad faith. The committee found the contrary to be the case. If plaintiff's attorneys fees are contingent upon success, this fact should weed out and deter the filing of frivolous or questionable cases. Moreover, section 4C(f) provides for the award of reasonable attorneys' fees to a prevailing defendant if the defendant establishes that the State attorney general acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

It should be stressed that the contingency fees authorized under this provision are not a percentage of the recovery. The contingency fees authorized are based on success, but computed on an hourly rate.

As Congresswoman BARBARA JORDAN, Democrat, of Texas, stated—contained at page 27 of House Report No. 94-499, 94th Congress, 1st session:

I am concerned that a flat ban on "contingency fees" will effectively place the services of perfectly ethical and highly knowledgeable attorneys beyond the reach of the States.

There is another vital point at stake. The contingent fee is not merely an honorable means of financing litigation for those who would otherwise be unable to afford it until the award of final judgment. It is also recognized as an important tool for weeding out the frivolous and unmeritorious case on the basis of expert assessment. It is highly unlikely that a lawyer knowledgeable in any field will be prepared to invest large quantities of his own time and effort in a case on the basis that he will be uncompensated unless he obtains a successful result for the client, unless he believes after careful examination that the case has serious merit.

This point is responsible to two concerns which have been expressed by opponents and critics of the bill. Business interests have argued that the enactment of this legislation will bring a plethora of unfounded lawsuits for enormous sums of money, which they will have to defend at great expense. And members of the committee have on several occasions questioned whether the law might not present irresistible temptations to politically ambitious state officials bent on making a reputation without regard to the ultimate disposition of the cases they bring.

Neither of these unfortunate predictions is remotely likely to come true if the economic judgment of the legal experts is invoked in the evaluation of cases through the use of the contingent fee.

ABUSES BY STATE ATTORNEYS GENERAL

Question 12: Is there not a risk that politically ambitious State attorneys general will file frivolous cases to harass innocent businessmen for public relations purposes?

Answer 12: Opponents of title IV contend that its enactment will pave the way for the filing of frivolous lawsuits by politically ambitious State attorneys general.

First of all, let me point out that State attorneys general have had the authority to file antitrust suits under the Clayton Act since 1890. Many have the authority to enforce State civil and criminal antitrust statutes as well.

Not one example of abuse has been put forward by those expressing this fear. I doubt very much that State attorneys general will embark upon a campaign of harassment of local businesses in their States.

Title IV does not give State attorneys general authority to file private antitrust lawsuits under the Federal antitrust laws for the first time. It permits the aggregation of damages to facilitate meaningful consumer representation.

The committee has found that State attorneys general to be effective and ideal spokesmen for the public in antitrust cases. A primary duty of the State is to protect the health and welfare of its citizens; and a State attorney general is normally an elected and accountable and responsible public officer whose duty it is to promote the public interest. In the words of Chief Judge John Sirica:

The court is persuaded that the States, acting through their attorneys general, are the best representatives of the consumers residing within their jurisdictions. This court agrees that it is difficult to imagine a better representative of the retail consumers within a state than the State's attorney general. Historically, the common law powers of the attorney general include the right and the duty to take actions necessary to the maintenance of the general welfare and his presence here is but a modern day application of that right and duty. *Ampicillin Antitrust Litigation*, 1972 Trade Cases 73,966 (D.D.C. 1972). *See also State of Illinois* v. *Bristol-Myers Co.*, 470 F. 2d 1276 (2d Cir. 1973).

Similarly, in connection with the House counterpart to title IV (H.R. 8532), Rowland F. Kirks, Director of the Administrative Office of the U.S. Courts, wrote that "the control of litigation would be in the hands of Government officials who may properly be expected to act responsibly in the screening of cases to be filed in the district courts."

Additionally, the bill provides for the award of attorneys' fees to defendants in the case of bad faith suits by State attorneys general.

We cannot guarantee that a State official will never abuse his office. We have all witnessed relatively recent events in Washington to demonstrate abuse of power by Federal officials. But, that does not mean we are repealing the antitrust laws or the authority of the U.S. Attorney General to enforce them. We believe, however, that title IV's authority to State attorneys general—many of whom are *elected officials*—creates no more risk of abuse than presently exists under State grand jury authority or authority for States to file private antitrust suits under the Clayton Act.

To those who are concerned about abuse, we say, given the excellent track record of State attorneys general, balance that concern with concern for the abuse of consumers by those conspiring to violate the antitrust laws because of the lack of a procedural mechanism for consumers to recover damages.

LITIGATING IN 50 STATES

Question 13: Is it not unfair to business to require them to defend possibly 50 different lawsuits in 50 different States?

Answer 13: Absolutely. But that will not happen under title IV.

Under present law, when major private antitrust cases are filed by consumers or States, all 50 States are usually involved. But that does not mean 50 trials. Discovery and trial are consolidated under the provisions of the Judicial Panel on Multidistrict Litigation and the Federal Rules. These provisions are not being changed and will govern cases filed under title IV.

STATE STATUTES

Question 14: When H.R. 8532 was before the House, President Ford expressed the view that if the States wanted this authority, then they should enact State anitrust statutes. What is the answer to that?

Answer 14: First of all, we are talking about a private right of action to secure damages for violation of a Federal statute which consumers, States, and State attorneys general have enjoyed since 1890. This legislation makes such cases involving large numbers of consumers manageable. That is primarily what is involved. We see no reason to change such a long-standing provision and discriminate against the rights of consumers to recover for violation of a Federal law.

Second, if 50 States enacted 50 different State antitrust statutes, corporations would really be confused and uncertain over that conduct was legal and what conduct was illegal.

Third, if 50 States filed suit against a corporate defendant, then that defendant could not benefit from consolidation but possibly would have to litigate 50 different trials in 50 different jurisdictions under 50 different standards.

Finally, antitrust is our fundamental national economic policy which belongs on the Federal level.

CONSTITUTIONALITY OF TITLE IV

Question 15: Questions have been raised as to whether title IV is constitutional. What is your response?

Answer 15: Opponents to title IV contend that several of its provisions are unconstitutional. Primarily, they rely on the severely criticized dictum of Judge Medina in *Eisen* v. *Carlisle & Jacquelin*, 479 F.2d 1005 (2d Cir. 1973). Of the 10 judges participating in the Eisen decision and the subsequent denial of a petition for rehearing en banc, only one judge concurred with the rationale of Judge Medina's opinion. Three judges specifically disagreed with Judge Medina's constitutional conclusions. One judge concurred in result only. The remaining four judges were silent on the merits, but voted against an en banc hearing "to speed this case on its way to the Supreme Court." (479 F.2d at 1021). As the Library of Congress advised the committee:

> The [Supreme] Court then vacated the judgment of the Court of Appeals and remanded the case for further proceedings. *Id.*, 179. The Supreme Court therefore did not endorse, even obliquely, the lower court's conclusion as to "fluid recovery" and it seems reasonably clear that its notice conclusion is founded solely on the "unambiguous requirement of Rule 23." *Id.*, 176. The lower court's decision having been superseded by a more authoritative Supreme Court opinion and its judgment vacated, the lower court's constitutional conclusions have no precedential value. They do have what value is to be accorded them on the basis of the persuasiveness of the arguments undergirding them.

A leading treatise on Federal practice, Federal Practice and Procedure, by Charles Alan Wright, professor of law, the University of Texas and Arthur R. Miller, professor of law, University of Michigan (1972), criticized the Eisen decision as follows:

> This decision is unnecessarily restrictive and demands more than is traditionally required to satisfy due process and more than seems necessary in rule 23(b)(3) actions.

Relying primarily on the second circuit decision in Eisen, another argument made is that one aspect of title IV is unconstitutional, namely, that portion of the aggregate damages awarded a State which is not claimed by individual consumers damaged by the antitrust violation, because it is a taking of property from the defendant without the necessary showing of injury to an actual person, required under a theory of damages.

In vacating and remanding Eisen, the Supreme Court specifically stated that "we therefore have no occasion to consider whether the Court of Appeals correctly resolved the issues of manageability and fluid class recovery, or indeed, whether those issues were properly before the Court of Appeals under the theory of retained jurisdiction." 417 U.S. at 172 n. 10. A review of the "solid weight of additional judicial authority" rejecting the fluid-class theory of recovery, cited by opponents of title IV, establishes that those cases were decided not on constitutional grounds but as a matter of statutory construction of the existing class action provisions of rule 23 of the Federal Rules of Civil Procedure. Before settlement of the Tetracycline litigation, the court, in the context of whether or not to certify the consumer class, considered and rejected the constitutional arguments of defendants that the procedures involved are unconstitutional. It stated:

> The court cannot conclude that the defendants are constitutionally entitled to compel a parade of individual plaintiffs to establish damages.

In re *Antibiotic Antitrust Actions*, 333 F. Supp. 278 (1971). Similarly, the second circuit, in affirming a settlement of the Tetracycline litigation, rejected the contention of plaintiff wholesalers and retailers as to the impropriety "of permitting the States to recover through their attorneys general damages on behalf of individual consumers who have not themselves filed any claims." The court concluded:

> To require those who wish to authorize the state to recover for them to affirmatively notify the court to this effect would obviously, as a practical matter, be likely to reduce the amount of these recoveries to a minimum.

West Virginia v. *Chas. Pfizer & Co., Inc.*, 440 F.2d 1079 (2d Cir. 1971). In the Daar case, the court permitted the fluid recovery theory with respect to that portion of the total illegal overcharge not claimed by individual users of taxicabs by reducing future year taxicab rate increases for the benefit of all taxicab users. "No appearance by the individual members of the class was required to recover the full amount of the overcharges." *Daar* v. *Yellow Cab Co.* 63 Cal. Rptr. 724, 433 P.2d 732 (1967).

The committee considered the constitutional issue underlying title IV and was the opinion that title IV does not encroach upon the Constitution. The committee was so advised by Assistant Attorney General Thomas E. Kauper, Professor John J. Flynn of the University of Utah College of Law, Professor Jonathan Rose of the Arizona State University College of Law, Harvard Constitutional Law Professor Arthur Miller, and the Library of Congress. Two law review articles confirm the conclusion that title IV is constitutional, and the committee noted that Congressman CHARLES WIGGINS, Republican of California, a leading opponent of the House companion measure (H.R. 8532), testified before the committee that "if individuals are brought forward to prove their damages as representative of a class or as members of a sample for purpose of aggregation of damages, then the constitutional requirements would be met." Additionally, the committee noted the following judicial precedents for the procedures contained in title IV: *Bebchick* v. *Public Utility Comm.*, 318 F.2d 187 (D.C. Cir.), *cert. den.*, 373 U.S. 913 (1963; *Daar* v. *Yellow Cab Co.*, 67 Cal. 2d 695, 433 P.2d 732, 63 Cal. Rptr. 724 (1967); *SEC* v. *Texas Gulf Sulphur Co.*, 446 F.2d 1301 (2d Cir.), *cert. den.*, 404 U.S. 1005 (1971); *West Virginia* v. *Chas. Pfizer & Co.*, 314 F. Supp. 710 (S.D. N.Y. 1970), aff'd 440 F.2d 1079 (2d Cir. 1971); and *In re Antibiotic Antitrust Actions*, 333 F. Supp. 278 (S.D. N.Y. 1971).

As to the type of notice constitutionally required, the previously referred to Oregon Law Review comment concluded that Judge Medina's opinion was erroneous in light of two earlier Supreme Court decisions which held that "in situations in which personal notice can be given only with great difficulty, notice by publication was adequate and due process did not require efforts which went beyond the value of the right involved." The Hastings Constitutional Law Quarterly article concluded that "in reading Mullane and Hansberry together there seems to be no authorization for a rigid standard of individual notice, but rather a balancing of interests with adequacy of representation playing an important role in determining what type of notice, if any, is required. Finally, professor of constitutional law at Harvard, Professor Arthur Miller, wrote the committee:

> . . . Personally, I think, that the proposed legislation, especially as revised by the Committee staff, should survive any such attack.
>
> As to the question of notice by publication, it is very important to understand that the doctrine of *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), is completely unaffected by the Supreme Court's recent decision in *Eisen v. Carlise & Jacquelin*, 417 U.S. 156 (1974). The latter decision was based entirely on the construction of the special language in Federal Rule 23(c)(2) regarding giving individual notice to reasonably identifiable members of Rule 23(b)(3) classes. The holding therefore is a very limited one and cannot be said to raise the constitutional notice standard higher than that set out in *Mullane*.
>
> *Mullane* itself stands for the proposition that "notice reasonably calculated, under all the circumstances to apprise interested parties" should be used. A careful reading of the facts of that case suggests that many of the contingent beneficiaries of the trust fund involved in the litigation were identifiable and locatable, but the Supreme Court declined to direct personal service to them because of the economics of the situation and the likelihood that their rights would be adequately protected by others. Extrapolating from *Mullane*, the question under S. 1284 is what is reasonable under the special circumstances presented by litigation brought by a State attorney general on behalf of numerous consumers within that State. Given the adequacy of the attorney general's representation, my own judgment is that publication-plus should suffice—the real question being what form should the "plus" take.
>
> I think that the decision to provide expressly in Section 4C(b)(1) of Title IV that the court may direct further notice in appropriate cases is very sound. There is a counterpart for this type of authorization in Federal Rule 4(i)(1)(E) and I believe that this power in the district judge plus notice by publication will solve any constitutional problem. . . .

With respect to the issue of aggregate damages, the same Oregon Law Review article concluded:

> The examination of the due process issues inherent in fluid recovery has shown that the use of fluid recoveries in consumer class

actions is not prohibited by the Constitution. Fuid recoveries can be devised which safeguard the due process rights of all the parties to a class action. The courts should recognize the constitutional validity of the fluid class recovery and address the important policy issues inherent in maintaining consumer class actions.

The Hasting Constitutional Law Quarterly article concluded:

Indeed, to disallow the *parens patriae* suit would be a far greater denial of due process, because it would deprive the consumer of his one realistic opportunity to recover his property.

Finally, Prof. Arthur Miller advised the committee:

As to the aggregate damage procedure, I tend to agree with Professor Rose's analysis. I start with the premise that the proposed statute establishes a new statutory cause of action that augments the existing statutory and common law remedies available to those injured by improper competitive conduct. Certainly Congress has the power to shape or implement any cause of action it creates by prescribing any mode of proof it believes desirable as a policy matter so long as due process notions and other fundamental procedural rights (such as avoiding double liability) are not violated. I find an aggregate damages procedure—pejoratively called by some the pot-of-gold approach—even when it is based on statistical or sampling techniques, to be no more offensive constitutionally than a federal no-fault statute, the elimination of certain common law defenses by the Federal Employers' Liability Act, or the enactment of a statute that would create absolute liability without fault or a limited wrongful death action. Nor could a constitutional attack be successful on a decision by Congress that circumstances warranted modifying common law notions of burdens of proof or evidentiary presumptions, which I think are proper analogies to the techniques of proof that would be validated by S. 1284. In any event, statistical methods and proof by sample are becoming acceptable methodologies. *See* Manual for Complex Litigation § 2.172 (1973).

But this does not directly meet an objection based on violation of the jury trial guarantee. Under the recent Supreme Court decisions in *Curtis* v. *Loether*, 415 U.S. 189 (1974), and *Pernell* v. *Southall Realty Corp.*, 416 U.S. 363 (1974), it seems to me that the Seventh Amendment jury trial guarantee would raise a question as to whether actions under Title IV would violate the constitutional mandate because it provides that a single jury may award damages in a lump sum and does not require individual jury awards for each of the individual damage claims. My own opinion is that in light of the congressional judgment and policy that will be reflected by S. 1284 and given the special exigencies of complex and multiparty litigation, the jury trial guarantee is satisfied by enabling one jury to sit as the finder of facts and assessor of a single damage award in a mass representative action. Any objection to the practice really goes to the fairness of the individual proceeding and the techniques of proof permitted by a particular judge—matters that can be taken up as typical issues on appeal. To insist upon the incredibly cumbersome and mind-boggling procedure of having a separate jury deliberation on each and every consumer's claim in the antitrust context, would be to strike through the substance of the jury right and wallow in its form.

Finally, with respect to the contention that *Warth* v. *Seldin*, 422 U.S. 490 (1975), stands for the proposition that the issue of standing is a constitutional bar to title IV, the Court expressly held that "Congress may grant an express right of action to persons who otherwise would be barred by prudential standing rules." 422 U.S. at 501. Furthermore, the States have had such a right of action under the common law parens patriae doctrine which the Supreme Court has upheld. *Georgia* v. *Pa. R.R. Co.*, 324 U.S. 439 (1945).

BURDEN ON COURTS

Question No. 16: It has been contended that passage of title IV will swamp the courts. Opponents have pointed out that the number of antitrust cases filed already has increased by several hundred percent over the past few years. What is your response to this concern?

Answer No. 16: In a July 23, 1975, letter, Rowland F. Kirks, Director of the Administrative Office of the U.S. Courts, advised that:

Thus the control of litigation would be in the hands of Government officials who may properly be expected to act responsibly in the screening of cases to be filed in the district courts. For this reason we would not expect the cases filed under this bill to be numerous, although we have no information on which to base a firm estimate.

We also would point out that:

The number of antitrust cases (based on Judicial Conference statistics) on federal appeal had a 9 percent decline in 1975 over 1974; and a 1.3 percent decline in the 6-year period of 1975 versus 1970. In fact, in the 5-year period since 1970, only in one-year, 1974, did the number of antitrust cases on appeal exceed the number on appeal in 1970.

It is true that in 1975, 190 antitrust class actions were filed in Federal courts representing an increase over the 114 antitrust class actions filed in 1974. However, the number of all civil cases in Federal courts in 1975 increased over the number of all civil cases filed in 1974. More importantly, 160,602 cases were filed in Federal courts in 1975; the 190 antitrust class actions included in this number is a statistically insignificant amount.

Of the 13 districts having 30 or more filed antitrust cases in 1975, 5 districts had fewer class action cases filed in 1975 than in 1973; 5 had more; 3 remained the same. Horeover, the number of such cases ranged from 0 to 24—in contrast to the total civil filings in such courts which ranged from 1,174 to 6,282 cases. The proportion of antitrust cases to total cases ranged from 0.7 percent to 3.4 percent; and the proportion of antitrust class actions to total cases filed was less than 1 percent. Finally, the proportion of antitrust cases filed to all civil cases remained constant since 1973.

The attached tables show the numbers referred to above, and I ask unanimous consent that they be printed at this point in the RECORD.

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

DISTRICTS WITH 30 OR MORE PRIVATE ANTITRUST FILINGS IN FISCAL YEAR 1975

[Data are shown for fiscal years 1973-75]

District	Total civil filings			Private antitrust filings						Class action antitrust filings [1]		
				1973		1974		1975				
	1973	1974	1975	Number	Percent of total	Number	Percent of total	Number	Percent of total	1973	1974	1975
District of Columbia	2,811	2,003	2,029	34	1.2	63	3.1	30	1.5	7	2	4
Massachusetts	4,091	4,863	5,045	38	.9	27	.6	36	.7	----------	1	4
New York, southern	5,680	5,639	6,282	106	1.9	95	1.7	109	1.7	21	8	16
New Jersey	1,895	1,951	2,244	29	1.5	18	.9	35	1.6	5	2	5
Pennsylvania, eastern	2,890	3,173	3,539	64	2.2	53	1.7	59	1.7	8	4	8
Pennsylvania, western	1,271	1,345	1,629	20	1.6	31	2.3	32	2.0	----------	2	----------
Florida, southern	2,168	2,031	2,853	23	1.1	36	1.8	59	2.1	6	9	15
Georgia, northern	2,032	2,668	2,731	12	.6	11	.4	32	1.2	1	2	16
Illinois, northern	3,395	3,438	4,075	95	2.8	65	1.9	78	1.9	18	3	16
Minnesota	1,131	1,043	1,174	29	2.6	18	1.7	34	2.9	14	2	10
Missouri, western	1,596	1,657	1,854	39	2.4	25	1.5	33	1.8	1	2	4
California, northern	2,322	2,647	2,751	81	3.5	76	2.9	94	3.4	7	3	24
California, central	3,118	3,420	4,282	82	2.6	78	2.3	78	1.8	6	7	2

[1] These cases are included in the private antitrust case filings.

U.S. DISTRICT COURTS

CIVIL CASES FILED SHOWING PRIVATE ANTITRUST CASES AND CLASS ACTION ANTITRUST CASES

Fiscal Year	Total civil filings	Total private antitrust filings		Private antitrust class actions	
		Number	Percent of total civil filings	Number	Percent of total civil filings
1973	98,560	1,152	1.2	156	0.16
1974	103,530	1,230	1.2	113	.11
1975	117,320	1,375	1.2	189	.16

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent as in executive session that the distinguished Senator from Wisconsin (Mr. PROXMIRE) may be permitted to proceed with his remarks which he had intended to make prior to the vote on the nominations, but because of the exigencies of the situation he very courteously acceded to the request of the leadership that he forgo those remarks.

I ask that he now be permitted to make those remarks as in executive session.

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

FEDERAL RESERVE BOARD: THE ROOKIES TAKE OVER

Mr. PROXMIRE. Mr. President, I thank the distinguished Senator from West Virginia.

Mr. President, the Senate has just confirmed the nomination of David Lilly for a term on the Federal Reserve Board. I rise because I would like to call the attention of the Senate to something that is happening to this very important agency.

Mr. President, there is no more powerful economic body in the Nation than the Federal Reserve Board. This American economy of ours is a credit economy. Jobs, the price level, as well as interest rates, depend heavily on credit policy. And of course our Nation's credit manager is the Federal Reserve Board.

When the Congress created the Fed, it made a number of provisions to give it as much solid strength and wisdom as possible. One of those provisions was for a 14-year term. This is the longest term of office any Federal appointee enjoys except top court appointments—which are for life.

That 14-year term was deliberately calculated to give the board the experience, expertise, and judgment that only years of time can give.

And yet the title the board has earned for this season is the Rookies.

Why? Because with the exception of the Chairman all the other members have been on the Board for so short a time. There has never been a time since the inception of the Federal Reserve Act *more than 60* years ago, when we have had almost no one at the helm of our monetary policy but the rawest of rookies.

Although designed to have seven members each with 14 year terms, six of the present seven members, that is all except the chairman, have been on the Board of Governors for 26 months or less. What a travesty on the 14-year term.

This is not to say that a number of them did not come to the Board with very impressive backgrounds and experience. Some had superb preparation and are highly qualified for membership.

Governor Wallich who had a distinguished intellectual preparation served on the staff of the Federal Reserve Bank of New York, was a member of the Council of Economic Advisers, and taught economics at Yale.

Governor Coldwell was the head of the Dallas Reserve Bank and served on the Open Market Committee before his appointment to the Board of Governors.

Governor Partee served on the Board's staff from 1962 until his appointment and was managing director for research and economic policy when he was appointed.

Mr. Lilly, whose name is before us today, was chairman of the Minneapolis Federal Reserve Bank while he was in private industry and in that capacity spent considerable time—perhaps as much as 1 day a week—on the Minneapolis Bank's business.

My criticism is not that many of them did not have considerable collateral experience before coming to the Board. They did. But six out of the seven members have served only for one-seventh or less of the 14-year term they are appointed to serve.

Mr. President, here is a job that cannot be taught. It can only be learned by experience. A Governor who has served 5 years is likely to be a better Governor than one who has served only 3, and one who has served 10 or 12 years is likely to be still better.

But what do we have on the Board now? With the exception of the Chairman who has served 6 years, the term of service is as follows. The veteran of the Governors, Henry Wallich, has served only 26 months, Philip Coldwell 19 months, Philip Jackson 10 months, Charles Partee 5 months, Stephen F. Gardner less than 4 months, and the latest nominee, David Lilly, has not yet taken office. He has just been confirmed by the Senate.

Mr. President, the Fed has become a revolving door. Here is the agency that not only regulates banks and the Nation's payment system, but far more important it is the agency of our Government that determines the availability of credit which is so vital to our economy. The Fed makes the decisions that affect the level of interest rates for every lender and borrower in America, and in the process determines when and how and if the economy grows or contracts. No agency can approach the Fed in its influence on the economy.

Of course, we have to recognize that in this free economy of ours the level of interest rates and prices is determined in major part not only by conscious regulation but by the working of the marketplace. But the one agency which has the conscious power to affect prices significantly is the Federal Reserve Board.

All of this is to say that we face a sorry situation when, in spite of the wisdom and ability of the Chairman and the potential ability of the six other Governors, it is a rookie board run by men with a dearth of experience that would make any major league baseball or football team a bad joke if they tried to play with such limited experience.

The Fed requires far more experience than the Redskins or the Steelers or the Yankees. It is the most serious kind of public business. The public deserves more than it is getting from the rookies.

Mr. President, I ask unanimous consent that the names of the Board of Governors and the date of initial oath of office and the term of service which they have served be printed at this point in the RECORD.

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

Name, date of initial oath of office, and year of expiration:

1. Arthur F. Burns*, Jan. 31, 1970, 1984.
2. Stephen S. Gardner*, Feb. 13, 1976, 3 months, 1990.
3. Philip F. Coldwell**, Oct. 29, 1974, 19 months, 1980.
4. Philip C. Jackson, Jr.**, July 14, 1975, 10 months, 1982.
5. Henry C. Wallich*, March 8, 1974, 26 months, 1988.
6. J. Charles Partee**, Jan. 5, 1976, 5 months, 1986.

MEMBERSHIP OF THE BOARD

1. Arthur F. Burns, Chairman: Full 14-year term which began February 1, 1970.

2. Stephen S. Gardner, Vice Chairman:

Confirmed by Senate on January 29, 1976 for full 14-year term, beginning February 1, 1976, replacing George W. Mitchell whose term expired.

Beginning in August, 1974, Mr. Gardner served as Deputy Secretary of Treasury. Prior to this appointment, Mr. Gardner was Chairman of the Board of the Girard Trust Bank in Philadelphia, which he joined in 1949.

3. Philip F. Coldwell:

Confirmed by Senate on October 9, 1974 for the unexpired term of Andrew F. Brimmer (resigned) which began on February 1, 1966.

A Texan, Mr. Coldwell was President of the Federal Reserve Bank of Dallas since 1968, which he first joined in 1952. He also served as a member of the Federal Open Market Committee of the Federal Reserve System. He holds a Doctorate in Economics.

4. Philip C. Jackson, Jr.:

Confirmed by Senate on July 18, 1975 for the unexpired term of 14 years of John Eugene Sheehan (resigned) whose term began on February 1, 1968.

From Alabama, Mr. Jackson was associated since 1949 with the Jackson Company of Birmingham, a mortgage banking concern.

5. Henry C. Wallich:

Dr. Wallich's full 14-year term began on February 1, 1974.

From Connecticut, Dr. Wallich previously was Professor of Economics at Yale University. Former member of the Council of Economic Advisors, May 1959–Jauary 1961), served as Assistant to the Secretary of the Treasury (September 1958–May 1959), and with the Federal Reserve Bank of New York (June 1941–September 1951). Also served as senior consultant to the Treasury Department, beginning in 1969.

*Appointed to full 14-year term.

**Filling balance of unexpired term.

6. J. Charles Partee:

Confirmed by the Senate on December 19, 1975 to serve the balance of the unexpired term of Mr. Jeffrey Bucher (resigned), which began on February 1, 1972.

A Virginian, Mr. Partee served on the FRSB's staff since 1962 in various capacities. From 1962–1965, he was Chief, Capital Markets Section, Division of Research; from 1964–65, adviser in charge of financial sections within the Research Division; from 1965–74, Associate Director and then Director, of the Division of Research; from 1973 until his confirmation, he was Managing Director for Research and Economic Policy.

Mr. PROXMIRE. Mr. President, I bring this up not, as I say, because of any derogation of Mr. Lilly or any other member of the board. As I say, some of these men have had good backgrounds. But I say this because I think we have to recognize that if we are going to have a 14-year term for the Board of Governors, and I think it is a wise provision, we should do our best to appoint men who will devote this much of their career, which in many cases is virtually a lifetime—particularly if a man is appointed at the age of 50 or older—to this very powerful agency so central to the welfare of our economy.

Mr. President, I yield the floor.

ORDER FOR RECOGNITION OF SENATOR HASKELL ON WEDNESDAY, JUNE 2, 1976

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Wednesday, June 2, after the two leaders or their designees have been recognized under the standing order, Mr. HASKELL be recognized for not to exceed 15 minutes.

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

ORDER FOR RECOGNITION OF SENATOR MANSFIELD ON WEDNESDAY, JUNE 2, 1976

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the recognition of Mr. HASKELL on June 2, Mr. MANSFIELD be recognized for not to exceed 15 minutes.

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

ORDER DESIGNATING THE PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON WEDNESDAY, JUNE 2, 1976

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the recognition of the Senators for whom orders have been entered for recognition on Wednesday, June 2, there be a brief period for the transaction of routine morning business not to extend beyond the hour of 12 o'clock noon, with statements limited therein to 5 minutes.

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

ORDER FOR RECESS FOR JOINT MEETING OF THE TWO HOUSES OF CONGRESS ON WEDNESDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate leaves to go in a body to the Hall of the House of Representatives for a joint meeting on Wednesday, June 2, it stand in recess following the address in the Hall of the House of Representatives, and that the Senate then reassemble following that address on the call of the Chair.

The PRESIDING OFFICER (Mr. HATFIELD). Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I yield the floor.

SEIZURE BY PANAMA OF U.S.-FLAG VESSEL IN U.S. TERRITORIAL WATERS

Mr. HELMS. Mr. President, on the evening of Sunday, May 23, the U.S. registry vessel *Sea Wolf* was fired upon, boarded, and seized by a gunboat of the Panamanian National Guard in the waters of the Canal Zone. The vessel was then removed to Panamanian waters where reportedly it is still anchored. The U.S. Department of State has yet to make any public announcement concerning the seizure of a ship flying the American flag, nor has it revealed what steps, if any, are being taken for the recovery of American property, or for the reassertion of U.S. rights in the waters of the Canal Zone. The only public notice this event has received is a short article published yesterday in the heavily censored Panamanian press.

A brief recital of the facts involved is therefore in order. The vessel, a $650,000 yacht, had been in litigation for 10 months in the U.S. Federal District Court in Balboa. Yesterday evening, my staff contacted the Acting Chief Deputy U.S. Marshall C. J. Spiros, who supplied the following account:

The *Sea Wolf*, home ported in Los Angeles, with U.S. registry number 547248, was seized and impounded by U.S. marshals in the Canal Zone in July 1975, because of a suit which had been brought with regard to ownership. A certain John O'Toole, a citizen of New Zealand, asserted that the *Sea Wolf* had been sold to him, and produced an alleged bill of sale for $650,000. The owner denied that the ship had been sold, and contested the genuineness of the bill of sale. Eventually the U.S. district court found against Mr. O'Toole.

Meanwhile, however, the ship remained impounded by the court. It was heavily mortgaged, and during the proceedings, the mortgage holder, the General Electric Credit Corp., sought to recover its interest. On May 5, by order of the court, the ship was auctioned off, and was purchased by GECC. The new owner had the ship refitted and hired a crew to bring the ship back to the United States.

On the evening of May 23, the *Sea Wolf*, under the command of Captain Schatner, a U.S. citizen, and a crew of three, left Cristobal for the United States. Just outside the Cristobal breakwater, and well within the 10-mile-wide sea corridor and within the 3-mile limit of the Canal Zone, the *Sea Wolf* was accosted by a vessel of the Panamanian National Guard, the *Anayancy*. The *Anayancy*, incidentally, is a former U.S. Government-owned vessel which was turned over to the Republic of Panama as a gesture of friendship.

The *Anayancy* was waiting without lights. As soon as the *Sea Wolf* arrived on the scene, the *Anayancy* fired flares across the bow of the *Sea Wolf*. The flares were followed by fire from large-caliber automatic weapons and carbines. The *Sea Wolf* crew fell to the deck to avoid injury, but the ship itself received an undetermined amount of damage. Officers of the Panamanian National Guard then boarded the *Sea Wolf*, seized it, and removed it to Panamanian waters.

I am informed that an investigation conducted by canal officials has confirmed that the incident positively took place in Canal Zone waters.

The incident can properly be described as an act of piracy. It was an act of piracy undertaken not by private individuals, but by officials of the Republic of Panama. Moreover, there are further reports which suggest that the Republic of Panama was acting on behalf of the aggrandizement of certain individuals residing in the Republic.

It is reported that while the *Sea Wolf* case was under litigation in the U.S. district court, and while the ship was still under U.S. impoundment, Mr. O'Toole allegedly took the bill of sale which was ultimately rejected as genuine by the U.S. district court, and registered the U.S. vessel as a Panamanian flag ship in Panama. It is also alleged that Mr. O'Toole is a partner with a certain Mr. Daly, a former U.S. citizen who is presently a captain in the Panamanian National Guard, in an enterprise known as Helicopters de Panama. Helicopters de Panama has asserted that it is owed $51,000 for repairs and other services done to the *Sea Wolf* while under impoundment by the U.S. district court.

On the strength of this $51,000 claim, Helicopters de Panama went to the Panamanian courts, and was granted an attachment by First Circuit Judge Warren S. Alvarado. Apparently it was on the basis of this attachment that the Panamanian National Guard seized the *Sea Wolf*.

Mr. President, it is not my purpose to comment on the competing claims surrounding the litigation of competing interests in the *Sea Wolf*. What is important is that the ship was seized in the territorial waters of the United States after a final adjudication of the rights of ownership in a U.S. district court.

It is clear that we have a direct confrontation not only over the rights of private ownership, but also over the exercise of U.S. sovereignty in the Canal Zone. If the Panamanian National Guard, acting under the veil of the authority of a Panamanian court, is allowed to exercise sovereign acts in U.S. territorial waters, then we have what may well be the first of a series of frontal challenges to our sovereign powers in the zone.

It is also highly significant that the Panamanian courts appear to have sanctioned an illegal change of registry, using papers allegedly fraudulent, which

occurred while the matter of ownership was properly in litigation in the U.S. district court. And if the involvement of Captain Daly has occurred as reported, then we have a situation in which the Guardian and Captain Daly are involved in an unseemly conflict of interest for personal profit and at the expense of U.S. sovereignty.

Mr. President, we have a situation in which piracy has occurred with the collusion of the Republic of Panama; and moreover, the U.S. Department of State is implicated in this act of piracy by failing to make a public announcement of the act, and, by thus appearing to tolerate the trespass upon our sovereignty.

The Secretary of State, Dr. Kissinger, and the President jointly bear responsibility for failing to take proper measures to protect U.S. interests. In the first place, they are at fault for their conduct of the negotiations for a new treaty with Panama. The Statement of Basic Principles, signed by Secretary Kissinger and Panamanian Foreign Minister Tack on February 7, 1974, pursuant to directives signed by the President, is a document which does not reflect the fundamental status of the Canal Zone. By proposing to surrender our sovereignty, our property, and ultimately our control of the Canal Zone, the basic agreement has led Panamanians to believe that the Republic of Panama can exercise sovereign powers in the Zone.

Moreover, the Department of State has been shockingly negligent in its handling of the incident, so much so that the Department appears almost to want to be relieved of the burden of our sovereign powers in the zone. Failure to assert and exercise our sovereign powers will inevitably result in the attrition and de facto loss of those powers. Thus the Panamanians will obtain in fact what they have not yet been able to obtain through negotiation.

What should the State Department have done?

In the first place, the Department should have prevented it. This case had been in litigation in the U.S. district court in Balboa for 10 months. Is it possible that the U.S. Ambassador, Mr. William Jorden, has been so inattentive to his post that he was unaware of the developing controversy? Could he have been unaware of the potential conflict created by the illegal reregistration of a U.S.-flag vessel in Panama while the matter was in adjudication? Had no reports come to him about the activities of Mr. O'Toole and Mr. Daly? Did he not know of the auction of the vessel ordered by the U.S. district court?

Second, assuming that the information-gathering duties of our Embassy personnel had been performed with diligence, why was no protection offered to the vessel? In a situation bearing so many seeds of controversy, an escort vessel or an escort officer should have been provided until the vessel was on the high seas.

Third, if the Panamanian Government wanted to assert jurisdiction over the vessel, the proper course would have been for the State Department to have notified the Republic of Panama that such matters should be handled with diplomatic notes, negotiations, or arbitration. The failure of the State Department to be aware of the developing controversy calls into question its capability to negotiate in good faith on the more basic issues.

Fourth, the failure of the State Department to take public notice of the action even after 6 days gives the impression that we do not intend to assert our sovereign rights, and undercuts not only any negotiations, but even our present status. This is not an occasion for secret diplomacy. This is an occasion for firmness and balance. Secret diplomacy is a sign of weakness and a sign of withdrawal.

Mr. President, the State Department is not exercising its traditional diplomatic and consular functions for the protection of U.S. rights and the property of U.S. citizens. The failure to do so is endangering the future of the Panama Canal and the future of our relationship with Panama.

When a U.S.-flag ship can be captured in waters where we undisputably exercise sovereign powers, and the action is done with impunity, then the whole conduct of our foreign policy and the role of the United States in the leadership of the West is in doubt. We must immediately suspend any further negotiations on the basic treaties until this matter is fully resolved. Indeed, there is a question whether any negotiations can be pursued in good faith with a government which does not recognize the basic principles of international law.

Finally, Mr. President, this incident fully justifies the U.S. Government in reestablishing immediately the Naval Special Service Squadron based in the Canal Zone. Prior to World War II, this unit was stationed in the Canal Zone for diplomatic purposes. It consisted of the flagship *Erie* and two destroyers. If U.S.-flag vessels are not safe in Canal Zone waters, then we must underline our intention to assert our rights and the rights of free passage through the canal.

SENATE ACHIEVEMENTS—JANUARY 19 THROUGH MAY 28, 1976

Mr. ROBERT C. BYRD. Mr. President, since convening 4 months ago, the Senate has passed more measures and enacted more laws than in any similar period during the previous 4 years. A statistical profile of this session compares favorably with those of preceding sessions as illustrated by the chart which I shall submit at the conclusion of my remarks.

The Senate has dealt with a number of issues of major importance to the Nation and to the Senate as an institution. To follow up the outstanding work begun by Senator CHURCH's temporary Committee on Intelligence Activities, the Senate established a permanent Committee on Intelligence to oversee all intelligence activities of the Government. This committee has legislative, budgetary, and oversight jurisdiction over the Central Intelligence Agency and shares such authority over the FBI and other intelligence units with the standing committees. The work of this committee should greatly facilitate the Senate's ability to carry out its responsibility to share in the guidance of intelligence activities of the Federal Government while assuring the protection of the rights and liberties of American citizens.

The Senate has also created a select committee to study the Senate committee system headed by Senators STEVENSON and BROCK who have a deep interest in this matter. We anticipate that their recommendations which are due next February will lead to improvements in our present system related to committee jurisdiction, structure, number, size and staffing. The recommendations of the Commission on the Operation of the Senate, the Culver Commission, which was created last session, will be reported at the end of this year. Their studies and recommendations should shed light on means of providing better administrative support and services to Senators.

With regard to important national issues, the Senate has sought to increase employment through public works jobs and has on the calendar a measure to increase public service employment. We have extended and revised major housing programs with the realization that the housing industry is key to improving the economy and increasing employment. We have passed and sent to conference a measure to help finance home insulation improvement for low-income persons and to encourage energy conservation in the construction of new homes and commercial buildings. We have enacted a naval petroleum reserve bill to provide for exploration and limited production of certain reserves as a guard against a cutoff of foreign oil. We have also made improvements in the campaign financing act. We passed a strong foreign aid-military sales bill and will pass a second version of that bill in June.

Needless to say, a number of bills have been vetoed. In fact, President Ford has vetoed 22 measures this Congress.

He has vetoed programs to increase employment, stimulate housing construction, and help people buy a home or avoid foreclosure on their home. He has vetoed funds to improve the child day care centers, to aid the Nation's public schools, to train nurses, improve health services, continue essential health care programs, cut taxes, and control strip mining abuses. The Senate and the House have persisted, however, and more than 50 percent of these measures, or modified versions of them, have gone on to become public law—with or without the President's signature.

For further information concerning these and other measures which the Senate has passed this year, I refer you to the report prepared by the staff of the Democratic Policy Committee which I ask unanimous consent to have inserted in the RECORD at this point in addition to the other material to which I have referred.

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

5-YR. SENATE ACTIVITY (AS OF MAY 28)

	1972	1973	1974	1975	1976
Days in session	79	70	67	73	74
Hours in session	427:36	330:00	399:03	391:55	405:28
Total measures passed	224	204	237	193	323
Public laws	81	35	48	22	86
Record votes	169	145	208	194	208
Vetoes	0	3	1	4	5
Average attendance (percent)	79.93	85.24	88.59	89.46	85.76
Saturday sessions	0	2	0.	1	0
Sessions after 8 p.m.	3	1	1	8	5
Sessions before 10 a.m.	15	1	6	15	13

MAY 28, 1976.

STATUS OF PRESIDENTIAL VETOES

(94TH CONGRESS—TOTAL 22)

Vetoes overridden (4):

1. H.R. 5901, Education Appropriations. Vetoed July 25, 1975. House overrode veto on September 9, 1976. Senate overrode veto on September 10, 1975. Became Public Law 94–94.

2. S. 66, Health Services—Nurse Training. Vetoed July 26, 1975. Senate overrode veto on July 26, 1975. House overrode veto on July 29, 1975. Became Public Law 94–63.

3. H.R. 4222, School Lunch Program. Vetoed October 3, 1975. House and Senate overrode veto on October 7, 1975. Became Public Law 94–105.

4. H.R. 8069, Labor—HEW Appropriations, 1976. Vetoed December 19, 1975. House overrode veto on January 27, 1976. Senate overrode veto on January 28, 1976. Became Public Law 94–206.

Vetoes for which modified versions have been repassed (11):

5. H.R. 25, Strip Mining. Vetoed May 20, 1975. House sustained veto on June 10, 1975. (Comparable provisions in S. 391 which passed the Senate on July 31, 1975, and passed the House amended January 21, 1976.)

6. H.R. 4481, Emergency Employment Appropriations. Vetoed May 28, 1975. House sustained veto on June 4, 1975. (Related measure, H.J. Res. 492 became Public Law 94–36. Public Law 94–41 contained funds for this purpose.)

7. H.R. 4485, Emergency Middle-Income Housing. Vetoed June 25, 1975. House sustained veto on June 25, 1976. (Related measure, H.R. 5398, became Public Law 94–50).

8. H.R. 1767, Oil Import Fees, President's authority to impose. Vetoed March 4, 1975. Referred to House Ways and Means Committee. (Relevant provisions contained in H.R. 4035, which was also vetoed and S. 622 which became Public Law 94–163.)

9. H.R. 4035, Oil Policy. Vetoed July 21, 1975. Referred to House Interstate and Foreign Commerce Committee. (Related provisions in S. 622 which became Public Law 94–163.)

10. S. 1849, Oil Price Controls. Vetoed September 9, 1975. Senate sustained veto on September 10, 1975. (H.R. 9524 extending controls to December 15, 1975, became Public Law 94–133. Comparable provisions are contained in S. 622 which became Public Law 94–163.)

11. H.R. 5357, Tourism Promotion. Vetoed May 28, 1976. Referred to House Interstate and Foreign Commerce Committee. (Similar measure S. 2003 became Public Law 94–55.)

12. H.R. 12, Executive Protective Service. Vetoed November 29, 1975. Referred to House Public Works and Transportation Committee. (Similar provisions are contained in H.R. 11184 which became Public Law 94–196.)

13. H.R. 5559, Tax Reduction. Vetoed December 17, 1975. House sustained veto on December 18, 1975. (Almost identical bill, H.R. 9968 became Public Law 94–164.)

14. H.R. 5247, Public Works Employment. Vetoed February 13, 1976. House overrode veto on February 19, 1976. Senate sustained veto on February 19, 1976. (Comparable provisions are contained in S. 3201 which is in conference.)

15. H.R. 9803, Child Day Care Funding. Vetoed April 6, 1976. House overrode veto on May 4, 1976; Senate sustained veto on May 5, 1976. (Comparable provisions are contained in H.R. 12455 which is in conference.)

Other vetoes (7):

16. H.R. 4296, Agricultural Price Supports. Vetoed May 1, 1976. House sustained veto on May 13, 1975. (Secretary of Agriculture will hold quarterly oversight meetings with Agriculture Committees on subject.)

17. H.R. 9497, Tobacco Price Supports. Vetoed September 30, 1975. Referred to House Agriculture Committee.

18. S. 2350, National Security Council Membership. Vetoed December 31, 1975. Senate overrode veto on January 22, 1976. House referred to Armed Services Committee January 26, 1976.

19. H.R. 5900, Common Situs Picketing—Collective Bargaining. Vetoed January 2, 1976. House referred to Education and Labor Committee.

20. S.J. Res. 121, Milk Price Supports. Vetoed January 30, 1976. Senate sustained veto on February 4, 1976.

21. H.R. 8617, Hatch Act Revision. Vetoed April 12, 1976. House sustained veto on April 29, 1976.

22. S. 2662, Foreign Aid—Military Sales. Vetoed May 7, 1976. (Comparable versions, S. 3439 and H.R. 13680, are scheduled for floor consideration in early June.)

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(94th Congress—2d Session)

(By Senate Democratic Policy Committee)

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Trust Territory of the Pacific (H.R. 12122, P.L. 94-2551).
White House Conference on Handicapped (S.J. Res. 154, P.L. 94-224).

GOVERNMENT EMPLOYEES

Federal Mine Safety Inspectors Protection (S. 3070).
*Hatch Act Revisions (H.R. 8617).
Secret Service Director's Salary (S. 3028).

HEALTH

Alcohol Abuse, Prevention and Treatment (S. 3184).
Biomedical and Behavioral Research (S. 2515).
Clinical Laboratories Improvement (S. 1737).
Communicable Disease Control—Consumer Health Education (S. 1466).
Drug Abuse Office and Treatment (S. 2017, P.L. 94-237).
Heart, Lung and Blood Research—Health Services (H.R. 7988, P.L. 94-278).
Helen Keller Center (H.R. 12018, P.L. 94-288).
Lead-Based Paint Poisoning Prevention (S. 1664).
Medical Device Safety (S. 510, P.L. 94—).
Rehabilitation Act Extension (H.R. 11045, P.L. 94-230).

HOUSING

Housing—Flood Insurance (H.R. 9852).
Housing Programs, (S. 3295).

INDIANS

Indian Claims Commission (S. 2981).
Indian Crimes (S. 2129), P.L. 94-).
Palms and Cabazon Mission Indians (H.R. 1465, P.L. 94-).
Pueblo Indians, New Mexico (S. 2129).

INTERNATIONAL

Asian Development Funds (S. 3103).
Brussels Conferencs (S. Con. Res. 93).
Commission on Security and Cooperation in Europe (S. 2679, P.L. 94-).
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Inter-American Development Bank—African Development Fund (H.R. 9721, P.L. 94-)
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Inter-American Women's Rights Convention (Eq. D, 81st-1st)
Radio Regulations Revision (Ex. G, 94th-1st)
Telecommunications Convention (Ex. J, 93d-2d)
Telegraph and Telephone Regulations (Ex. E, 93d-2d)
Women's Political Rights Convention (Ex. J, 88th-1st)
U.S. International Trade Commission (S. 3420)
U.S.-Soviet Relations (S. Res. 406)
U.S. Winter Olympic Team (S. Res. 386)
U.S.I.A. Authorization (H.R. 11598, P.L. 94-272)
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Charles Carroll Medals (H.R. 3427, P.L. 94-257)
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William A. Barrett, Death of (S. Res. 433)
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Boundary Waters Canoe Area (S. 1526)
Chickasaw National Recreation Area (H.R. 4979, P.L. 94-235)
Eugene O'Neill National Historic Site (S. 2398)
Fire Island National Seashore (S. 867)
George W. Norris Home National Historic Site (S. 3476)
Gruber Wagon Works (S. 1497)
Land and Water Conservation Fund—National Historic Preservation—Oil Shale Revenues (S. 327)
Land and Water Resource Conservation (S. 2081)
National Parks Mining Regulations (S. 2371)
National Resource Lands Management (S. 507)
National Wildlife System Administration (H.R. 5512, P.L. 94-223)
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Reclamation Projects Authorization (S. 151, P.L. 94-228)
River Basin Monetary Authorizations (S. 3432)
Santa Monica Recreation Area (S. 1640)
Wetlands Loan Extension (H.R. 5608, P.L. 94-215)
Wilderness Areas:
Badlands National Monument (S. 1068)
Bristol Cliffs Wilderness (S. 2308, P.L. 94-268)
Eagles Nest Wilderness (S. 268)
Shenadoah National Park (S. 885)
Wilderness Areas Studies: Kaiser Roadless Area (S. 75)

NOMINATIONS (ACTION BY ROLLCALL VOTE)

George Bush to be Director of Central Intelligence
S. John Byington to be Commissioner on Consumer Product Safety Commission
George Henry Kuper to be Executive Director of National Center for Productivity and Work Quality
David M. Lilly to be member of Board of Governors of Federal Reserve System
William L. Springer to be member of the Federal Election Commission
Willie J. Usery to be Secretary of Labor

PROCLAMATIONS

Bald Eagle Days (S. Res. 347)
Beta Sigma Phi Week (S.J. Res. 76)
Employ the Older Worker Week (S.J. Res. 35, P.L. 94-275)
Fair Housing Month (S. Con. Res. 112)
Family Week (S.J. Res. 101, P.L. 94-270)
Fourth of July Holiday (S.J. Res. 151)
Horse Week (S.J. Res. 182)
Independence Day (S.J. Res. 150)

Knights of Columbus Day (S.J. Res. 183)
Small Business Week (S.J. Res. 163)
Tennis Week (S.J. Res. 172)
Thomas Jefferson Day (H.J. Res. 670, P.L. 94-263)
World Habitat Day (S. Res. 398)

SENATE

Cloture Rule (S. Res. 268)
Commission on the Operation of the Senate (S. Res. 410) (S. Res. 423)
Oklahoma Senate Contest
Old Senate Chamber (S. Res. 446)
Select Committee on Committees (S. Res. 109)
Select Committee on Intelligence (S. Res. 400)
Select Committee on Intelligence Activities (S. Res. 377) (S. Res. 414) (S. Res. 435)
Select Committee on Small Business (S. Res. 104)
Watergate Reform Legislation (S. Res. 437)

TRANSPORTATION-COMMUNICATIONS

Airport and Airway Development (H.R. 9771)
Alaska Highway (S. 2071)
Boat Safety Programs (H.R. 5630)
Common Carrier Tariff Proceedings (S. 2054)
ConRail Acquisition of Bankrupt Rail Property (H.R. 12490, P.L. 94-253)
ConRail Stock (S.J. Res. 184, P.L. 94-248)
Educational Broadcasting Facilities (H.R. 9630, P.L. 94-)
Federal-Aid Highway Authorization (H.R. 8235, P.L. 94-280)
Hazardous Materials Transportation (S. 2991)
Rail Negotiations (S. Con. Res. 97)
Railroad Revitalization (S. 2718, P.L. 94-210)
Translator Broadcast Operations (S. 2847)

VETERANS

American Battle Monuments Commission Travel Expenses (H.R. 8507, 94-256)
Veterans' Housing Loans (S. 2529)
Veterans' Insurance (S. 1911)

SENATE LEGISLATIVE ACTIVITY

(94th Congress, 2d Session)

(By Senate Democratic Policy Committee)

Days in Session	74
Hours in Session	405:28
Total Measures Passed	323
Private Laws	86
Public Laws	20
Treaties	5
Confirmations	25,055
Record Votes	208
Vetoes	5

Symbols: (VV)—Passed by Voice Vote; numbers in parentheses indicate number of record vote on passage, conference report, or reconsideration—* numbers indicate vote occurred 1st session of 94th Congress (1975).

AGRICULTURE

Agriculture Department employees' dependents orientation: Authorizes the Secretary of Agriculture to use appropriated funds for the orientation and language training of dependents of officers and employees of the United States Department of Agriculture who have foreign assignments. S. 3052—Passed Senate March 16, 1976. (VV)

Agricultural census: Amends section 142, title 13, U.S.C. to change the reference years and the years for taking the census of agriculture to coincide with the economic census of manufacturing, mining, and industry which is taken every 5 years and refers to the years the last numericals of which are "2" and "7" in order to provide comparable data for evaluating the Nation's economic and agricultural status and to avoid the heavy workload in the Bureau of the Census when the agricultural census is taken in the same year as the decennial census; changes the definition of the term "farm" for census purposes to include only places which produce at least $1,000 worth of agricultural goods a year instead of, as at present, any place which produces agricultural goods selling for at least $250 in a year or a place measuring at least 10 acres and producing at least $50 in agricultural goods; and postpones until June 30, 1976, the effective date of the change in the term "farm" to give Congress an opportunity to study the possible effects of the change before it becomes effective. H.R. 7824—Public Law 94-229, approved March 15, 1976. (VV)

Agricultural loans for losses due to toxic chemical contamination: Requires the Secretary of Agriculture to make loans to bona fide farmers and ranchers who suffer losses on or after January 1, 1973, through no fault of their own due to toxic chemical contamination of their agricultural commodities or livestock; limits the amount of any loan to an individual agricultural producer to $100,000, the cost of replacing the condemned livestock or products, or the noncompensated share of the condemned products or livestock; places a 7-year maximum term on the loan at a rate of interest reflecting the cost of money to the Government; and authorizes the Secretary to grant a grace period for principal payments and the majority of interest for up to 3 years if individual circumstances warrant. S. 2578—Passed Senate March 10, 1976. (VV)

Agricultural pest control: Broadens and strengthens the authority of the Secretary of Agriculture to control and eradicate agricultural pests by (1) permitting the Secretary to carry out eradication and control programs with respect to plant pests not now covered by the Organic Act of 1944 including spider mites, slugs, and snails; (2) extending the Secretary's authority to cooperate with foreign governments including governments of the Western Hemisphere, Canada, Mexico, Central America, Colombia, the Bahama Islands, the Greater Antilles, the Lesser Antilles, and international organizations and associations in carrying out eradication and control programs; (3) making discretionary the Secretary's authority to provide phytosanitary inspection and certification service for domestic plants and plant products for export, and extending such authority to inspection and certification of any plants or plant products offered for export or transiting the United States; (4) repealing provisions of the Act of October 6, 1917, for cooperation with Mexico and adjacent States in the extermination of pink bollworm infestations near the U.S. border which authority is now contained in the Organic Act; and (5) clarifying the Secretary's authority to cooperate with certain Western Hemisphere countries, the Bahama Islands, the Greater Antilles, the Lesser Antilles and international organizations and associations with respect to animal disease control and the carriers of animal diseases. S. 1617—Public Law 94-221, approved March 15, 1976. (VV)

Beef research and information: Authorizes the Secretary of Agriculture to issue a national order providing for the establishment of a Beef Board consisting of not more than 68 members, and alternatives who are to be appointed by the Secretary from qualified nominees representing cattle producers from each beef-producing area; provides that the Beef Board is to develop, subject to the Secretary's approval, a program of research, producer and consumer information, and promotion designed to strengthen the cattle and beef industry in the domestic and foreign market which is to be financed from assessments paid by cattle producers;

Requires approval by referendum among cattle producers before the national order may become effective; requires that approval be by two-thirds of the majority of the registered producers voting and that at least 50 percent of those registered must vote;

Authorizes the Secretary to terminate or suspend the order if he finds it does not effectuate the purposes of the bill or to hold a referendum at any time, and provides that a referendum shall be held if requested by 10 percent or more of the number of producers voting in the referendum approving the order;

Provides for funding of the program through an assessment system where each buyer of cattle would collect an assessment from the producer-seller based on the value of the cattle involved, and pass it on to the next buyer, with the slaughterer required to remit the assessment to the Beef Board; sets the maximum amount which may be assessed at 0.5 percent of the value; exempts cattle produced and slaughtered for home consumption;

Provides that producers not favoring the program may obtain a refund of the assessment if requested not more than 60 days after the end of the month in which the sale or slaughter of the cattle occurred and provides that the Beef Board make a refund within 60 days; authorizes a civil penalty of $1,000 for persons willfully failing or refusing to collect any assessments required of them or otherwise willfully violating provisions of the order;

Requires the Beef Board to submit to the Secretary for approval all plans and projects as well as a budget; and requires that copies of the budget be submitted to the House and Senate Committees on Agriculture. H.R. 7656—Public Law 94- , approved 1976. (* 539, 175).

Farmer elected committeeman system: Expresses Senate support for the participation of farmers in the programs of the Department of Agriculture through the farmer elected community committeeman; urges the Secretary of Agriculture to take the actions necesary to provide for increased involvement of farmers in the policy and decisionmaking operations of the Department of Agriculture; and requests the Secretary to discontinue any actions designed to eliminate or reduce the community committeeman program administered by the Stabilization and Conservation Service of the Department of Agriculture. S. Res. 272—Senate adopted February 5, 1976. (VV)

Food stamp reform: Makes changes in the food stamp program relating to eligibility to participate, the benefits available, administration of the program, and the penalties applicable to violations, as follows:

Changes affecting eligibility

(1) Eliminates the present system of allowing varying, itemized deductions from gross income in determining household income for purposes of the food stamp program and replaces it with a standard deduction of $100 a month for the 50 States and the District of Columbia and of $60 a month for Puerto Rico, the Virgin Islands and Guam, and provides an additional standard deduction of $25 a month in the case of a household with one or more members 60 years of age or older, or any household with earned income of $150 a month or more;

(2) Defines "gross income" as including (but not limited to) all money payments (including payments made pursuant to the Domestic Volunteer Services Act of 1973) and payments in kind, excluding: (a) medical costs payments; (b) earned income of a child under 18; (c) payments received under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; (d) infrequent or irregular income not exceeding $30 during any 3 month period; (e) all loans, scholarships, fellowships, grants, and veterans' educational benefits, except those deferred to the extent they are not used for tuition and mandatory fees; (f) housing

vendor payments to landlords; (g) payments under the supplemental food program for women, infants, and children (WIC); (h) payments in kind from government benefit programs, including, but not limited to, school lunch, medicare, and elderly feeding programs, and any payments in kind which cannot be reasonably and properly computed; (i) the cost of producing self-employed income; (j) Federal, State, and local income tax refunds, Federal income tax credits, and retroactive payments under the Social Security Act provided that these amounts shall be included under household resources for eligibility purposes; and (k) income specifically excluded by other Federal laws;

(3) Bases eligibility on income received during the 30 days prior to application;

(4) Provides for semi-annual adjustment of the standard deduction and of the income poverty guidelines according to changes in the Consumer Price Index, with the first adjustments effective July 1, 1977;

(5) Freezes existing assets eligibility standards (presently set by regulation) until 60 days after a report on asset holding has been submitted to Congress;

(6) Eliminates present automatic eligibility for persons eligible for welfare programs and requires them to apply and demonstrate eligibility just as nonwelfare persons;

(7) Excludes from eligibility college students who are or can legally be claimed as tax exemptions by families which are themselves not eligible for food stamps;

(8) Excludes from eligibility those who terminate employment voluntarily, unless previously eligible; strengthens work registration requirements for persons under 60 years of age; requires a person with a child age 12 or over (instead of age 18 or over) to meet the work registration and acceptance requirements for eligibility; and makes other changes;

Changes affecting benefits

Changes the purchase-price requirement from the present varying rate based on household size and income using basis-of-issuance tables established in 1971 to a uniform price rate of 25 percent of net income as determined under the Food Stamp Act; defines a "nutritionally adequate diet" as one that is based on the thrift food plan developed in 1975 by the Department of Agriculture and provides that the cost of such diet shall be the basis for uniform coupon allotments; provides that the minimum benefit for single-person and two-person households shall be $10 per month; and allows a household to file for lost benefits due to administrative error not later than 3 months after learning of the error, and limits the cash payment for lost benefits to bonus value of its allotment for a 3-month period;

Changes affecting administration

Requires States to certify applicants and issue authorization to purchase cards within 30 days of receiving the application; gives each State the option, instead of the present requirement which would have become effective beginning October 1, 1976, to decide whether to establish a system where a household may elect to have its purchase price charge for the coupons withheld from its public assistance check; allows all food stamp recipients who are housebound, feeble, physically handicapped, or otherwise disabled, as well as all those over age 60, to use food stamps for meals-on-wheels with stamps; authorizes a pilot project on elimination of the purchase price requirements; provides that a household may be disqualified for fraudulent participation but must be found guilty in a court or by a State welfare agency, after a proper hearing; and makes other changes;

Changes affecting penalties for violations

Establishes criminal penalties for food stamp vendors who fraudulently mishandle receipts; requires timely and verified reports of receipts and deposits by vendors; reduces the maximum penalty for certain misdemeanor violations from $5,000 to $1,000 so as to permit such misdemeanors to be prosecuted before magistrates under the Federal Magistrate Act; and makes other changes. S. 3136—Passed Senate April 8, 1976. (138)

Food stamp vendors: States that receipts from the sale of food stamps are Federal funds and that any vendor using such funds for his own benefit shall be punished by a fine of not more than $10,000, or a sum equal to the amount involved, whichever is greater, or imprisonment for up to 10 years, or both; requires timely, verified reports of receipts and deposits by vendors to state agencies responsible for the administration of the program and to the Department of Agriculture; and directs the Secretary of Agriculture to establish procedures to monitor the inventories of food stamps held by vendors and to provide standards to safeguard them against misuse by vendors. S. 2852—Passed Senate April 8, 1976. (139)

Grain inspection: Amends the United States Grain Standards Act to require that (1) all grain inspections at export elevators and major inland terminal elevators be made by employees of the Federal Grain Inspection Agency established by this bill within the Department of Agriculture to administer the program; (2) all grain transferred into or out of export elevators be officially weighed by Federal employees; (3) grain may be officially weighed at major inland terminal elevators either by Federal employees or by State employees under Federal supervision; and (4) large companies engaged in merchandising grain in foreign commerce must be registered with the Agency; strengthens the civil and criminal penalties available under the Act to enforce honest and accurate grain inspection and weighing; and provides for the recovery of most of the costs of the program through fees for program services. H.R. 12572—Passed House April 12, 1976; Passed Senate amended April 26, 1976; In conference. (153)

Milk price supports: Establishes the support price for milk at 85 percent of the parity price effective on the date of enactment and ending on March 31, 1978. S.J. Res. 121—Vetoed January 30, 1976. Senate sustained veto February 4, 1976. (27)

Peanut allotments: Authorizes the Secretary of Agriculture, for 1976 and subsequent years, to permit the transfer of all or part of the peanut acreage allotments for any farm located in an area having suffered a natural disaster which would prevent the planting of peanuts on a timely basis to another farm engaged in the production of peanuts. S. 1545—Public Law 94-247, approved March 25, 1976. (VV)

Potash supplies: Expresses as the sense of the Senate that: the Department of State should express concern to the Canadian Government and the Government of the Province of Saskatchewan that supplies of the critical plant nutrient, potash, not be disrupted; the Department of State should determine the exact objectives and likely conclusions of the proposed takeover of the potash industry by the Government of the Province of Saskatchewan; and the Department of Agriculture should develop contingency plans to assure an adequate supply of potash for American agriculture in the event that supplies from Saskatchewan should be temporarily or permanently disrupted. S. Res. 403—Senate agreed to March 17, 1976. (VV)

Resource conservation and development loans: Amends the Bankhead-Jones Farm Tenant Act, as amended, to increase from $250,000 to $500,000 the amount of any loan which may be made for a research conservation and development project under the act without prior approval by the House and Senate Agriculture Committees; and redefines the term "aquaculture" to mean the culture or husbandry of aquatic animals or plants for scientific purposes or for creating or augmenting publicly owned and regulated stocks of fish in streams or rivers, in order to make certain types of fish aquaculture and hatchery fisheries eligible for loans under the act. S. 2485—Passed Senate May 25, 1976. (VV)

Rice production: Contains provisions effective for the 1976 and 1977 crops of rice; suspends marketing quotas and authorizes unrestricted planting of rice; establishes a national acreage allotment of 1.8 million acres, which is to be used only for determining program benefit recipients and amounts;

Establishes a price of $8 per hundredweight for the 1976 crop, adjusted to reflect changes in the index of prices paid by farmers for production items, interest, taxes and wage rates beginning on the date of enactment and ending July 31, 1976; provides that the established price for the 1977 crop would be the 1976 price, adjusted for changes in the index during the previous 12-month period, and that such established prices for both crops may be further adjusted for changes in yields;

Provides a 1976 loan rate of $6 per hundredweight, adjusted as in the case of the established price, and for a 1977 loan rate adjusted to reflect any change in the established price;

Authorizes payments if the 5-month average market price received by producers falls short of the established price (if the market price is higher than the established price, no payments are made);

Authorizes disaster payments, limited to $55,000 per person, under certain conditions; authorizes sales, leases, and transfers of allotments and a rice research program; and contains other provisions. H.R. 8529—Public Law 94-214, approved February 16, 1976. (23)

Tobacco allotments: Permits the lease and transfer of all types of flue-cured tobacco farm acreage allotments or marketing quotas across county lines in any State where a majority of the producers of flue-cured tobacco, voting in referendum, approve; and excludes North Carolina from the provisions of the bill. S. 700—Passed Senate January 26, 1976. (VV)

Watershed projects: Amends the Watershed Protection and Flood Prevention Act, as amended, to increase from $5 million to $10 million the limitation on any single loan or advancement for watershed works of improvement. S. 2484—Passed Senate April 13, 1976. (VV)

Wool Act payments: Authorizes the Secretary of Agriculture to amend retroactively the regulations governing the computation of price support payments under the National Wool Act of 1954 for the marketing years 1969 through 1972 to permit making Wool Act payments to certain farmers and ranchers who failed to receive the full proceeds from their sale of wool because of defaults in payments by their marketing agency; and provides that the computation be based on the lesser of (a) the net sales proceeds based on the price the farmer or rancher would have received had there been no default of payment or (b) the fair market value of the wool at the time of sale. S. 532—Passed Senate April 13, 1976. (VV)

APPROPRIATIONS

1976 and Transition Period:

Continuing: Extends the continuing resolution (Public Law 94-159) which expires on March 31, 1976, until September 30, 1976, to provide obligational authority for programs funded under the foreign assistance and District of Columbia Appropriations Acts which have not yet been enacted; extends authority for certain programs for the Department of Health, Education, and Welfare and the Corporation for Public Broad-

casting; and includes $175,000 for the National Commission on Water Quality to complete its final report. H.J. Res. 857—Public Law 94-254, approved March 31, 1976. (VV)

Defense: Appropriates $90,721,789,000 for fiscal year 1976 and $21,849,816,000 for the transition period July 1-September 30, 1976, for the military functions of the Department of Defense including pay, operations and maintenance, procurement, research and development, intelligence functions, and funds for the Central Intelligence Agency; prohibits the use of funds under this Act for any activities involving Angola other than intelligence gathering and contains other provisions. H.R. 9861—Public Law 94-212, approved February 9, 1976. (*505, *602)

Foreign aid: Appropriates $5,328,640,909 in new budget (obligational) authority for Foreign Assistance Act activities, foreign military credit sales, foreign assistance and other programs and for activities of the Export-Import Bank for fiscal year 1976 and $978,179,000 for these activities for the transition period; prohibits assistance to North or South Vietnam, Cambodia, or Laos; and prohibits aid to any nation which is in default on payments of U.S. loans for more than 1 year. H.R. 12203—Passed House March 4, 1976; Passed Senate amended March 23, 1976; Conference report filed. (90)

Labor-HEW: Appropriates $36,073,748,318 for fiscal year 1976 and $8,953,070,000 for the transition period July 1-September 30, 1976, for the Departments of Labor, and Health, Education, and Welfare (HEW), and related agencies; includes programs for comprehensive manpower assistance and public service employment, occupational health and safety (OSHA), maternal and child health, emergency medical services, Public Health Service hospitals, National Institutes of Health (NIH) research, alcohol, drug abuse, and mental health programs, public assistance, human development, and community services programs;

Increases funds for OSHA to provide 333 additional compliance officers; directs the Department of Labor to take the following actions in the area of occupational safety and health: (1) upgrade the skills of OSHA inspectors through intensive retraining, (2) review and simplify existing OSHA standards and eliminate standards which do not deal with workplace conditions that are clearly hazardous to the health or safety of workers or are more properly under the jurisdiction of State departments of public health; (3) redirect enforcement programs to place increased emphasis on problems related to worker health; (4) redirect inspection efforts away from industries with good worker health and safety records so as to permit increased inspection in industries with the greatest health and safety problems; and (5) develop fine-free on-site consultation programs to advise employers of the application of OSHA standards in their workplace; requires the Secretary of Labor to report to the Senate and House Appropriations Committees 30 days prior to the first day of a scheduled hearing what actions have been taken to comply with these directives; and

Prohibits the use of funds contained in the Act to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home and which offers the courses of study pursued by the student in order to comply with title VI of the Civil Rights Act of 1964. H.R. 8069—Vetoed December 19, 1975. House overrode veto January 27, 1976; Senate overrode veto January 28, 1976. Became Public Law 94-206, without approval January 28, 1976. (*423, 15)

Supplemental: Appropriates $2,242,384,000 in emergency supplemental appropriations for fiscal year 1976 to the Department of Labor ($522,420,000 for summer youth jobs, $1.2 billion for public service employment, and $55.9 million for part time jobs for low-income older persons); HEW ($135,064,000 for a nationwide influenza immunization program to prevent an expected swine flu epidemic, and $23 million for Summer Youth Recreation and Transportation and the National Youth Sports Programs); and includes $300 million to liquidate obligations made under the Environmental Protection Agency's waste treatment construction program. H.J. Res. 890—Public Law 94-266, approved April 15, 1976. (142)

Supplemental: Makes supplemental appropriations of $9,393,791,970 in new budget authority for fiscal year 1976 and $2,647,057,180 for the transition period July 1-September 30, 1976; contains funds for the emergency school aid program (ESAP), areas facing difficulties as a result of desegregating schools such as in Boston and Louisville, drug abuse community programs, international agriculture development programs, military procurement, child nutrition and food stamp programs, cost-of-living increases, public assistance payments, veterans benefits, liquidation of obligations for the Federal-Aid Highway Program, elderly and handicapped housing loans, basic education grants, Corporation for Public Broadcasting, Regional Rail Service, National Commission on the Observance of International Women's Year, disaster relief for victims of recent earthquakes in Italy, and Corporation for Public Broadcasting; bars the use of funds under this or previous acts to continue the study of the effect of marihuana on human sexual response at Southern Illinois University and for the People's Bicentennial Commission; and contains other provisions. H.R. 13-172—Public Law 94- , approved , 1976. (173)

Supplemental legislative: Appropriates $33 million for fiscal year 1976 to complete the construction of the Library of Congress James Madison Memorial Building; retitles the Senate position of Procurement Officer, Auditor, and Deputy Sergeant at Arms to Deputy Sergeant at Arms and Doorkeeper; and increases the maximum salary which the Sergeant at Arms and Doorkeeper may fix for the position from $35,298 to $39,909 with the provision that such authority does not supersede any order of the President pro tempore of the Senate authorizing a higher salary or an adjustment under section 4 of the Federal Pay Comparability Act of 1970. H.J. Res. 811—Public Law 94-226, approved March 9, 1976. (VV)

Supplemental railroad: Makes supplemental appropriations of $587 million for fiscal year 1976, $4.25 million for the transition period July 1-September 30, 1976, $995.3 million for fiscal year 1977, and $176 million for fiscal year 1978 to implement the reorganization of the bankrupt Penn Central Railroad and 6 other railroads servicing a 17-State region in the northeastern and midwestern portion of the Nation. H.J. Res. 801—Public Law 94-252, approved March 30, 1976. (50)

ATOMIC ENERGY

Nuclear Regulatory Commission: Authorizes $274,300,000 for the Nuclear Regulatory Commission for fiscal year 1976; permits the obligation of funds received by the Commission for the cooperative nuclear safety research programs only to the extent provided in appropriation acts; and permits the retention and use of funds received by the Commission under appropriations acts for the cooperative nuclear research programs during fiscal year 1976. S. 3107—Public Law 94-291, approved May 22, 1976. (VV)

BUDGET

Deferrals—1976:

Army Corps of Engineers: Disapproves the proposed deferral of $700,000 contained in the Public Works Appropriations Act of 1976 (Public Law 94-180) for the United States Army Corps of Engineers to plan and design hopper dredges which was recommended by the President in his message of January 23, 1976. S. Res. 408—Senate agreed to April 14, 1976. (VV)

Indian health facilities: Disapproves the proposed deferral of $14,908,000 contained in the Department of the Interior and Related Agencies Appropriations Act of 1976 (Public Law 94-165) for Indian Health Facilities which was recommended by the President in his messages of July 26, 1975, and January 23, 1976. S. Res. 366—Senate agreed to March 9, 1976. (VV)

Indian public school construction: Disapproves the proposed deferral of $10,881,000 contained in the Department of the Interior and Related Agencies Appropriations Act of 1976 (Public Law 94-165) for construction grants to public schools in Indian reservation areas which was recommended by the President in his message of February 6, 1976. S. Res. 388—Senate agreed to March 9, 1976. (VV)

Youth Conservation Corps: Disapproves the proposed deferral of $23,680,000 contained in the Department of the Interior and Related Agencies Appropriations Act of 1976 (Public Law 94-165) for the Youth Conservation Corps which was recommended by the President in his message of February 6, 1976. (VV) S. Res. 385—Senate agreed to March 9, 1976. (VV)

Rescissions—1976:

Consumer Product Safety, Interior, Park Service, Selective Service, and State: Rescinds $75,831,000 of the $83,506,000 recommended by the President in his message of January 23, 1976, as follows: $2,656,000 for salaries and expenses of the Consumer Product Safety Commission; $1,775,000 for salaries and expenses of the Selective Service system; $4.9 million for the Department of Interior Bureau of Land Management, public lands development roads and trails; $58,500,000 for road construction of the National Park Service; and $8 million for road construction of the National Park Service; and $8 million for educational and cultural exchange activities of the Department of State. H.R. 11665—Public Law 94-249, approved March 25, 1976. (VV)

Resolutions—1976:

First budget resolution: Sets the level for total budget outlays for fiscal year 1976 at $413.3 billion, for total new budget authority at $454.2 billion, for the deficit at $50.8 billion, for Federal revenues at $362.5 billion and recommends a decrease in the aggregate levels of Federal revenues of $15.3 billion; and for the public debt at $713.1 billion with an increase in the temporary statutory limit on the public debt of $65.9 billion;

Sets the total levels for outlays for the major functional categories in the budget at $413.3 billion as compared to the President's budget recommendation, as revised in the spring update of March 25, 1976, for outlays of $395.2 billion, as follows (figures are in billions of dollars):

National defense: $100.8 as compared to $101.1; international affairs: $6.6 as compared to $6.9; general science, space, and technology: $4.5 as compared to $4.5; natural resources, environment, and energy: $15.7 as compared to $13.8; agriculture: $2.0 as compared to $1.9; commerce and transportation: $17.7 as compared to $16.4; community and regional development: $7.8 as compared to $5.7; education, training, employment, and social services: $23.0 as compared to $17.6; health: $37.9 as compared to $35.5; income security: $139.3 as compared to $136.5 (adjusted to exclude earned income tax credit); veterans benefits and services: $19.5 as compared to $17.2; law enforcement and justice: $3.5 as compared to $3.4; general government: $3.5 as compared to $3.6; revenue sharing and general purpose fiscal assistance: $7.35 as compared to $7.4; interest: $40.4 as

compared to $41.3; allowances: $1.15 as compared to $1.5; and undistributed offsetting receipts: a minus $17.4 as compared with a minus $18.4.

Sets for the transition quarter beginning on July 1, 1976, levels of $86.0 billion for Federal revenues, $96.3 billion for total budget outlays, $16.2 billion for the deficit, and $647.2 billion for the public debt with an increase in the amount of the temporary debt limit of $20.2 billion. S. Con. Res. 109—Action completed in both Houses. (148, 175)

CONGRESS

Congressional tax liability: Amends title 4, U.S.C., to make it clear that Members of Congress may not, for the purposes of State income tax laws, including those of the District of Columbia, be treated as residents of any State other than the State from which they were elected; and provides equal treatment for delegates from the District of Columbia, Guam and the Virgin Islands and the Resident Commissioner from Puerto Rico. S. 2447—Passed Senate February 18, 1976. (VV)

Inaugural Committee: Authorizes a joint committee consisting of three Senators and three Representatives, to be appointed by the President of the Senate and the Speaker of the House respectively, to make the necessary arrangements for the inauguration of the President-elect and Vice President-elect on January 20, 1977. S. Con. Res. 90—Action completed by both Houses. (VV)

Joint Committee on the Bicentennial: Amends S. Con. Res. 44 which established the Joint Committee on Arrangements for Commemoration of the Bicentennial to grant the Committee the power to enter into contracts for food, restroom, first aid, and informational facilities and to accept for transmittal to the Treasury whatever profits might be derived from such arrangements. S. Con. Res. 103—Action completed by both Houses. (VV) 1976. (VV)

Magna Carta delegation: Provides for a delegation of 25 Members of Congress consisting of the Speaker of the House, 12 members appointed by the Speaker, and 12 members appointed by the President of the Senate (upon the recommendation of the Majority and Minority Leaders) to go to the United Kingdom, at the invitation of the two Houses of Parliament, to accept a 1-year loan of an original copy of the Magna Carta for display in the Rotunda of the Capitol in connection with the Bicentennial. S. Con. Res. 98—Action completed by both Houses. (VV)

Professional societies fellowship programs: Expresses the appreciation of the Congress to the following scientific and engineering societies for their Congressional Science and Engineering Fellowship Programs: The American Association for the Advancement of Science, The American Physical Society, The Institute of Electrical and Electronic Engineers, The American Society of Mechanical Engineers, The American Psychological Association, The American Institute of Aeronautics and Astronautics, The Optical Society of America, and The Federation of American Societies for Experimental Biology, gives special thanks to The American Association for the Advancement of Science for its role in coordinating the fellowship programs of the various societies; and encourages the scientific and engineering communities to continue to expand this public service activity. S. Con. Res. 100—Action completed by both Houses. (VV)

CONSUMER AFFAIRS

Consumer Food Act: Requires food processors to develop, implement, and maintain adequate safety assurance procedures, and empowers the Secretary of Health, Education, and Welfare to develop and enforce safety assurance standards for procedures and systems that fail to provide adequate protection agains unreasonable risks of adulteration; seeks to upgrade the Nation's food safety and sanitation programs by requiring food recall coding, by providing a national registration program for food processors, and by extending the Food and Drug Administration's inspection authority to include records maintained by food processors; and requires food manufacturers to provide complete, and in some cases quantitative, food ingredient information, open dating information, and information regarding the nutritional value of food products. S. 641—Passed Senate March 18, 1976. (86)

Consumer leasing: Amends the Truth in Lending Act to make the provisions of the Act applicable to leases of consumer durables (such as automobiles and household goods) with a total contractual obligation not exceeding $25,000, to protect consumers against inadequate and misleading leasing information, to limit ultimate liability in connection with the leasing of such property, and to provide consumers with more meaningful information about the component and aggregate costs so that they can make better informed choices between leases, and between leases and credit sales. H.R. 8835—Public Law 94-240, approved March 23, 1976. (VV)

Consumer product safety: Authorizes $51 million for fiscal year 1976, $14 million for the transition period July 1-September 30, 1976, $60 million for fiscal year 1977, and $68 million for fiscal year 1978 to implement the Consumer Product Safety Act; contains provisions concerning the jurisdiction of the Consumer Product Safety Commission which: (1) eliminates pesticides from the Commission's jurisdiction under the Poison Prevention Packaging Act of 1970 as being duplicative of the Environmental Protection Agency's authority under the Federal Environmental Pesticide Control Act of 1972 to enforce pesticide-related packaging standards for the purpose of child protection; (2) provides that the Commission has no jurisdiction to regulate tobacco or tobacco products as being a "hazardous substance" under the Federal Hazardous Substances Act; (3) provides that the Commission, under the Hazardous Substances Act, may not regulate ammunition as a "hazardous substance" but may continue to establish and enforce cautionary labeling requirements relative to storage in a household, and may continue to regulate fireworks as a "hazardous substance"; requires the Commission to submit to the Senate and House Commerce Committees proposed safety rules and prohibits the Commission from adopting such a rule for 30 days; requires Commission approval prior to the submission of requests for appropriations by the Chairman; prohibits review or approval by any officer or entity within the Executive Office of the President of any employee or official other than a Commissioner; requires, in order to facilitate the identification of potential product hazards, that a product liability insurer or an independent testing laboratory which discovers a substantial product hazard in the course of its business must report that finding to its insured or its client and inform him of his obligations, if any, under the law; enlarges the enforcement authority of the Commission; provides a uniform Federal preemption clause for the Federal Hazardous Substances Act, the Flammable Fabrics Act and the Consumer Product Safety Act which provides that if the Commission has standards or regulations in effect for a product, State or local requirements must conform to the Federal standard unless the State requirement does not cause the product to be in violation of the Federal standard and provides a significantly higher degree of protection without unduly burdening the manufacture or distribution of products in interstate commerce; authorizes the Commission to seek a preliminary injunction to restrain distribution of a consumer product which the Commission has reason to believe presents a substantial product hazard; amends the Federal Tort Claims Act to allow a suit against the Consumer Product Safety Commission for a claim based upon a misrepresentation, deceit or discretionary abuse; gives courts the discretion to award attorney's fees to persons involved in obtaining judicial review under the Consumer Product Safety Act; and contains other provisions. S. 644—Public Law 94-284, approved May 11, 1976. (*297)

Equal credit opportunity: Amends title VII of the Consumer Credit Protection Act to expand the prohibitions against discrimination in credit transactions to include age, race, color, religion, national origin, receipt of public assistance benefits, and exercise of rights under the Act; provides that a rejected credit applicant may, upon request, obtain a statement giving the specific reasons credit was refused; creates a Consumer Advisory Council in the Federal Reserve Board to advise and consult with the Board concerning its supervisory functions under the Act and phases the existing Truth in Lending Advisory Committee into the Council; clarifies the relationship of this Act to existing or future State law dealing with credit discrimination, while generally allowing the State law to remain in effect if it is not inconsistent with this Act; strengthens the enforcement mechanisms in present law by continuing the present limits on punitive damages of $10,000 for individual actions and $100,000 for class actions and raising the ceiling for class action recoveries of civil penalties from the present formula of the lesser of $100,000 or 1 percent to the lesser of the $500,000 or 1 percent of the creditor's net worth; and empowers the U.S. Attorney General to bring enforcement actions, either on referral from other agencies or on his own initiative, where there are patterns or practices in violation of this Act. H.R. 6516—Public Law 94-239, approved March 23, 1976. (VV)

Gold labeling: Amends the National Gold and Silver Stamping Act of 1906 to provide that the actual fineness of gold or gold alloy (which is (1) used in any article made in whole or in part of gold or any of its alloys, (2) offered for sale, imported, exported, transported, mailed, or otherwise distributed in interstate or foreign commerce, or (3) sold by any manufacturer or importer more than 5 years after the date of enactment of this section) shall not be less than approximately 1/14th carat (presently 1/2 carat) of the indicated number of carats for articles made of gold or gold alloy and approximately 1/24th carat (presently 1 carat) of the indicated number of carats for articles with solder or gold alloy of inferior fineness which are used to unite the parts of the article. S. 3095—Passed Senate May 13, 1976. (VV)

Motor vehicle information and cost savings: Amends the Motor Vehicle Information and Cost Savings Act to authorize additional appropriations to implement the four titles of the bill for fiscal year 1976, the transition period July 1-September 30, 1976, and fiscal year 1977 respectively, as follows: Title I, which requires the Secretary of Transportation to promulgate bumper standards applicable to all passenger motor vehicles: $500,000, $125,000 and $500,000; Title II, which provides for an automobile consumer information program: $2 million, $650,000 and $4 million; Title III, which provides for diagnostic inspection demonstration projects: $5 million, $1.5 million, $7.5 million; and Title IV, which sets odometer requirements: $450,000, $100,000 and $650,000; redefines the special motor vehicle diagnostic inspection demonstration project under title III to assure that the project will be designed for use by States for high volume inspection facilities to evaluate conditions of parts,

components and repairs required to comply with State and Federal safety, noise and emission standards and to assist the owner in achieving the optimum fuel and maintenance economy and authorizes an additional $7.5 million for fiscal year 1978 to implement this program: provides the Secretary with additional authority to enforce the odometer anti-tampering provisions; and imposes a civil penalty of not to exceed $10,000 for each violation and criminal penalties of not more than $50,000 and/or 1 year in prison. S. 1518—Passed Senate June 5, 1975; Passed House amended January 22, 1976. (VV)

CRIME-JUDICIARY

Bankruptcy referees salary: Amends the procedure for fixing the salaries of bankruptcy referees and implements the Congressional Salary Adjustment Act (Public Laws 90-206 and 94-82); restores to Congress the sole authority to fix salaries of full-time bankruptcy referees which are set at $36,000 per year subject to adjustment pursuant to Public Laws 90-206 and 94-82; sets the maximum salary of a part-time bankruptcy referee at $18,400 subject to adjustment of the Judicial Conference; and provides that a retired referee may be called upon by a referee of a court of bankruptcy, and if willing, perform the duties of a bankruptcy referee within the jurisdiction of the court at the same compensation as the assigned referee serving the territory to which the retired referee is assigned. H.R. 6184—Public Law 94-217, approved February 27, 1976. (VV)

Copyright revision: Makes a general revision of the copyright law including: a lengthening of the period of a copyright from 56 years (28 years plus an allowed renewal of 28 years) to the lifetime of the author plus 50 years; the establishment of a Copyright Royalty Tribunal in the Library of Congress, which would set royalty rates, to be reviewed and changed every 10 years, for the use under a system of compulsory licenses of copyrighted works by cable television systems, public broadcasting stations, and certain jukebox owners; a requirement that jukebox owners, presently exempt from royalty payment requirements, must pay a royalty of $8 annually per machine; provisions permitting libraries to reproduce or distribute not more than one copy of a copyrighted work, which must include a notice of the copyright; and contains other provisions. S. 22—Passed Senate February 19, 1976. (40)

District court judgeships: Provides for the creation of 45 additional district court judgeships in 40 judicial districts located in 28 States and Puerto Rico so as to enable the district courts to handle more efficiently and expeditiously the increased volume of cases brought before them; reallocates the 7 judgeships authorized for the 3 judicial districts in the State of Oklahoma to provide a more equitable workload; converts the temporary judgeship in the middle district of Pennsylvania to a permanent judgeship; and contains other provisions. S. 287—Passed Senate April 1, 1976. (113)

Drug Enforcement Administration agents: Authorizes the Permanent Subcommittee on Investigations, at the discretion of its chairman, to provide the Drug Enforcement Administration with any information in its possession relevant to alleged illegal activities of certain agents of the Drug Enforcement Administration. S. Res. 391—Senate adopted February 17, 1976. (VV)

Lotteries: Amends titles 18 and 39, U.S.C., to make the present exemption which permits a newspaper published in a State with a State-conducted lottery to contain lottery information concerning that State's lottery, also apply to a newspaper published in an adjacent State in order to permit it to carry such lottery information provided the adjacent State also had a State-conducted lottery thus providing an exemption for newspapers with the same scope as that now applied to radio and television stations. H.R. 1607—Passed House June 6, 1975; Passed Senate February 4, 1976. NOTE: (A motion made on February 5, 1976, to reconsider the vote by which the Senate passed the bill is still pending.) (VV)

Mississippi judicial district: Amends title 28, U.S.C., to authorize an additional place in Corinth for holding court in the Eastern Division of the Northern Judicial District of Mississippi. S. 2412—Passed Senate May 11, 1976. (VV)

North Dakota judicial districts: Amends title 28, U.S.C., to transfer Bottineau, McHenry, Pierce, Sheridan, and Wells Counties from the Southwestern and Northeastern Judicial District of North Dakota to the Northwestern Judicial District of North Dakota in order to reduce the average distance which litigants, attorneys, and jurors in these counties must travel to the nearest place of holding court. S. 2887—Passed Senate May 11, 1976. (VV)

Parole reorganization: Reorganizes the Federal parole structure by abolishing the present U.S. Board of Parole and replacing it with a 9-member U.S. Parole Commission as an independent agency attached to the Department of Justice (one to serve as Chairman, three to serve as members of a National Appeals Board, and five to serve in the five regions around the country); provides that the Commissioners shall be appointed by the President with the advice and consent of the Senate for 6 year terms except that no one may serve more than 12 years; provides for panels of hearing examiners, operating under guidelines adopted by the full Commission, to conduct parole hearings and recommend decisions subject to review by regional commissioners and the National Appeals Board before becoming final; provides an internal process by which the Attorney General or the offender may trigger a review by the National Appeals Board of any decision made by a regional commissioner; gives the Chairman the necessary administrative powers to keep the decision-making machinery of the Parole Commission operating on a timely basis; provides a procedure to insure better opportunities for decision-making and fairness in parole interviews; requires that the revocation process whereby a parolee is returned to prison for violating the conditions of his parole not based on a new criminal conviction must contain certain procedural safeguards set forth by the Supreme Court in Morrissey v. Brewer, 408 U.S. 471 (1972) and Gagnon v. Scarpelli, 411 U.S. 778 (1973), and in the case of a parolee charged with a new criminal conviction, the parole revocation process must satisfy the probable cause requirement set forth in U.S. v. Tucker, F.2d 77 (Fifth Cir. 1975); provides a process of appeal where conditions were imposed on a parole or release has been modified or denied or parole revoked with review of decisions upon written request; and provides that an offender who has demonstrated by his conduct that he has rehabilitated himself could be discharged from supervision by the Parole Commission. H.R. 5727—Public Law 94-233, approved March 15, 1976. (VV)

Patent laws revision: Provides for the general revision of the United States patent system including: duties and procedures of a generally administrative nature imposed on or carried out by the Patent and Trademark Office; substantive and procedural provisions regarding the obtaining of patents; rights of a patent holder and their enforcement; and implementation of the Patent Cooperation Treaty. S. 2255—Passed Senate February 26, 1976. (VV)

Territorial judges cost-of-living adjustment: Amends section 373, title 28, U.S.C., to grant to eligible judges the same cost-of-living adjustments in their retirement compensation as is given to annuitants under the civil service retirement fund as provided and computed in section 8340(b), title 5, U.S.C.; limits the total amount payable by any cost-of-living adjustment to 95 percent of the salary payable to a U.S. district court judge in regular active service; and excludes any life-tenure district court judge who retired by resigning the office in which event he receives the salary he was receiving at the time of his resignation for the remainder of his life. S. 14—Passed Senate February 4, 1976. (VV)

U.S. magistrates jurisdiction: Amends section 636(b), title 28, U.S.C., to clarify and further define the additional duties which may be assigned to a U.S. Magistrate in the discretion of a judge of the district court including the power to hear and determine certain pretrial motions and to hear and recommend disposition motions; provides that the order or recommendation of a magistrate is subject to final review by a judge of the court; and provides that a magistrate may be assigned any other duty not inconsistent with the Constitution and laws of the United States to enable the district courts to continue innovative experimentations in the use of the magistrate. S. 1283—Passed Senate February 5, 1976. (VV)

U.S. magistrates salary: Amends title 28, U.S.C., to provide that full-time U.S. Magistrates shall receive the same salary as full-time referees in bankruptcy and adjusts the salary of part-time magistrates to up to one-half of the amount received by full-time magistrates instead of the fixed amount of $15,000 contained in present law, thus giving the Judicial Conference of the United States which sets the salary of magistrates, the authority necessary to fix the salary of full-time magistrates at $36,000 per year, the current statutory maximum for referees in bankruptcy. S. 2923—Passed Senate February 5, 1976. (VV)

DEFENSE

Armed Services per diem allowance: Amends section 404(d) of title 37, U.S.C., to increase the maximum rate of per diem allowance for uniformed services personnel traveling on official business from $25 to $35 and from $40 to $50 for travel to "high cost" areas under "unusual circumstances." H.R. 8089—Passed House November 17, 1975: Passed Senate amended March 31, 1976. (VV)

Assistant commandant of the Marine Corps: Authorizes the Assistant Commandant of the Marine Corps to have the permanent grade of General, at the discretion of the President, with the advice and consent of the Senate, without regard to the overall strength of the Marine Corps instead of, as provided in present law, if the overall strength of the Marine Corps exceeds 200,000; and provides that the Secretary of Defense rather than the service Secretary must determine the disability retirement of general officers and medical officers. S. 2117—Public Law 94-225, approved March 4, 1976. (VV)

Carbonyl chloride: Grants the Secretary of Defense authority to sell, within the United States, all stocks of the chemical labeled carbonyl chloride (also named phosgene) or any of its commercial derivatives procured by the Department of Defense for use as a chemical warfare agent notwithstanding the provisions of section 409 of Public Law 91-441 which prohibit disposal of a chemical warfare agent before it has been detoxified (unless immediate disposal is clearly necessary, in an emergency, to safeguard human life) or transport of a chemical to or from any military installation in the United States unless the Secretary determines that it is in the interest of national security. H.R. 9570—Public Law 94-251, approved March 29, 1976. (VV)

Defense production—voluntary agreements: Amends the Defense Production Act, as amended (Public Law 94-153), to make the provisions relating to voluntary agreements developed in support of the national defense effort or the International Agreement on an International Energy Program effective 120 days after the effective date of the Act (November 30, 1975) in order to afford certain agencies adequate time to prepare voluntary agreements which conform to the new provisions. H.J. Res. 784—Public Law 94-220, approved February 27, 1976. (VV)

Department of Defense employees oath authority: Amends section 303, title 5, U.S.C., to authorize civilian employees of the Department of Defense to administer oaths to witnesses while conducting official investigations. H.R. 508—Public Law 94-213, approved February 13, 1976. (VV)

Household goods shipments: Empowers the Federal Maritime Commission to investigate and suspend non-compensatory rates submitted by movers to the Department of Defense when those rates are submitted under a traffic allocation system such as the "Okinawa Trial" which denies the opportunity for other movers to bid for the traffic within a period of time. S. 2023—Passed Senate March 29, 1976. (VV)

Military construction authorization: Authorizes $3,289,785,000 for fiscal year 1977 to provide construction and other related authority for the military departments and the Office of the Secretary of Defense, within and outside the United States, and authority for the construction of facilities for the Reserve components; includes funds for the NATO infrastructure program; the Naval nuclear weapons storage site upgrade program; the aeropropulsion systems test facility at the Arnold Engineering Development Center near Tullahoma, Tennessee; and the Trident weapon system; requires the Department of Defense to report to the Armed Services Committees of the Senate and House on a bi-monthly basis for the next 2 years the following information on each of the 2 sites for the nuclear weapons storage programs: (1) estimated cost, (2) design start date (actual or estimated), (3) construction contract award date (actual or estimated), (4) completion date (actual or estimated), and (5) remarks including the reasons for any changes from the previous report; incorporates into law present Defense Department procedures relating to base closings to alleviate the large amount of litigation that has resulted from such closings; and contains other provisions. H.R. 12384—Passed House May 7, 1976; Passed Senate amended May 20, 1976; On conference. (183)

Military procurement authorization: Authorizes a total of $31,831,348,000 for fiscal year 1977 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces; prescribes the authorized personnel strength for each active duty component and for the Selected Reserve of each Reserve component of the Armed Forces and of civilian personnel of the Department of Defense; and authorizes the military training student loads. H.R. 12438—Passed House April 9, 1976; Passed Senate amended May 26, 1976; In conference. (200)

Reservists active duty: Authorizes the President, if he determines it is necessary to augment active forces for operational missions, to authorize the Secretaries of Defense or Transportation (in the case of 50,000 Selected Reservists for a limited 90-day period, without a declaration of war or national emergency; prohibits the call-up of reservists to perform functions relating to insurrection or enforcement of State laws or to assist Federal or State Government in time of disaster, accident, or catastrophe; excludes members called up from computation of active duty strength and grade structure; requires the President to submit to the Speaker of the House and the President of the Senate a written report stating the circumstances necessitating the call up of reservists and the anticipated use of them; provides that the service of all units so called up may be terminated by order of the President or by passage of a concurrent resolution by the Congress; reaffirms that nothing contained in this Act shall be construed as amending or limiting the application of the provisions of the war powers resolution; and entitles any reserve member ordered to active duty to the same reemployment rights and benefits currently provided reservists ordered to initial active duty for training for 3 months or more. S. 2115—Public Law 94-286, approved May 14, 1976. (VV)

DISTRICT OF COLUMBIA

Medical and dental manpower: Extends for 1 year, through fiscal year 1977, title III of the District of Columbia Medical and Dental Manpower Act of 1970, as amended, which provides Federal grant assistance to Georgetown University Schools of Medicine and Dentistry and the George Washington University School of Medicine with such grants limited to the minimum amounts necessary but not to exceed $5,000 per enrolled medical student or $3,000 per enrolled dental student. H.R. 12132—Public Law 94- , approved 1976. (VV)

Metro transit police: Gives Congressional consent to amendments adopted by the Commonwealth of Virginia and the State of Maryland and favored by the District of Columbia Government by amending the Washington Metropolitan Area Transit Regulation Compact (which is the interstate compact agency for construction and operation of the METRO rapid transit system and operation of the METRO bus system) to authorize the Washington Metropolitan Area Transit Authority to establish and maintain a regular METRO Transit Police Force having jurisdiction over all METRO property and powers which are the same as those of law enforcement officers of the signatory jurisdictions; authorizes the Transit Authority to issue rules and regulations for safe and effective transit facility operations; designates the Superior Court of the District of Columbia as the court of competent jurisdiction in the District for prosecution of violations against Transit Authority rules and regulations; clarifies the authority of the D.C. Council to enact amendments to the Compact agreement; and reserves the right of Congress to amend, alter, or repeal this Act. H.R. 8719—Public Law 94- , approved 1976. (VV)

Southeastern University: Insures the continued eligibility of Southeastern University for the benefits of the several acts providing for aid to higher education; amends its Charter to make possible the continued operation of the University as a nonprofit, tax-exempt educational institution under the provisions of section 501(c)(3) of the Internal Revenue Code; and makes provisions of Federal law relating to the audit of accounts of private corporations apply to the University. S. 611—Public Law 94-350, approved March 29, 1976. (VV)

ECONOMY—FINANCE

Bankruptcy of major municipalities: Amends Chapter IX of the Bankruptcy Act to change the procedure by which the debts of political subdivisions and public agencies and instrumentalities are adjusted to enable a city to continue to function in an orderly manner while an adjustment or extension of its debts is negotiated with its creditors; provides that a legislature, or a governmental officer or organization empowered by State law is authorized to file a petition stating its eligibility to file, its inability to pay its debts as they mature, and its desire to effect a plan of composition or extension of its debts; provides that an entity is not eligible for relief unless (1) it has successfully negotiated a plan of adjustment of its debts with creditors holding at least a majority in amount of the claims of each class which are claims affected by that plan, (2) it has negotiated in good faith with its creditors and has failed to obtain, with respect to a plan of adjustment with its debts, the agreement of creditors holding at least a majority in amount of the claims of each class which are claims affected by that plan, (3) such negotiation is impracticable, or (4) it has a reasonable fear that a creditor may attempt to obtain a preference; provides that the filing of the petition would operate as a stay of the commencement or continuation of any court or other proceeding against the debtor; provides that while the city is negotiating with its creditors so as to work out a suitable plan, the city would remain under the management of whatever form of government is provided by State law; authorizes the city to issue certificates of indebtedness to supplement available funds on a short-term basis for essential governmental services; and requires that a final proposed plan be approved by more than 50 percent of all creditors and by creditors holding two thirds of the amount. H.R. 10264—Public Law 94-260, approved April 8, 1976. (*575)

Child day care staffing standards: Delays the date for State compliance with Federal child care staffing standards from February 1, 1976, to July 1, 1976; increases Federal funding for social services programs by $62.5 million in fiscal year 1976 and $62.5 million for the transition quarter which is to be used only for child care expenditures and would be allocated on an 80 percent matching basis; reserves 20 percent of the additional Federal funding for allocation to States having particular funding problems related to complying with Federal child care standards; authorizes a tax credit for employing welfare recipients in child care; permits, on a temporary basis until September 30, 1976, the waiver of child care standards if the children receiving federally funded care represent no more than 20 percent of the total number of children served, or in the case of a center, no more than 5 such children, provided that it is not feasible to place the children in a facility which does meet the Federal requirements; modifies, also temporarily until September 30, 1976, the limitation on the number of children who may be cared for in a family day care home by not counting the family day care mothers own children if they are under age 6; and makes permanent certain social services provisions related to addicts and alcoholics. H.R. 9803—Vetoed April 6, 1976. House overrode veto May 4, 1976; Senate sustained veto May 5, 1976. (20,92,165)

Amends title XX of the Social Security Act to give States complete flexibility to determine what income or other eligibility conditions they wish to establish for participation in social services programs and how those conditions are to be enforced; extends the suspension of Federal staffing standards for child care for pre-school children retroactively from February 1, 1976, until October 1, 1977; provides $375 million in additional child care Federal funding to October 1, 1977; and provides incentives for the employment of welfare recipients in child care jobs. H.R. 12455—Passed House March 16, 1976; Passed Senate amended May 20, 1976; on conference. (188)

Library of Congress trust funds: Increases the amount of interest paid on the trust funds deposited with the United States Treasury by the Library of Congress Trust Fund Board to a rate which is the higher of the rate of 4 percent per annum or .25 percent less than a rate to be determined by the Secretary of the Treasury based on the cur-

rent average market yield on the outstanding long-term marketable obligations of the United States having the longest periods of maturity adjusted to the nearest ⅛th of 1 percent. S. 2619—Public Law 94–289, approved May 22, 1976. (VV)

Increases the amount of interest paid on the Library of Congress Trust Fund deposited with the United States Treasury under the Act of August 20, 1912 (Bequest of Gertrude M. Hubbard, a perpetual trust, for the purpose of adding to the Gardiner Greene Hubbard collection of engravings), to a rate which is the higher of the rate of 4 percent per annum or .25 percent less than a rate to be determined by the Secretary of the Treasury based on the current average market yield on the outstanding long-term marketable obligations of the United States having the longest periods adjusted to the nearest ⅛th of 1 percent, with such interest, as income, subject to disbursement for the purposes authorized and provided in the bequest. S. 2620—Public Law 94–290, approved May 22, 1976. (VV)

New York City retirement systems: Allows five New York City pension funds to participate in the plan worked out in November of 1975 between the city and its municipal employee unions and pension funds to purchase city notes without bringing to bear certain provisions of the Internal Revenue Code which affect the tax status of beneficiaries of such pension funds; provides that the Secretary of the Treasury may disapprove any amendment which the banks' Municipal Assistance Corporation may make to the Agreement if he feels it is not consistent with the purpose of this bill; and requires that reports on the financial condition of the funds be submitted to the Treasury and the Ways and Means and Finance Committees of the House and Senate respectively. H.R. 11700—Public Law 94–236, approved March 19, 1976. (VV)

Pension plans tax-free rollover: Provides for a tax-free rollover treatment to an employee who receives a payment on account of a termination of his employer's retirement plan or a complete discontinuance of contributions under such a plan, and in certain situations involving sales of subsidiaries and divisions of corporations: requires, generally, that the payment be reinvested by the employee in a qualified plan or individual retirement account within 60 days; and makes these provisions applicable to payments received on or after July 4, 1974. H.R. 12725—Public Law 94-267, approved April 15, 1976. (VV)

Public debt limit increase: Increases the temporary debt limit by $32 billion for a total temporary and permanent debt limit of $627 billion until June 30, 1976. H.R. 11893—Public Law 94-232, approved March 15, 1976. (VV)

State taxation of depositories: Extends from January 1, 1976, to September 12, 1976, the moratorium on interest taxation of depositories to allow Congress a full year to consider the recommendations of the Advisory Commission on Intergovernmental Relations whose report was not submitted to the Congress until September 12, 1975; adds Connecticut, Rhode Island, Maine and Vermont to the list of States allowed NOW accounts; amends the Truth in Lending Act to provide that discounts offered by merchandisers for cash purchases would not, for truth in lending disclosure purposes, constitute interest or a finance charge under the State usury or time-price differential laws; places a 3-year limit on the ban against surcharges to give Congress an opportunity to review the matter during that time; and authorizes the Federal Reserve Board to delegate to its staff, the authority to issue interpretations or approvals that would have binding effect in subsequent litigation over violations of the Truth in Lending Act. S. 2672—Public Law 94-222, approved February 27, 1976. (VV)

EDUCATION

Allen J. Ellender fellowships: Extends for 4 years, through fiscal year 1980, the Allen J. Ellender Fellowship Program authorized by Public Law 92-506 which provides fellowships to disadvantaged secondary school children; increases the authorization therefor from $500,000 annually to $750,000 for fiscal years 1977 and 1978, and $1 million for fiscal years 1979 and 1980; eliminates the present limitation on the number of fellowships to be awarded annually to accommodate the increased funding; amends that section of the Program which sets forth requirements for the program to ensure that students and teachers from rural communities and small towns, as well as teachers from urban areas, will be adequately represented among the fellowship recipients. H.J. Res. 491—Public Law 94-277, approved April 21, 1976. (VV)

Indochinese refugees educational assistance: Authorizes $125.5 million to reimburse (on a 100 percent basis the first year and a 50 percent basis the second year) local educational agencies for costs incurred in educating Indochina refugee children through a basic cost of education grant plus a $300 per refugee child payment for supplementary assistance; and amends the Adult Education Act to direct the Commissioner to operate a program of grants to State and local governments for adult education programs for refugees with such funds to be appropriated from existing authorizations. S. 2145—Passed Senate October 29, 1975; Passed House amended January 19, 1976; In conference. (VV)

ELECTIONS

Federal Election Commission—campaign financing: Amends the Federal Election Campaign Act to provide for a Federal Election Commission composed of the Secretary of the Senate and the Clerk of the House of Representatives, as ex officio and non-voting members, and six members appointed by the President by and with the advice and consent of the Senate, to replace the present Commission, which is composed of the Secretary of the Senate and the Clerk of the House of Representatives, as ex officio and non-voting members, and six members, two appointed by the President pro tempore of the Senate, two by the Speaker of the House of Representatives, and two by the President, in order to meet the constitutional objections stated by the Supreme Court in *Buckley* v. *Valeo*, decided January 30, 1976, to the delegation of the administration and enforcement of the Act, which constitute executive branch functions, to officers appointed by the legislative branch instead of by the President as required under the Appointments Clause of the Constitution;

Provides that not more than three appointed members of the Commission may be of the same political party; sets terms of six years for the members, except that of the members first appointed, two are to be appointed for terms ending April 30, 1977, two for terms ending April 30, 1979, and two for terms ending April 30, 1981, and provides that none of the two shall be affiliated with the same political party;

Gives the Commission jurisdiction for civil enforcement of the Act and of the provisions of the Internal Revenue Code regarding public financing of Presidential campaigns; requires the affirmative vote of four members of the Commission to establish guidelines, initiate civil actions, render advisory opinions, make regulations, conduct investigations, or report apparent violations of law;

Makes various reporting and definitional changes, which include a requirement that (1) in any year when a candidate is not on the ballot for election the candidate and his authorized committees must file a report for any quarter in which contributions or expenditures aggregate more than $10,000; (2) records be kept by political committees only on contributions in excess of $50, instead of in excess of $10 and (3) corporations, labor organizations and other membership organizations need only report expenditures over $2,000 per election for communications to stockholders or members advocating the election or defeat of candidates; permits corporations and labor organizations to make two written solicitations per year from stockholders, executive and administrative personnel, and from employees respectively;

Restructures the penalty provisions of the law to provide criminal penalties for substantial violations and civil penalties and disclosure for less substantial violations, as well as protection for persons who enter into and adhere to conciliation agreements with the Commission;

Retains the present $1,000 per candidate per election limit on contributions by a "person" (defined as an individual, partnership, committee, association, corporation, labor organization and any other organization, which includes a non-qualified political committee) and now adds a limit on contributions by a "person" to political committees of national parties which are not the authorized political committees of any candidate at a yearly aggregate of $20,000 and at a yearly aggregate of $5,000 to any other political committee; retains the present $5,000 limit per candidate per election on contributions by a qualified multi-candidate political committee to a candidate and his authorized political committees, and now adds a limit on contributions by a multi-candidate political committee (1) to any political party committee which is not the authorized committee of any candidate at a yearly aggregate of $15,000 and (2) to any other political committee at a nearly aggregate of $5,000; contains a new provision which permits the Republican and Democratic Senatorial Campaign Committees and the national committee of a political party to contribute up to $17,500 to a candidate for nomination or for election to the U.S. Senate; treats as a single political committee all committees established by a single person or group of persons, and provides that these limits do not apply to transfers between national, State, District or local political committees, or to joint fundraising efforts; retains the present yearly aggregate limit on an individual's contributions at $25,000;

Requires that any printed or broadcast communication which expressly advocates the election or defeat of a clearly identified candidate and which is disseminated to the public must contain a notice that it is authorized by a candidate or it is not authorized by a candidate;

Prohibits a Presidential candidate who accepts public financing from spending more than $50,000 from his own personal funds or the funds of his immediate family in connection with his campaign (including funds spent in behalf of the Vice-Presidential nominee); provides for the termination of public financing for Presidential candidates who lack demonstrable support;

Amends the provisions pertaining to Congressional review of rules or regulations proposed by the Commission;

Changes the limits on honoraria which may be accepted by Federal officials from $1,000 to $2,000 (excluding amounts accepted for actual travel and subsistence expenses for self, a spouse, or an aide) for any speech, appearance, or article, and the total limit from $15,000 to $25,000; and contains other provisions. S. 3065—Public Law 94–283, approved May 11, 1976. (96,164)

Political campaigning: Condemns the conduct of certain people toward Governor George Wallace of Alabama and Senator Henry Jackson of Washington which campaigning in Wisconsin; states that such conduct, wherever it should occur, is un-American, undemocratic, and violates the principles of free speech and fair play; and declares that any loyal and patriotic citizen has the right to seek the office of President and pre-

sent his or her views to the American people without fear of harassment or of bodily harm. S. Res. 419—Senate adopted March 31, 1976. (VV)

EMPLOYMENT

Public works employment: Authorizes the Secretary of Commerce to make grants to State and local governments for the total cost of construction, renovation, repair or other improvement of public works projects, to make supplemental grants for the purpose of increasing the Federal contribution to 100 percent of the cost of public works projects authorized by any other Federal law where the Federal assistance is available and construction has not started, and to make grants for all or any portion of the State or of the local share cost of any public works project authorized by any State or local law where construction has not yet started;

Assures that at least ½ of 1 percent but not more than 10 percent of funds appropriated will be granted within any one State and groups Guam, the Virgin Islands and American Samoa together for this purpose; requires the Secretary, as long as the national unemployment rate is 6½ percent or more, to give priority to applications from areas in excess of the national rate and thereafter to give priority to areas in excess of 6½ percent but less than the national unemployment rate requires that 70 percent of the funds must be used for the first priority category; authorizes up to $2.5 billion to carry out this title for the period ending September 30, 1977;

Authorizes, in title II, funds for financial assistance to State and local governments for each of 5 succeeding calendar quarters (beginning April 1, 1976) of $125 million when the national seasonally adjusted unemployment rate reaches 6 percent plus an additional $62.5 million for each one-half percentage point over 6 percent which on an annual basis means $500 million would be authorized when the national rate reaches 6 percent and an additional $250 million would be authorized for each percentage point that the rate rises over 6 percent; authorizes assistance from these amounts to States and local governments based upon their unemployment rate and level of tax revenue, as measures of recessionary impact and the level of services provided;

Amends, in title III, section 201(c) of the Public Works and Development Act of 1965 to increase the authorization for fiscal year 1976 from $75 million to $200 million, and authorizes under this section payment during the calendar year ending December 31, 1976, of interest supplements sufficient to reduce the interest up to 4 percentage points on loans guaranteed by the Secretary in order to aid firms needing financial assistance to continue current operations;

Authorizes the Secretary to designate as a redevelopment area cities of 50,000 or more and to make grants to cities with approved development programs; authorizes $50 million for fiscal year 1976 and $50 million for the transition period for this purpose;

Authorizes $500 million for fiscal year 1976 and makes the funds available for obligation until September 30, 1976, for supplementing existing programs; authorizes $1,417,968,050 for the fiscal year ending September 30, 1977, for grants for the construction of publicly owned wastewater treatment works pursuant to title II of the Federal Water Pollution Control Act; and contains other provisions. H.R. 5247—Vetoed February 13, 1976. House overrode veto February 19, 1976; Senate sustained veto February 19, 1976. (*348,41).

Public works jobs: Amends the Public Works and Economic Development Act of 1965 to provide $2.5 billion for anti-recessionary public works authorizations, of which (1) $2 billion is for grants to State and local governments for public works projects, (2) $125 million is for an increase for working capital loans to prevent the loss of jobs in the private sector, and (3) $375 million is for the Job Opportunities Program (title X, to accelerate the job-creating impact of various Federal, State and local programs; authorizes $1.375 billion for countercyclical assistance to State and local governments; and makes additional authorizations of $1.4 billion for waste treatment works construction grants under the Federal Water Pollution Control Act. S. 3201—Passed Senate April 13, 1976; Passed House amended May 13, 1976; In conference. (150)

ENERGY

Coal leasing—strip mining: Makes basic changes in the Mineral Leasing Act of 1920 governing leasing of Federally owned coal which constitutes almost 50 percent of the recoverable coal reserves in the United States; provides that all leasing shall be done under a 5-year program to be developed by the Secretary of the Interior and designed to meet national needs for Federal coal in a manner consistent with (a) timely and orderly development of Federal coal resources, (b) environmental protection, and (c) receipt of fair market value for public resources; provides that leases may be issued only by competitive bidding on either a royalty or bonus bidding basis in order to permit a wider opportunity for competition for Federal coal leases;

Requires the preparation of land use plans where the United States owns both the surface and subsurface prior to sale of leases, and provides that, in cases where the surface is not Federally owned, no lease sale shall be held if the Secretary determines that development of such coal deposits would be inconsistent with any applicable State or local land use plan except where the Secretary finds that such development would be in the national interest;

Eliminates prospecting permits and preference right leases to prospectors as no longer appropriate or necessary since considerable information has been accumulated since 1920 about Federal coal resources which provides an adequate basis for leasing decisions; provides that coal leases shall be for a specified term of 20 years and so long thereafter as coal is produced instead of for indeterminant periods dependent upon diligent production as at present; requires a lessee, within 3 years after obtaining a coal lease and before significant environmental disturbance, to formulate and submit for approval a development plan which must show the work to be done, the manner of extraction, how applicable environmental and health and safety standards as well as reclamation standards set out in title II are to be met;

Increases by 22½ percent (from 37½ to 60 percent) the share of lease revenues to the State in which the lease is located and specifies that the additional 22½ percent shall be used for planning, construction and maintenance of public facilities, and provision of public services in those areas suffering impact problems as a result of energy development;

In title II, the Federal Lands Surface Mining Control and Reclamation Act of 1975, applies to Federal lands and Federal coal the basic surface coal mining and reclamation standards of the vetoed strip mining bill (H.R. 25); requires the Secretary to issue regulations for a Federal program implementing this Act; requires after enactment of this Act that persons wishing to conduct any surface mining operations on Federal lands must obtain a permit from the Secretary; specifies the permit application information that must be given to demonstrate that the environmental protection provisions of this Act can be met, which includes submission of a reclamation plan; provides for giving public notice and holding public hearings in regard to an application; and contains other provisions. S. 391—Passed Senate July 31, 1975; Passed House amended January 21, 1976. (*364)

Coastal zone management: Amends the Coastal Zone Management Act to assist States facing Outer Continental Shelf (OCS) oil and gas development or other energy-related developments and facilities affecting the coastal zone; provides assistance in the form of grants or loans to coastal States from a new coastal energy facility impact fund, which is to be available to States receiving or anticipating impacts in their coastal zones from the exploration, development, and production of energy resources, or from the location, construction, expansion or operation of any energy facility requiring a Federal license or permit; authorizes moneys for the fund at $250 million per year for 3 fiscal years and the 1976 transition period; provides that up to 20 percent of the moneys may be used for planning grants with the balance to be used for efforts to reduce or ameliorate adverse impacts from energy exploration and development or to provide public facilities and services necessitated by such activity; requires as a condition of eligibility the provision of public facilities and services necessitated by such activity; requires as a condition of eligibility for assistance from the fund that the State must participate in a coastal zone management program and must experience or anticipate a temporary or net adverse impact or have experienced an adverse impact within the 3 years prior to enactment; authorizes automatic grants payable from the general treasury to any State where OCS oil or natural gas is being directly landed (brought ashore); provides a Federal guarantee for State or local government bonds issued to pay for measures needed to reduce adverse coastal impacts; contains provisions to clarify that Federal leases must be consistent with approved coastal zone management programs of the affected States; raises the Federal share for coastal zone management funding from 66⅔ percent to 80 percent; amends the Mineral Leasing Act of 1920 to increase from 37½ percent to 60 percent the amounts returned to the States as reclamation funds from royalties paid to the Federal Government by mining companies extracting federally-owned minerals; and contains other provisions. S. 586—Passed Senate July 16, 1975; Passed House amended March 11, 1976; In conference. *NOTE:* (Impact fund provisions are also contained in S. 521, Outer Continental Shelf Management, which passed the Senate July 30, 1975.) (*291)

Energy conservation in buildings: In title I, authorizes the Federal Energy Administration to make grants to States for financing residential insulation improvements for low-income persons; provides an authorization of $55 million annually for fiscal years 1976, 1977, and 1978, with the funds to be used chiefly for purchasing insulation materials to be installed in dwelling units occupied by persons with incomes not exceeding 50 percent of the median income for the area; includes among insulation materials items which improve the thermal efficiency of a dwelling and caulking and weather stripping but excludes all mechanical equipment costing more than $50 per dwelling unit; provides that the program shall utilize, insofar as possible, the services of volunteers and persons employed under other Federal, State, and local programs such as manpower program trainees and public service employees;

In title II directs the Secretary of Housing and Urban Development to establish energy conservation standards for new residential and commercial buildings and to facilitate

State and local adoption and implementation of such standards within a reasonable period of time; provides that the Secretary shall develop minimum performance standards for such structures in consultation with the Federal Energy Administration, the National Bureau of Standards, and the General Services Administration, and published them within a period of 36 months after the date of enactment; provides that the standards shall become effective after an additional period, not exceeding 18 months, for a review and adoption by State and local governments; defines a minimum performance standard as a standard which establishes an energy efficiency goal for a particular type of building, under varying conditions, such as climate, without specifying the means to reach that goal; allows an additional 6 months for promulgation of the standard, if needed: allows a period of 12 months for States and localities to adopt standards in their building codes that meet or exceed Federal standards; prohibits, effective one year after promulgation of the Federal standards Federal loan and grant assistance and the extension of credit by Federally supervised financial institutions for new residential and commercial construction in areas which do not adopt equivalent or stricter standards; authorizes the Secretary to make grants not to exceed $5 million in fiscal year 1976 to assist States in meeting the costs of developing performance standards and certification procedures for implementing them; and contains other provisions. H.R. 8650—Passed House September 8, 1975; Passed Senate amended March 9, 1976; In conference. (54)

ERDA supplemental authorization: Authorizes to the Energy Research and Development Administration supplemental appropriations of $34 million for fiscal year 1976 and $23 million for the transition period July 1-September 30, 1976, in budget authority and $26.5 million and $17.5 million in budget outlays for the respective periods to provide a balanced nuclear weapons research, development, and testing program, a capability to verify the peaceful nuclear explosive agreement now being negotiated with the Soviet Union as part of the Threshold Test Ban Treaty and to purchase, at reduced cost, a computer now being leased for the Lawrence Livermore Laboratory. S. 3108—Public Law 94-269, approved April 16, 1976. (VV)

Helium conservation: States the sense of the Senate that the President should direct the Secretary of the Interior to make prompt arrangements to conserve the helium, which is now being extracted by private companies in the process of upgrading natural gas prior to distribution and then vented into the atmosphere, in accordance with ERDA's conclusions that: large quantities of helium will be required for energy-related applications such as fusion reactors, superconducting magnetic energy storage, and superconducting power transmission; known existing helium reserves will be essentially exhausted at about the time that large helium demand will commence and increase; the U.S. will be dependent in part on foreign source fields and helium extracted from the atmosphere; and cost of helium extracted from the atmosphere is far greater than that extracted from natural gas. S. Res. 253—Senate adopted May 13, 1976. (VV)

International petroleum exposition: Authorizes the President to invite the several States and foreign nations to participate in the Internatonal Petroleum Exposition at Tulsa, Oklahoma, from May 16 through May 22, 1976, for the purpose of exhibiting machinery, equipment, supplies, and other products used in the production and marketing of oil and gas, and bringing together buyers and sellers for the promotion of foreign and domestic trade and commerce in such products. S.J. Res. 59—Public Law 94-227, approved March 11, 1976. (VV)

Interstate oil and gas compact: Extends until December 31, 1978, the consent of Congress to the Interstate Compact to Conserve Oil and Gas consisting of 30 oil and gas producing states and 6 associate member States whose purpose is to conserve oil and gas by prevention of physical waste thereof from any cause, and calls for a special report from the Attorney General on the activities of advisory committees used in connection with activities related to the purposes of the Compact to see if they are consistent with the antitrust laws. S.J. Res. 126—Passed Senate May 3, 1976 (VV)

Natural gas pipeline safety: Amends the Natural Gas Pipeline Safety Act of 1968 to authorize an additional total of $24.5 million to implement the Natural Gas Pipeline Safety Act through fiscal 1978 and to make certain improvements to protect the public from hazards associated with natural gas pipelines; authorizes from the total $11.5 for State grant-in aid programs; defines the term "intrastate pipeline transportation" as that not subject to the jurisdiction of the Federal Power Commission under this Act and includes within the definition those pipeline facilities which transport gas from an interstate pipeline to a direct sales customer purchasing gas for its own consumption; provides that the Secretary may establish standards relating to emergency plans and procedures; requires the Technical Pipeline Safety Standards Committee to meet at least twice yearly; revises the State certification process to allow certification by a State agency even though it may not have adopted each Federal safety standard established within 120 days of the date of certification; requires States which are certified under this act, to encourage and promote programs designed to prevent natural gas pipelines and subsurface utility equipment from being damaged as a result of excavation; increases the amount of Federal contribution to State efforts to enforce Federal natural gas pipeline safety standards by authorizing the Secretary to make available to the States 100 percent (not to exceed $60,000 for each State) of the cost of up to 3 full-time inspectors under certain conditions; continues the existing authority of the Secretary of Transportation to pay up to 50 percent of the cost of personnel, equipment, and activities with respect to interstate transmission lines; makes clear that the Department of Transportation's pipeline safety standards are the only Federal pipeline safety standards that an interstate pipeline operator is required to meet; provides that the Federal Power Commission may not attach any condition to the issuance of a certificate of public convenience and necessity, or to the exercise of rights grated under such standards for pipeline facilities or for the transportation of gas, other than the standards prescribed by the Secretary of Transportation; requires the Secretary to include in his annual report to the President and Congress a full compilation of natural gas pipeline leaks occurring during that year; requires each person engaged in the transportation of natural gas to conduct a program to educate the public on the hazards associated with gas leaks and on the importance of reporting gas odors and leaks to the pipeline owner; authorizes the Secretary to develop materials suitable for use in such a consumer education program; and authorizes under specified conditions citizens' civil actions for mandatory or prohibitive injunctive relief, including interim equitable relief, against any person who is alleged to be in violation of the Act. S. 2042—Passed Senate May 28, 1976. (VV)

Naval petroleum reserves production: Transfers, effective June 1, 1977, jurisdiction of Naval Petroluem Reserve No. 4 in Alaska from the Secretary of the Navy to the Secretary of Interior and redesignates it the "National Petroleum Reserve in Alaska"; provides for continued petroleum exploration of this reserve but prohibits development and production until authorized by Congress.

Amends chapter 64, title 10, United States Code, to provide for the full exploration and development of the naval petroleum reserves and to permit limited production of Naval Petroleum Reserves No. 1—Elk Hills in California, No. 2—Buena Vista in California, and No. 3—Teapot Dome in Wyoming, within 90 days of enactment, under the authority of the Secretary of the Navy; defines "national defense" for the purposes of permitting such production in terms broad enough to permit production to offset a situation such as the Arab embargo of 1973; provides that production will not exceed the maximum efficient rate determined in accordance with sound oilfield engineering practices for a period of 6 years with provision for 3 year extensions thereafter; authorizes the President at his discretion to direct that all or any part of oil produced from the naval petroleum reserves be placed in a strategic reserve or be exchanged for petroleum of equal value to be so stored; waives, for the period of production, the requirement that the Secretary consult with the Congress on every contract; retains the requirement that the sale of oil be by competitive bidding for periods of not more than 1 year; prohibits the sale of more than 20 percent of the estimated Federal share of petroleum produced from Elk Hills to any buyer in a single year; requires that pipelines and facilities at this reserve be capable of handling 350,000 barrels of oil a day not later than 3 years after enactment; establishes a special account in the Treasury to offset outlay requirements for continued exploration and development, construction and filling of a strategic reserve and for operations in the Alaska reserve; requires that pipelines operate as common carriers; and contains other provisions. H.R. 49—Public Law 94-258, approved April 5, 1976. (*342)

ENVIRONMENT

Blackbird control: Waives certain provisions of the National Environmental Policy Act of 1969, the Federal Environmental Pesticide Control Act and other provisions of law to permit the Secretary of the Interior, to treat with chemicals registered for bird control purposes, "blackbird roosts" in Kentucky and Tennessee determined through normal survey practices of the Department of the Interior to contain in excess of 500,000 birds and upon prior certification by the Governor of the respective State that the roost is a hazard to human health unless the Secretary determines that treatment of a particular roost would pose a hazard to human health, safety, or property. H.R. 11510—Public Law 94-207, approved February 4, 1976. (VV)

Council on Environmental Quality: Authorizes $3 million for each of fiscal years survey practices of the Department of the Council on Environmental Quality. H.R. 11619—Public Law 94- , approved 1976. (VV)

Earthquake hazard reduction program: Amends the National Science Foundation Act of 1950 to establish a national earthquake hazard reduction program, under the direction of the President, to reduce and minimize the risks to life and property from future earthquakes in the United States; includes the following four elements in the program: (1) research and implementation of findings in tectonics, seismology, and geology under the supervision of the Geological Survey; (2) research in engineering, education, planning, and the social sciences under the supervision of the National Science Foundation; (3) effective information dissemination and education activities; and (4) assistance to the States (under the Disaster Relief Act of 1974) to make the results of research available; establishes a na-

tional advisory committee to assist the President on the progress, implementation and coordination of the program; requires the President to submit an annual report to the Congress describing and evaluating progress achieved in reducing earthquake hazards and including any recommendations for legislative or other action; and authorizes therefor $40 million for fiscal year 1977; $50 million for 1978, and $60 million for 1979. S. 1174—Passed Senate May 24, 1976. (VV)

Endangered species: Amends the Endangered Species Act of 1973 to extend and increase authorizations for the Departments of Interior and Commerce, who jointly administer the act, as follows: Department of the Interior—from $10 million per fiscal year to $1.8 million for the transition period July 1–September 30, 1976, and a combined total of $25 million for fiscal years 1977 and 1978; and Department of Commerce—from $2 million per fiscal year to $500,000 for the transition period July 1–September 30, 1976, and a combined total of $5 million for the fiscal years 1977 and 1978. S. 3122—Passed Senate May 18, 1976. (VV)

Environmental research authorization: Provides a separate authorization for fiscal year 1976 and the transition period July 1–September 30, 1976, with respect to the research programs of the Environmental Protection Agency (EPA) under the Noise Control Act ($2.11 million and $527,505), Federal Insecticide, Fungicide, and Rodenticide Act ($14,047,000 and $3,511,970), Public Health Service Act—Section 301 ($2,115,000 and $528,750), Safe Drinking Water Act ($12,789,200 and $3,197,300), Clean Air Act ($148,194,700 and $37,048,675), Solid Waste Disposal Act ($13,534,300 and $3,383,575), and Federal Water Pollution Control Act Amendments of 1972 ($148.7 million for fiscal year 1976 only) in order to conform the environmental research authorizations to committee jurisdictional responsibility in the House of Representatives and to synchronize their expiration; limits to 10 percent the amount of funds that may be transferred to or from particular categories; specifies that no appropriation may be made to EPA for environmental research, development, or demonstration after September 30, 1976, unless previously authorized by Congress; directs the Administrator to submit to Congress a 5-year plan for environmental research, with such plan revised yearly; and requires that whenever funds are appropriated in any fiscal year above the President's budget request for fiscal year 1977, the first $3 million of any excess for EPA shall be used to assure the adequacy, reliability and quality of the testing of chemicals and the first $25.280 million of any excess for the Federal Drug Administration shall be used to maintain and assure the preclinical and clinical adequacy, reliability, and quality of the testing of drugs, food additives, devices, and cosmetics. H.R. 7108—Passed House July 10, 1975; Passed Senate amended April 13, 1976; House requested conference April 30, 1976. (VV)

Noise control: Extends for 2 years, through fiscal year 1977, the monetary authorizations under the Noise Control Act of 1972 and authorizes therefor $24,290,000 for fiscal year 1976, $6,072,500 for the transition period July 1–September 30, 1976, and $26,719,000 for fiscal year 1977. H.R. 5272—Public Law 94– , approved 1976. (VV)

Noise control research: Amends the Noise Control Act to extend through fiscal year 1977 the research, development and demonstration programs of the Environmental Protection Agency carried on under the Noise Control program and authorizes therefor $2.5 million. S. 3436—Passed Senate May 18, 1976. (VV)

Scrimshaw art preservation: Permits the Secretary of Commerce, who administers the Endangered Species Act with respect to whales, to grant exemptions for a limited period of time for the sale of finished scrimshaw (etched designs and carvings from whale bone) products in interstate commerce. S. 229—Passed Senate April 14, 1975; Passed House amended February 17, 1976. (VV)

Toxic substance control: Directs the Environmental Protection Agency (EPA) to require testing of a chemical substance or mixture if its commercial use might present "an unreasonable risk" of injury to health or environment and if there were insufficient data to judge the effects upon health and the environment or if its use would cause wide exposure to humans and the environment and there were insufficient data available;

Establishes a Federal advisory committee of 8 members with testing expertise to develop a priority list of chemicals for testing and gives EPA 12 months after a substance is listed to begin either rulemaking proceedings to require testing or to publish its reasons for not acting;

Requires manufacturers of new chemical substances to give notification to EPA 90 days in advance of first manufacture and to supply test data along with that notification if required by EPA; provides that this requirement does not apply to research chemicals unless EPA specifically includes any such chemical;

Requires manufacturers and processors of chemical substances to maintain certain records and reports to enable the Administrator to determine if unreasonable risks exist as well as health and safety studies conducted which the Administrator is authorized to require submission of;

Authorizes EPA to take immediate action—such as seizure and condemnation—against chemicals that posed an "imminent hazard" to human health and the environment; and provides civil and criminal fines for violations of the act;

Exempts from the law pesticides, tobacco or tobacco products, nuclear materials, firearms and ammunition, and food, drugs, cosmetics and medical devices;

Prohibits discriminations against employees for participating in enforcement of the law and authorizes the Labor Department to hold hearings on alleged violations;

Authorizes citizens to bring suits to enjoin certain violations and to require the Administrator of EPA to perform his mandatory duties; and contains other provisions. S. 3149—Passed Senate March 26, 1976. (103)

Water resources planning: Increases from $1.5 million to $2 million the authorization for expenses of the Water Resources Council in administering the Water Resources Planning Act, and adds the Territory of Guam for eligibility to receive water planning grants under title III of the act. H.R. 11876—Public Law 94–285, approved May 12, 1976. (VV)

Water quality report: Amends the Federal Water Pollution Control Act to increase from $17 million to $17.25 million the authorization for the National Study Commission to complete its report on water quality. H.R. 12193—Public Law 94–238, approved March 23, 1976. (VV)

Weather modification: Authorizes $1 million to the Secretary of Commerce to develop a comprehensive and coordinated national policy on weather modification and a recommended national weather modification research and development program, taking into account the international impact of such a program, and to submit a report of his findings and recommendations to the President and Congress within 1 year of enactment. S. 3383—Passed Senate May 21, 1976. (VV)

FISHERIES AND MARINE LIFE

Fisheries development (outer Pacific Ocean): Extends for 3 years, through fiscal year 1979, the Central, Western, and South Pacific Fisheries Development Act which assists in the development of tuna and other latent fishery resources of the outer Pacific Ocean; requires the Secretary of Commerce to submit an annual report to the President and Congress on the progress of the program; and authorizes therefor a total of $4 million for the 3-year period ($1,333,333 annually). H.R. 13380—Passed House May 18, 1976; Passed Senate May 21, 1976. (VV)

Fisheries management—200-mile limit: Establishes, in title I, effective March 1, 1977, a fisheries conservation zone, contiguous to the U.S. territorial sea and extending for 200 nautical miles from the U.S. coasts; provides exclusive fishery management jurisdiction to the U.S. within this zone over all fish (except highly migratory species) and beyond this zone, over anadromous species of fish (e.g. salmon) that spawn in U.S. rivers and streams and migrate to ocean waters, and over U.S. Continental Shelf fishery resources; declares Congressional intent that this legislation support and encourage continued U.S. efforts to obtain an internationally acceptable treaty which provides for effective fishery conservation and management; and grants the Secretary of Commerce authority to conform regulations issued pursuant to this Act to the fishery management jurisdiction provisions of an international fishery agreement that may result from any U.N. Conference of the Law of the Sea once that agreement has been ratified by the U.S.;

Authorizes, in title II, foreign fishing for species and resources under the exclusive fishery management authority of the United States pursuant to (1) an international fishery agreement which is in effect as of the date of enactment of this legislation pending renegotiation (in the case of a treaty) or expiration (in any other case) and (2) a "governing international fishery agreement"; states the sense of the Congress that a governing international fishery agreement between the U.S. and a foreign national shall contain specified provisions essential to the conservation and management of fishery resources and shall not become effective until it has been submitted to and received by Congress; sets the total allowable level of foreign fishing with respect to any fishery under exclusive U.S. jurisdiction at that portion of the optimum yield which will not be harvested by U.S. vessels; prohibits a foreign fishing vessel from fishing within the U.S. fishery conservation zone after February 28, 1977, unless it has, on board the vessel, a valid permit issued by the Secretary of Commerce through the Secretary of State; authorizes the Secretary of the Treasury to embargo seafood from nations which the Secretary of State certifies bars U.S. fishing vessels from its waters, subjects them to conditions and restrictions unrelated to fishery conservation and management, or seizes U.S. fishing vessels in violation of or without authorization under agreement;

Establishes, in title III, a national fishery management program for the conservation and management of fishery resources subject to exclusive U.S. jurisdiction which would establish national standards for fishery management; establishes eight Regional Management Fishery Councils which are empowered to recommend management plans and regulations to the Secretary of Commerce who is authorized to regulate fisheries within the expanded U.S. jurisdiction to prevent overfishing, rebuild overfished stocks, and insure conservation; contains provisions on prohibited acts, civil penalties, criminal offenses, civil forfeiture, and enforcement;

Amends, in title IV, the Fishermen's Protective Act, the Marine Mammal Protection Act of 1972, and the Atlantic Tunas Convention Act of 1975; repeals the Acts of May 20, 1964 (Bartlett Act) and October 14, 1966; and authorizes $5 million for fiscal year 1976, $5 million for the transition period July 1–September 30, 1976, $25 million for fiscal year 1977; and $30 million for fiscal year 1978 to the Secretary of Commerce to carry out the provisions of the Act. H.R. 200—Public Law 94–265, approved April 13, 1976. (14)

Fisheries research and development programs: Amends the Commercial Fisheries Research and Development Act of 1964 to enable the Trust Territory of the Pacific Islands to receive Federal matching funds for approved research and development projects intended for the development of the Nation's commercial fisheries. S. 1414—Passed Senate May 21, 1976. (VV)

Killer whales: Amends the Marine Mammal Protection Act of 1972, as amended, to prohibit the Secretary of Commerce from issuing any permit for the taking of any marine mammal of the orcinus orca species (or killer whale) except for scientific research purposes which shall be conducted without removing the mammal from the water or endangering its health or welfare. S. 3130—Passed Senate March 29, 1976. (VV)

Marine protection and sanctuaries: Amends the Marine Protection, Research and Sanctuaries Act of 1972 to extend the authorizations under titles I, II, and III of the act for 1 year, through fiscal year 1977, as follows: Title I—ocean dumping permit program, $4.8 million; Title II—research program on the effects of ocean dumping on the marine environment, $5.6 million; and Title III—marine sanctuaries, $500,000; and requires a separate annual report from the U.S. Army Corps of Engineers and the Coast Guard on their administration of provisions under the act. S. 3147—Passed Senate May 21, 1976; Reconsidered and repassed by Senate May 25, 1976. (VV)

GENERAL GOVERNMENT

Action authorization: Amends the Domestic Volunteer Service Act of 1973 to extend for 2 years, through fiscal year 1978, the operation of certain programs of the ACTION Agency including VISTA, University Year for Action, the Youth Challenge program, the National Student Volunteer program and certain special volunteer programs; authorizes the Director to include in agreements with VISTA sponsors a requirement that the sponsor assume a share of the direct costs of supporting VISTA volunteers through a program of grants whereby up to 20 percent of the funds appropriated for VISTA may be used for a cost sharing arrangement of this type; provides that a foster grandparent can continue to serve a child under his care beyond the child's 21st year; modifies the formula of funding for the Service Learning Programs; and clarifies the authority of the Director to undertake and support volunteer service programs including the recruitment and training of volunteers. H.R. 12216—Public Law 94——, approved ———— 1976. (VV)

Animal welfare: Brings interstate carriers, intermediate handlers and terminal facilities under the regulation of the Animal Welfare Act; requires that they adhere to standards promulgated by the Secretary of Agriculture with respect to the transportation in commerce of all animals protected by the act, including standards for containers, feed, water, rest, ventilation, temperature, and handling; requires dealers, exhibitors, auction sale operators, and Federal, State and local agencies to obtain a veterinarian's certificate before delivering any dog, cat, or other animal designated by the Secretary for transportation in commerce; prohibits the transportation of dogs, cats and other animals at less than the minimum age established by the Secretary; prohibits C.O.D. transportation of animals unless the shipper guarantees payment of roundtrip fare and any out-of-pocket expenses of the carrier or intermediate handlers and carriers and authorizes the Secretary to impose upon such handlers and carriers a civil penalty of up to $1,000 for each violation of the standards for humane care; revises the present penalty provisions and provides a uniform civil penalty of up to $1,000 for violations by any person regulated under the statute; adds a new section which makes it a crime punishable by a $5,000 fine and/or of 1 year's imprisonment to sponsor knowingly, participate in, or use the mails to promote fights between live dogs or other mammals, except man; prohibits, with limited exception, such activities in connection with fights between gamefowl and other live birds; and authorizes $400,000 per year to enforce this section. S. 1941—Public Law 94–279, approved April 22, 1976. (121)

Bicentennial flag display: Permits the Secretary of the Interior to erect and maintain flag poles on the Capitol Grounds adjacent to the Union Station Plaza to fly the flags of the 50 States of the United States and its territories and possessions. S. 3161—Passed Senate March 18, 1976; Passed House amended May 17, 1976. (VV)

Civil Rights Commission: Raises the limitation on appropriations for the United States Commission on Civil Rights from $7 million to $7,893,000 for fiscal year 1976, $1,933,000 for the transition period July 1–September 30, 1976, and $9,540,000 for fiscal year 1977, and allows the Commission to give "cost of living" and other increases in employee benefits to its staff above the stated budget limitation in the same manner as other Federal executive agencies now do pursuant to law. H.R. 8957—Public Law 94– , approved 1976. (VV)

Commission on New Technological Uses of Copyrighted Works: Extends the authorization for the National Commission on New Technological Uses of Copyrighted Works to be coextensive with the life of the Commission which was established pursuant to Public Law 93–573 (1) to study and make recommendations to the Congress concerning the use of copyrighted works in automatic systems capable of storing, processing, retrieving, and transferring information, and by various forms of machine reproduction, not including reproduction by instructors for use in face-to-face teaching activities; and (2) the creation of new works by the application or intervention of automatic systems or machine reproduction. S. 3187—Passed Senate May 11, 1976. (VV)

Commodity Futures Trading Commission: Amends the Commodity Futures Trading Commission Act of 1974 to: delete the requirement that the appointment of the executive director of the Commission be subject to confirmation by the Senate; enable the Commission to grant immunity to witnesses; and make certain technical changes in the Commodity Exchange Act. S. 3051—Passed Senate May 25, 1976. (VV)

Daylight saving time: Temporarily supersedes certain provisions of the Uniform Time Act of 1966 and places the nation on daylight savings time for 7 months, from the second Sunday in March to the second Sunday in October for a period of two years, instead of the present 6 month period beginning the last Sunday in April and ending the last Sunday of October; continues the present authority of States to exempt themselves from periods of advanced time by State law; directs the Federal Communications Commission to minimize the impact of the time change on daytime broadcasters; and directs the Department of Transportation to study the effects of the extended advanced time periods for the next 2 years. S. 2931—Passed Senate February 25, 1976. (47)

Federal Trade Commission authorizations: Increases the authorization for the Federal Trade Commission (FTC) not to exceed the following amounts: $54 million for fiscal year 1976, $13.5 million for the transition period July 1–September 30, 1976, $70 million for fiscal year 1977, and $85 million for fiscal year 1978 of which not to exceed $25 million, $6.25 million, $35 million and $45 million for the above fiscal years shall be for the purposes of maintaining competition; authorizes the FTC to appoint 25 attorneys, economists, special experts and outside counsels for the FTC's responsibilities with regard to maintaining competition; requires the simultaneous transmission of budgetary and legislative recommendations to the President or the Office of Management and Budget and the Congress; limits appeals of Commission orders to the court of appeals for the circuit within which the resident resides or maintains its principal place of business in order to prevent "forum shopping" on appeals of Commission orders; expands the Commission's jurisdiction authorized by the Clayton Act from "in commerce" to "in or affecting commerce"; makes orders of the Commission effective 60 days after their issuance subject to a stay issued by the Commisison or the appropriate court of appeals, or the Supreme Court when an applicable petition for certiorari is pending; improves the Commission's ability to obtain information by compulsory process by imposing penalties for failure to reply in a timely manner with the Commission's processes and by providing statutory amendments reflecting current decisional law on the issues or ripeness of suits to enjoin enforcement of the Commission's compulsory processes; requires that the Commission grant or deny petitions for issuance, amendment, or repeal of rules within 120 days after the date the petition is received by the Commission; creates a 3-year program of assistance and grants to States to improve their antitrust capabilities and authorizes therefor not to exceed $10 million for each of fiscal years 1976, 1977, and 1978 and $2.5 million for the transition period; makes technical amendments to the Wool Products Labeling Act and the Fur Products Labeling Act; and amends the Textile Fiber Products Identification Act to continue the exemption of outer coverings of furniture, mattresses, and box springs from the provisions of the Act but permits the FTC to require care labeling with respect to outer coverings of furniture. S. 2935—Passed Senate March 18, 1976. (VV)

Increases the authorization for the Federal Trade Commission for fiscal years 1976 from $46 million to $47,091,000, and extends until July 5, 1978, the filing date for certain reports required under the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act. H.R. 12527—Public Law 94– , approved 1976. (VV)

Fire prevention and control: Authorizes additional appropriations of $3.75 million for the transition period July 1–September 30, 1976, $15 million for fiscal year 1977 and $20 million for fiscal year 1978 to implement the Federal Fire Prevention and Control Act of 1974 except for that section relating to reimbursement for costs of firefighting on Federal property; and authorizes $1,275,000 for the transition period, $5.5 million for fiscal year 1977 and $6 million for fiscal year 1978 for activities of the Fire Research Center of the National Bureau of Standards. S. 2862—Passed Senate May 19, 1976. (VV)

Fiscal year adjustment: Amends existing law to change the dates of various provisions of law which require the submission of reports and other actions based on the present fiscal year system to conform to the new fis-

cal year dates of October 1–September 30 pursuant to the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344). S. 2445—Public Law 94-273, approved April 21, 1976. (VV)

Fiscal year transition: Amends existing law to insure the continuation of Federal programs and activities, based by statute on the present fiscal year, through the fiscal transition period of July 1–September 30, 1976. S. 2444—Public Law 94-274, approved April 21, 1976. (VV)

Flag display: Codifies in an official code for the use and guidance of civilians and civilian organizations the proper method of using and displaying the flag of the United States including provisions which specify the display of an all-weather flag 24 hours a day; the position of the flag when displayed in churches or other than being flown from a staff (such as on automobiles or suspended in buildings); when, and who may order, a flag flown at half-staff; the use of a flag patch or pen by members of the military, policemen, firemen or members of patriotic organizations; and the conduct for salute of the flag; and reiterates existing authority whereby the President may alter, repeal, or add rules pertaining to the custom of displaying the flag whenever he deems appropriate. S.J. Res. 49—Passed Senate May 10, 1976. (VV)

Library of Congress James Madison Memorial Building: Amends the Act of October 19, 1965, as amended, to provide an additional authorization of $33 million for completion of the Library of Congress James Madison Memorial Building thus making a total authorization of $123 million. H.R. 11645—Public Law 94-219, approved February 27, 1976. (VV)

Mariana Islands: Approves the text of the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" providing for the creation of a Commonwealth of the Northern Marianas under U.S. sovereignty, local self-government including the adoption of a local constitution by the residents of the Northern Mariana Islands, granting of citizenship or national status to the residents of the Commonwealth, and the extension of the provisions of the U.S. Constitution, treaties, and statutes with some limitation to the Commonwealth. H.J. Res. 549—Public Law 94-241, approved March 24, 1976. (44)

NASA authorization: Authorizes $3,695,-170,000 for fiscal year 1977 to the National Aeronautics and Space Administration of which $2,761,425,000 is for research and development, $120,290,000 is for construction of facilities and $813,455,000 is for research and program management; includes funding for: continued development of the Space Shuttle; a solar maximum mission to measure solar activity during the peak period of maximum solar activity 1979–1980; development of the thematic mapper used for earth surveys; a magnetic mapping satellite to be used for the location of mineral resources; construction of a new transonic wind tunnel designed to support national aeronautical research and development needs; the initiation of an aircraft energy technology development project to provide the technology base for a 50 percent improvement in fuel economy in commercial transports; support of ongoing flight projects in space science an dapplications; and continuation of a series of research tasks in aeronautical and space research designed to provide a base for future undertakings, the construction of and/or modifications and upgrading of facilities to support these programs, and a highly technical staff to conduct research and manage these multidisciplinary activities; and contains other provisions. H.R. 12453—Public Law 94- , approved 1976. (VV)

National Foundation on the Arts and Humanities: Extends the National Foundation on the Arts and Humanities Act of 1965 and authorizes therefor a total of $250 million for fiscal year 1977, $300 million for fiscal year 1978, and such sums as necessary for fiscal years 1979 and 1980; amends the act to provide for specific funding for the State Humanitites program in accordance with the funding levels applicable to the State Arts program; provides for more State involvement in the Humanities program and gives them several options to enable them to carry out programs appropriate to their individual needs; gives added support to museums in funding areas which are of particular importance; contains an Arts Challenge Program whereby the Federal government will match $1 for $3 in non-Federal funds in order to improve long-range planning and development of arts organizations; authorizes the National Endowment for the Arts to develop demonstration programs in arts education; provides for the establishment of a Humanities Challenge Program with attention focused on the goals and priorities relevant to the period between the present and the 200th anniversary of the Constitution of the United States in 1989; provides for a Bicentennial Photography and Film Project to produce a comprehensive survey of the United States and to be carried out primarily by the States themselves; makes the appointment by the President of the members of the National Council on the Arts and the National Council on the Humanities subject to the advice and consent of the Senate; and applies the same fair labor practices applicable to the Art program to the activities of the Humanities Endowment where appropriate. H.R. 12838—Passed House April 26, 1976; Passed Senate amended May 20, 1976. (VV)

National Portrait Gallery: Amends the National Portrait Gallery Act of 1962 to redefine the term "portraiture" to permit the National Portrait Gallery to acquire photographs and other portrayals of individuals in addition to "painted or sculpted likenessess". S. 1657—Public Law 94-209, approved February 5, 1976. (VV)

National Study Commission on Records and Documents of Federal Officials: Extends for 1 year, until March 31, 1977, the life and reporting date of the National Study Commission on Records and Documents of Federal Officials which is charged with studying problems relative to the control, disposition and preservation of records and documents of Federal officials; authorizes the Chief Justice of the United States to appoint a member of the Federal judiciary to serve on the Commission instead of a justice of the Supreme Court as is now provided; and corrects a reference to a provision in the law relating to payment of travel expenses for official travel by Commission members. S. 3060—Public Law 94-261, approved April 11, 1976. (VV)

National Security Council: Amends the National Security Act of 1947, as amended, to include the Secretary of the Treasury as a member of the National Security Council. S. 2350—Vetoed December 31, 1975. Senate overrode veto January 22, 1976. (1)

Presidential recordings and materials: Disapproves certain regulations proposed by the Administrator of General Services on October 15, 1975, under section 104 of the Presidential Recordings and Materials Preservation Act which involve: the composition of the Presidential Materials Review Board, responsible for the final archival decisions regarding the disposition of the Nixon tapes and other materials; the adequacy of the provisions giving notice to affected individuals prior to the opening of these files to the public; the procedures to be followed by the Administrator in considering petitions to protect certain legal or constitutional rights by limiting access to specified materials; the procedures for allowing reproduction of the tapes; and two provisions relating to the restriction of materials which are personal in nature or which would result in a defamation of character. S. Res. 428—Senate adopted disapproval resolution April 8, 1976. (VV)

Privacy Protection Study Commission: Increases from $1.5 million to $2 million the authorization for the Privacy Protection Study Commission established under Public Law 93-579 to conduct a comprehensive study and submit its recommendations to the President and Congress on the adequacy of procedures now in force in the Government and private sector to protect personal information about individuals, and removes the $750,000 fiscal year limitation on expenditures to permit the Commission to obligate its funds at a rate necessary to initiate research studies and hold hearings. S. 3435—Passed Senate May 19, 1976. (VV)

Regulatory reform: Provides for regulatory reform with respect to the independent regulatory agencies which are subject to the jurisdiction and oversight responsibility of the Commerce Committee (the Interstate Commerce commission (ICC), Federal Trade Commission (FTC), Federal Power Commission (FPC), Federal Communications Commission (FCC), Civil Aeronautics Board (CAB), Federal Maritime Commission (FMC), and Consumer Product Safety Commission (CPSC)) by (1) directing each agency to review and recodify systematically all of the rules and regulations which it has promulgated and which are still in effect and to prepare and submit to the Congress proposed modernization, revision, and codification of all statutes and other lawful authorities administered or applied by it; and (2) applying to each agency provisions which have been previously enacted into law with respect to one or more of the agencies and found to be useful and practicable including timely consideration of petitions, Congressional access to information, representation in civil actions, protection of officers, avoidance of conflict of interest, and accountability. S. 3308—Passed Senate May 19, 1976 (VV)

Science policy: Establishes a framework for the formulation of national policy and priorities for science and technology; establishes an Office of Science, Engineering, and Technology Policy in the Executive Office of the President to be headed by a Director with up to four Associate Directors, appointed by the President with the advice and consent of the Senate; directs the Office to prepare and update annually a 5-year forecast of Federal investment in science and technology including the allocation of Federal funds among the major expenditure areas and an estimate of options for various levels of Federal investment and to furnish the list of options to the Office of Management and Budget for use in developing budget recommendations to the President; establishes an Intergovernmental Science, Engineering, and Technology Advisory Panel to advise the Director in establishing priorities for addressing civilian problems at State, regional, and local levels which science and technology can help solve;

Provides that the Director of the Office shall, in addition to his other duties, serve as a member of the Domestic Council and shall, at the request of the National Security Council, advise the Council on such matters concerning science and technology as relate to national security; Creates a 2-year President's Committee on Science and Technology of 9 to 15 members (including the Director of the Office) all of whom shall be appointed by the President, to conduct a comprehensive survey of Federal science and technology, and to submit to the President an interim report after 1 year and a final report after 2 years of its findings; permits the President to extend the life of the Commit-

tee if he determines that it is advantageous for the Committee to continue in being;

Redesignates the Federal Council for Science and Technology (established pursuant to Executive order 10807 issued May 13, 1959, as amended by Executive Order 11381 issued November 8, 1967) as the Federal Coordinating Council for Science, Engineering, and Technology, and gives it the statutory authority to coordinate Federal plans and programs in science and technology; designates the Director of the Office as Chairman of the Committee; and

Authorizes therefor $2.5 million for fiscal year 1976 and the transition period July 1–September 30, 1976, and $4 million for fiscal year 1977. H.R. 10230—Public Law 94–282, approved May 11, 1976. (VV)

Small business amendments: Provides for the President to undertake a comprehensive review of all Federal disaster loan authorities and to submit a report of his recommendations, including possible consolidation of Federal disaster loan authorities, to the Congress not later than December 1, 1976; increases the funds available for the lease guarantee program from $10 million to $25 million and establishes a separate program to allow small businesses to finance the leasing of pollution control equipment through the sale of tax-exempt industrial revenue bonds; increases the amount which regular small business investment companies (SBIC's) may borrow from the government from 200 to 300 percent of private capital and increases the amount "venture capital" SBIC's may borrow from the government from 300 to 400 percent of private capital; extends these leverage increases to Minority Enterprise Small Business Investment Companies with a maximum leverage ceiling of $35 million; increases an SBIC's ability to guarantee a small business' minority obligations from 90 percent to 100 percent of the total obligation; authorizes limited partnerships with a corporate general partner to be licensed by SBA as small business investment companies; permits banks to own 100 percent of SBIC's voting common stock; permits SBA to make loans to State and local development companies for the acquisition of existing plant facilities and increases the maturity on such acquisitions and construction loans from 15 to 20 years plus such additional time as is necessary for construction; increases the maximum amount of economic opportunity loans from $50,000 to $100,000 per borrower and requires an equitable distribution of such loans between urban and rural areas; increases the maximum amount of financial assistance to State or local development companies from $350,000 to $500,000; increases the maximum amount of regular SBA business loans from $350,000 to $500,000 per borrower; authorizes an additional $21.5 million for the Surety Bond Guarantee Fund; directs the Chief Counsel for Advocacy of the Small Business Administration to make a comprehensive study of Small Business in America and submit a report to the President and Congress within 1 year of enactment; authorizes therefor $1 million; and establishes a uniform interest rate on SBA's share of any disaster loan except loans covering physical damage and economic injury caused by a natural disaster and product disasters which shall be made at a rate of interest not exceeding the rate of interest in effect at the time of the disaster. S. 2498—Public Law 94– , approved 1976. (*589)

Smithsonian Institution—National Museum: Authorizes $1 million annually for fiscal years 1978 through 1980 to the Smithsonian Institution for carrying out the purposes of the National Museum Act of 1966 through which the Smithsonian assists museums with specific reference to the continuing study of museum problems and opportunities, training in museum practices, preparation of museum publications, research in museum techniques, and cooperation with agencies of the government concerned with museums. S. 2945—Passed Senate April 6, 1976. (VV)

Spanish Americans, data on: Directs the Department of Labor, in cooperation with the Department of Commerce, to develop methods of improving and expanding the collection, analysis, and publication of unemployment figures for Spanish-origin Americans; directs the Departments of Commerce, Labor, HEW, and Agriculture to collect and regularly publish data pertaining to the socio-economic conditions of Spanish Americans; requires the Director of the Office of Management and Budget, in cooperation with the Secretary of Commerce and the heads of other data-gathering Federal agencies, to develop a Government-wide program for the collecton of data on Spanish Americans; directs the Department of Commerce, in cooperation with the appropriate State and local agencies and various population study groups, to determine what steps are necessary in the development of creditable estimates of undercounts of Spanish Americans in future censuses; requires the Secretary of Commerce to ensure that in the taking of future censuses and other data-collection activities, there will be provided Spanish-language questionnaires and bilingual enumerators; and directs the Department of Commerce to implement a program for the employment of Spanish Americans within the Bureau of the Census and to report to Congress within 1 year of enactment on the progress of the program. H.J. Res. 92–Passed House October 29, 1975; Passed Senate amended May 21, 1976. (VV)

Trust Territory of the Pacific: Provides the following authorizations for the continuance of civil government for the Trust Territory of the Pacific Islands: $80 million for fiscal years 1976 and 1977; $15.1 million for the transition period July 1-September 30, 1976, plus such amounts authorized but not appropriated in fiscal year 1975; $1.8 million for human development projects in the Marshall Islands; $8 million for the construction of facilities for a 4-year college to serve the Micronesian community but provides that no appropriation may be made until the President has made a study concerning the educational needs and concepts of such a college and transmitted the study to the House and Senate Interior Committees which will have 90 calendar days to review the study; and the continuation of an authorization up to but not exceeding $10 million to offset reductions in or the termination of Federal grant-in-aid programs; and provides for the extension to Guam of those laws of the United States made applicable to the Northern Marianna Islands by the provisions of Public Law 94–241, except for the provision extending certain social security act programs. H.R. 12122—Public Law 94–255, approved April 1, 1976. (VV)

White House Conference on Handicapped: Extends from 2 to 3 years the period during which the President is authorized to call a White House Conference on Handicapped Individuals pursuant to Public Law 93–516. S.J. Res. 154—Public Law 94–224, approved February 27, 1976. (VV)

GOVERNMENT EMPLOYEE.

Federal mine safety inspectors protection: Amends section 1114, title 18, U.S.C., to place Federal mine safety inspectors under those provisions which protect Federal officials from interference with the performance of their official duties. S. 3070—Passed Senate May 19, 1976. (VV)

*Hatch Act revisions: Amends present law to permit active participation by Federal employees in political processes at all levels of government, effective January 1, 1977; retains existing prohibitions on political contributions and other political activities for employees of the Internal Revenue Service, the Central Intelligence Agency, and the Justice Department except for (1) employees in non-sensitive positions, (2) employees in sensitive positions when the agency head determines that their political activity would not adversely affect public confidence and Congress does not disapprove within 30 days, and (3) Presidential appointees who determine national policies; contains provisions to protect employees from influence or coercion regarding political support and financial contributions; prohibits political activity on duty, in Federal buildings, or in uniform; establishes an independent Board on Political Activities of Federal Employees to adjudicate promptly alleged violations of the Act; mandates a 30 day suspension of any employee convicted of violating the prohibitions against use of official information or authority; provides that an employee may campaign for public elective office during his spare time or by utilizing accrued annual leave; exempts certain White House personnel from the prohibtion against political activities while on duty, on government property, or in uniform but states that this exemption is not an authorization for such activity; and contains other provisions. H.R. 8617—Vetoed April 12, 1976. House sustained April 29, 1976. (69,109)

Secret Service director's salary: Amends sections 5315 and 5316, title 5, U.S.C., to place the Director and the Deputy Director of the Secret Service in levels IV and V of the executive schedule of pay, respectively. S. 3028—Passed Senate February 26, 1976. (VV)

HEALTH

Alcohol abuse, prevention and treatment: Extends for 3 years, through fiscal year 1979, and increases the authorizations for programs administered by the Secretary of Health, Education and Welfare through the National Institute of Alcohol Abuse and Alcoholism with particular emphasis on: increased Federal assistance for States adopting the basic provisions of the Uniform Alcoholism and Intoxication Treatment Act, expanded and improved alcoholism research programs, and the provision of services to currently underserved populations. S. 3184—Passed Senate March 29, 1976; Passed House amended May 21, 1976. (VV)

Biomedical and behavioral research: Amends the Public Health Service Act to reestablish the present National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research as an 11 member Presidential Commission (with provision that the members of the present Commission who are serving when this Act becomes law shall continue to serve on the new Commission until the President makes his appointments) and directs the Commission to assume all powers, functions and duties of the current commission to analyze the ethical, social, and legal implications of all biomedical and behavioral research involving human subjects. S. 2515—Passed Senate May 21, 1976. (VV)

Clinical laboratories improvement: Extends and expands the existing program of mandatory licensure contained in the Clinical Laboratories Improvement Act of 1967 to all laboratories (except those under the jurisdiction of Federal agencies other than the Department of Health, Education, and Welfare) soliciting and accepting specimens for laboratory analysis;

Authorizes the Secretary of Health, Education, and Welfare to license those laboratories meeting quality assurance standards, to promulgate standards and regulations to assure the quality, accuracy, and precision of laboratory testing, and to delegate his licensure authority to States implementing laboratory quality assurance programs at least equal to the Federal program, and to take necessary actions against laboratories not meeting the quality assurance standards;

Authorizes the Secretary to establish an Office of Clinical Laboratories, the purpose of which would be to establish a uniform regulatory program for all laboratories subject to Federal jurisdiction, and to establish an advisory council to advise, consult with, and make recommendations to the Office of Clinical Laboratories concerning the development of quality assurances standards and the implementation of such standards;

Provides for exemption of physicians' office laboratories under certain conditions where physicians file an affidavit with the Secretary, including but not limited to a description of the qualifications of nonphysician laboratory personnel, the quality and type of tests conducted, and the score of proficiency testing examinations taken by such personnel.

Permits the Secretary to waive from the personnel standards laboratories located in rural hospitals with fewer than 100 beds and develop specific job-related proficiency tests for personnel in rural hospital laboratories;

Allows the Secretary to utilize the services of private, nonprofit entities for the provision of inspection and proficiency testing services;

Authorizes $15 million annually to permit the Secretary to provide technical and financial assistance to States to establish or administer laboratory quality assurance programs;

Federal Trade Commission authorizations: Increases the authorization for the Federal Trade Commission (FTC) not to exceed the following amounts: $54 million for fiscal year 1976, $13.5 million for the transition period July 1—September 30, 1976, $70 million for fiscal year 1977, and $85 million for fiscal year 1978 of which not to exceed $25 million, $6.25 million, $35 million and $45 million for the above fiscal years shall be for the purposes of maintaining competition; authorizes the FTC to appoint 25 attorneys, economists, special experts and outside counsels for the FTC's responsibilities with regard to maintaining competition; requires the simultaneous transmission of budgetary and legislative recommendations to the President or the Office of Management and Budget and the Congress; limits appeals of Commission orders to the court of appeals for the circuit within which the resident resides or maintains its principal place of business in order to prevent "forum shopping" on appeals of Commission orders; expands the Commission's jurisdiction authorized by the Clayton Act from "in commerce" to "in or affecting commerce"; makes orders of the Commission effective 60 days after their issuance subject to a stay issued by the Commission or the appropriate court of appeals, or the Supreme Court when an applicable petition for certiorari is pending; improves the Commission's ability to obtain information by compulsory process by imposing penalties for failure to reply in a timely manner with the Commission's processes and by providing statutory amendments reflecting current decisional law on the issue or ripeness of suits to enjoin enforcement of the Commission's compulsory processes; requires that the Commission grant or deny petitions for issuance, amendment, or repeal of rules within 120 days after the date the petition is received by the Commission; creates a 3-year program of assistance and grants to States to improve their antitrust capabilities and authorizes therefor not to exceed $10 million for each of fiscal years 1976, 1977, and 1978 and $2.5 million for the transition period; makes technical amendments to the Wool Products Labeling Act and the Fur Products Labeling Act; and amends the Textile Fiber Products Identification Act to continue the exemption of outer coverings of furniture, mattresses, and box springs from the provisions of the Act but permits the FTC to require care labeling with respect to outer coverings of furniture. S. 2935—Passed Senate March 18, 1976. (VV)

Increases the authorization for the Federal Trade Commission for fiscal year 1976 from $46 million to $47,091,000, and extends until July 5, 1978, the filing date for certain reports required under the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act. H.R. 12527—Public Law 94–approved —— 1976. (VV)

Fire prevention and control: Authorizes additional appropriations of $3.75 million for the transition period July 1–September 30, 1976, $15 million for fiscal year 1977 and $20 million for fiscal year 1978 to implement the Federal Fire Prevention and Control Act of 1974 except for that section relating to reimbursement for costs of firefighting on Federal property; and authorizes $1,275,000 for the transition period, $5.5 million for fiscal year 1977 and $6 million for fiscal year 1978 for activities of the Fire Research Center of the National Bureau of Standards. S. 2862—Passed Senate May 19, 1976. (VV)

Fiscal year adjustment: Amends existing law to change the dates of various provisions of law which require the submission of reports and other actions based on the present fiscal year system to conform to the new fiscal year dates of October 1–September 30 pursuant to the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). S. 2445—Public Law 94–273, approved April 21, 1976 (VV)

Fiscal year transition: Amends existing law to insure the continuation of Federal programs and activities, based by statute on the present fiscal year, through the fiscal transition period of July 1–September 30, 1976. S. 2444—Public Law 74–274, approved April 21, 1976. (VV)

Flag display: Codifies in an official code for the use and guidance of civilians and civilian organizations the proper method of using and displaying the flag of the United States including provisions which specify the display of an all-weather flag 24 hours a day; the position of the flag when displayed in churches or other than being flown from a staff (such as on automobiles or suspended in buildings); when, and who may order, a flag flown at half-staff; the use of a flag patch or pen by members of the military, policemen, firemen or members of patriotic organizations; and the conduct for salute of the flag; and reiterates existing authority whereby the President may alter, repeal, or add rules pertaining to the custom of displaying the flag whenever he deems appropriate. S. J. Res. 49—Passed Senate May 10, 1976. (VV)

Library of Congress James Madison Memorial Building: Amends the Act of October 19, 1965, as amended, to provide an additional authorization of $33 million for completion of the Library of Congress James Madison Memorial Building thus making a total authorization of $123 million. H.R. 11645—Public Law 94–219, approved February 27, 1976. (VV)

Mariana Islands: Approves the text of the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" providing for the creation of a Commonwealth of the Northern Marianas under U.S. sovereignty, local self-government including the adoption of a local constitution by the residents of the Northern Mariana Islands, granting of citizenship or national status to the residents of the Commonwealth, and the extension of the provisions of the U.S. Constitution, treaties, and statutes with some limitation to the Commonwealth. H.J. Res. 549—Public Law 94–241, approved March 24, 1976. (44)

NASA authorization: Authorizes $3,695,170,000 for fiscal year 1977 to the National Aeronautics and Space Administration of which $2,761,425,000 is for research and development, $10,290,000 is for construction of facilities and $813,455,000 is for research and program management; includes funding for: continued development of the Space Shuttle; a solar maximum mission to measure solar activity during the peak period of maximum solar activity 1979–1980; development of the thematic mapper used for earth surveys; a magnetic mapping satellite to be used for the location of mineral resources; construction of a new transonic wind tunnel designed to support national aeronautical research and development needs; the initiation of an aircraft energy technology development project to provide the technology base for a 50 percent improvement in fuel economy in commercial transports; support of ongoing flight projects in space science and applications; and continuation of a series of research tasks in aeronautical and space research designed to provide a base for future undertakings, the construction of and/or modifications and upgrading of facilities to support these programs, and a highly technical staff to conduct research and manage these multidisciplinary activities; and contains other provisions. H.R. 12453—Public Law 94–, approved 1976. (VV)

National Foundation on the Arts and Humanities: Extends the National Foundation on the Arts and Humanities Act of 1965 and authorizes therefor a total of $250 million for fiscal year 1977, $300 million for fiscal year 1978, and such sums as necessary for fiscal years 1979 and 1980; amends the act to provide for specific funding for the State Humanities program in accordance with the funding levels applicable to the State Arts program; provides for more State involvement in the Humanities program and gives them several options to enable them to carry out programs appropriate to their individual needs; gives added support to museums in funding areas which are of particular importance; contains an Arts Challenge Program whereby the Federal government will match $1 for $3 in non-Federal funds in order to improve long-range planning and development of arts organizations; authorizes the National Endowment for the Arts to develop demonstration programs in arts education; provides for the establishment of a Humanities Challenge Program with attention focused on the goals and priorities relevant to the period between the present and the 200th anniversary of the Constitution of the United States in 1989; provides for a Bicentennial Photography and Film Project to produce a comprehensive survey of the United States and to be carried out primarily by the States themselves; makes the appointment by the President of the members of the National Council on the Arts and the National Council on the Humanities subject to the advice and consent of the Senate; and applies the same fair labor practices applicable to the Art program to the activities of the Humanities Endowment where appropriate. H.R. 12838—Passed House April 26, 1976; Passed Senate amended May 20, 1976. (VV)

National Portrait Gallery: Amends the National Portrait Gallery Act of 1962 to redefine the term "portraiture" to permit the National Portrait Gallery to acquire photographs and other portrayals of individuals in addition to "painted or sculpted likenesses." S. 1657—Public Law 94–209, approved February 5, 1976. (VV)

National Science Foundation authorization: Authorizes $826.4 million to the National Science Foundation for fiscal year 1977 plus an additional $6 million in foreign currencies which the Treasury Department determines to be in excess to the normal requirements of the United States. H.R. 12566—Passed House March 25, 1976; Passed Senate May 27, 1976; Senate requested conference May 27, 1976. (VV)

National Study Commission on Records and Documents of Federal Officials: Extends for 1 year, until March 31, 1977, the life and reporting date of the National Study Commission on Records and Documents of Federal Officials which is charged with studying problems relative to the control, disposition

and preservation of records and documents of Federal officials; authorizes the Chief Justice of the United States to appoint a member of the Federal judiciary to serve on the Commission instead of a justice of the Supreme Court as is now provided; and corrects a reference to a provision in the law relating to payment of travel expenses for official travel by Commission members. S. 3060—Public Law 94-261, approved April 11, 1976. (VV)

National Security Council: Amends the National Security Act of 1947, as amended, to include the Secretary of the Treasury as a member of the National Security Council. S. 2350—Vetoed December 31, 1975. Senate overrode veto January 22, 1976. (1)

Presidential recordings and materials: Disapproves certain regulations proposed by the Administrator of General Services on October 15, 1975, under section 104 of the Presidential Recordings and Materials Preservation Act which involve: the composition of the Presidential Materials Review Board, responsible for the final archival decisions regarding the disposition of the Nixon tapes and other materials; the adequacy of the provisions giving notice to affected individuals prior to the opening of these files to the public; the procedures to be followed by the Administrator in considering petitions to protect certain legal or constitutional rights by limiting access to specified materials; the procedures for allowing reproduction of the tapes; and two provisions relating to the restriction of materials which are personal in nature or which would result in a defamation of character. S. Res. 428—Senate adopted disapproval resolution April 8, 1976. (VV)

Privacy Protection Study Commission: Increases from $1.5 million to $2 million the authorization for the Privacy Protection Study Commission established under Public Law 93-579 to conduct a comprehensive study and submit its recommendations to the President and Congress on the adequacy of procedures now in force in the Government and private sector to protect personal information about individuals, and removes the $750,000 fiscal year limitation on expenditures to permit the Commission to obligate its funds at a rate necessary to initiate research studies and hold hearings. S 3435—Passed Senate May 19, 1976. (VV)

Regulatory reform: Provides for regulatory reform with respect to the independent regulatory agencies which are subject to the jurisdiction and oversight responsibility of the Commerce Committee (the Interstate Commerce Commission (ICC), Federal Trade Commission (FTC), Federal Power Commission (FPC), Federal Communications Commission (FCC), Civil Aeronautics Board (CAB), Federal Maritime Commission (FMC), and Consumer Product Safety Commission (CPSC)) by (1) directing each agency to review and recodify systematically all of the rules and regulations which it has promulgated and which are still in effect and to prepare and submit to the Congress proposed modernization, revision, and codification of all statutes and other lawful authorities administered or applied by it; and (2) applying to each agency provisions which have been previously enacted into law with respect to one or more of the agencies and found to be useful and practicable including timely consideration of petitions, Congressional access to information, representation in civil actions, protection of officers, avoidance of conflict of interest, and accountability. S. 3308—Passed Senate May 19, 1976. (VV)

Science policy: Establishes a framework for the formulation of national policy and priorities for science and technology; establishes an Office of Science, Engineering, and Technology Policy in the Executive Office of the President to be headed by a Director with up to four Associate Directors, appointed by the President with the advice and consent of the Senate; directs the Office to prepare and update annually a 5-year forecast of Federal investment in science and technology including the allocation of Federal funds among the major expenditure areas and an estimate of options for various levels of Federal investment and to furnish the list of options to the Office of Management and Budget for use in developing budget recommendations to the President; establishes an Intergovernmental Science, Engineering, and Technology Advisory Panel to advise the Director in establishing priorities for addressing civilian problems at State, regional, and local levels which science and technology can help solve;

Provides that the Director of the Office shall, in addition to his other duties, serve as a member of the Domestic Council and shall, at the request of the National Security Council, advise the Council on such matters concerning science and technology as relate to national security; Creates a 2-year President's Committee on Science and Technology of 9 to 15 members (including the Director of the Office) all of whom shall be appointed by the President, to conduct a comprehensive survey of Federal science and technology, and to submit to the President an interim report after 1 year and a final report after 2 years of its findings; permits the President to extend the life of the Committee if he determines that it is advantageous for the Committee to continue in being;

Redesignates the Federal Council for Science and Technology (established pursuant to Executive order 10807 issued May 13, 1959, as amended by Executive Order 11381 issued November 8, 1967) as the Federal Coordinating Council for Science, Engineering, and Technology, and gives it the statutory authority to coordinate Federal plans and programs in science and technology; designates the Director of the Office as Chairman of the Committee; and

Authorizes therefor $2.5 million for fiscal year 1976 and the transition period July 1–September 30, 1976, and $4 million for fiscal year 1977. H.R. 10230—Public Law 94-282, approved May 11, 1976. (VV)

Small business amendments: Provides for the President to undertake a comprehensive review of all Federal disaster loan authorities and to submit a report of his recommendations, including possible consolidation of Federal disaster loan authorities, to the Congress not later than December 1, 1976; increases the funds available for the lease guarantee program from $10 million to $25 million and establishes a separate program to allow small businesses to finance the leasing of pollution control equipment through the sale of tax-exempt industrial revenue bonds; increases the amount which regular small business investment companies (SBIC's) may borrow from the government from 200 to 300 percent of private capital and increases the amount "venture capital" SBIC's may borrow from the government from 300 to 400 percent of private capital; extends these leverage increases to Minority Enterprise Small Business Investment Companies with a maximum leverage ceiling of $35 million; increases an SBIC's ability to guarantee a small business' minority obligations from 90 percent to 100 percent of the total obligation; authorizes limited partnerships with a corporate general partner to be licensed by SBA as small business investment companies; permits banks to own 100 percent of SBIC's voting common stock; permits SBA to make loans to State and local development companies for the acquisition of existing plant facilites and increases the maturity on such acquisitions and construction loans from 15 to 20 years plus such additional time as is necessary for construction; increases the maximum amount of economic opportunity loans from $50,000 to $100,000 per borrower and requires an equitable distribution of such loans between urban and rural areas; increases the maximum amount of financial assistance to State or local development companies from $350,000 to $500,000; increases the maximum amount of regular SBA business loans from $350,000 to $500,000 per borrower; authorizes an additional $21.5 million for the Surety Bond Guarantee Fund; directs the Chief Counsel for Advocacy of the Small Business Administration to make a comprehensive study of Small Business in America and submit a report to the President and Congress within 1 year of enactment; authorizes therefor $1 million; and establishes a uniform interest rate on SBA's share of any disaster loan except loans covering physical damage and economic injury caused by a natural disaster and product disasters which shall be made at a rate of interest not exceeding the rate of interest in effect at the time of the disaster. S. 2498—Public Law 94- , approved 1976. (*589)

Smithsonian Institution—National Museum: Authorizes $1 million annually for fiscal years 1978 through 1980 to the Smithsonian Institution for carrying out the purposes of the National Museum Act of 1966 through which the Smithsonian assists museums with specific reference to the continuing study of museum problems and opportunities, training in museum practices, preparation of museum publications, research in museum techniques, and cooperation with agencies of the government concerned with museums. S. 2945—Passed Senate April 6, 1976. (VV)

Spanish Americans, Data on: Directs the Department of Labor, in cooperation with the Department of Commerce, to develop methods of improving and expanding the collection, analysis, and publication of unemployment figures for Spanish-origin Americans; directs the Departments of Commerce, Labor, HEW, and Agriculture to collect and regularly publish data pertaining to the socio-economic conditions of Spanish Americans; requires the Director of the Office of Management and Budget, in cooperation with the Secretary of Commerce and the heads of other data-gathering Federal agencies, to develop a Government-wide program for the collection of data on Spanish Americans; directs the Department of Commerce, in cooperation with the appropriate State and local agencies and various population study groups, to determine what steps are necessary in the development of creditable estimates of undercounts of Spanish Americans in future censuses; requires the Secretary of Commerce to ensure that in the taking of future censuses and other data-collection activities, there will be provided Spanish-language questionnaires and bilingual enumerators; and directs the Department of Commerce to implement a program for the employment of Spanish Americans within the Bureau of the Census and to report to Congress within 1 year of enactment on the progress of the program. H.J. Res. 92—Passed House October 29, 1975; Passed Senate amended May 21, 1976. (VV)

Trust Territory of the Pacific: Provides the following authorizations for the continuance of civil government for the Trust Territory of the Pacific Islands: $80 million for fiscal years 1976 and 1977; $15.1 million for the transition period July 1-September 30, 1976, plus such amounts authorized but not appropriated in fiscal year 1975; $1.8 million for human development projects in the Marshall Islands; $8 million for the construction of facilities for a 4-year college to serve the Micronesian community but provides that no appropriation may be made until the President has made a study concerning the educational needs and concepts of such a college and transmitted the study to the House and Senate Interior Committees which will have 90 calendar days to review the study; and the continuation of an authorization up to but not exceeding $10 million to offset reductions in or the termination of

Federal grant-in-aid programs; and provides for the extension to Guam of those laws of the United States made applicable to the Northern Marianna Islands by the Provisions of Public Law 94-241, except for the provision extending certain social security act programs. H.R. 12122—Public Law 94-255, approved April 1, 1976 (VV)

White House conference on handicapped: Extends from 2 to 3 years the period during which the President is authorized to call a White House Conference on Handicapped Individuals pursuant to Public Law 93-516. S.J. Res. 154—Public Law 94-224, approved February 27, 1976. (VV)

GOVERNMENT EMPLOYEES

Federal mine safety inspectors protection: Amends section 1114, title 18, U.S.C., to place Federal mine safety inspectors under those provisions which protect Federal officials from interference with the performance of their offical duties. S. 3070—Passed Senate May 19, 1976. (VV)

*Hatch Act revisions: Amends present law to permit active participation by Federal employees in political processes at all levels of government, effective January 1, 1977; retains existing prohibitions on political contributions and other political activities for employees of the Internal Revenue Service, the Central Intelligence Agency, and the Justice Department except for (1) employees in non-sensitive positions, (2) employees in sensitive positions when the agency head determines that their political activity would not adversely affect public confidence and Congress does not disapprove within 30 days, and (3) Presidential appointees who determine national policies; contains provisions to protect employees from influence or coercion regarding political support and financial contributions; prohibits political activity on duty, in Federal buildings, or in uniform; establishes an independent Board on Political Activities of Federal Employees to adjudicate promptly alleged violations of the Act; mandates a 30 day suspension of any employee convicted of violating the prohibitions against use of official information or authority; provides that an employee may campaign for public elective office during his spare time or by utilizing accrued annual leave; exempts certain White House personnel from the prohibition against political activities while on duty, on government property, or in uniform but states that this exemption is not an authorization for such activity; and contains other provisions. H.R. 8617—Vetoed April 12, 1976. House sustained April 29, 1976. (69, 109).

Secret Service director's salary: Amends sections 5315 and 5316, title 5, U.S.C., to place the Director and the Deputy Director of the Secret Service in levels IV and V of the executive schedule of pay, respectively. S. 3028—Passed Senate February 26, 1976. (VV).

HEALTH

Alcohol abuse, prevention and treatment: Extends for 3 years, through fiscal year 1979, and increases the authorizations for programs administered by the Secretary of Health, Education and Welfare through the National Institute of Alcohol Abuse and Alcoholism with particular emphasis on: increased Federal assistance for States adopting the basic provisions of the Uniform Alcoholism and Intoxication Treatment Act, expanded and improved alcoholism research programs, and the provision of services to currently underserved populations. S. 3184—Passed Senate March 29, 1976; Passed House amended May 21, 1976. (VV)

Biomedical and behavioral research: Amends the Public Health Service Act to reestablish the present National Commission for the Protection of Human subjects of Biomedical and Behavioral Research as an 11 member Presidential Commission (with provision that the members of the present Commission who are serving when this Act becomes law shall continue to serve on the new Commission until the President makes his appointments) and directs the Commission to assume all powers, functions and duties of the current commission to analyze the ethical, social, and legal implications of all biomedical and behavioral research involving human subjects. S. 2515—Passed Senate May 21, 1976. (VV)

Clinical laboratories improvement: Extends and expands the existing program of mandatory licensure contained in the Clinical Laboratories Improvement Act of 1967 to all laboratories (except those under the jurisdiction of Federal agencies other than the Department of Health, Education, and Welfare) soliciting and accepting specimens for laboratory analysis;

Authorizes the Secretary of Health, Education, and Welfare to license those laboratories meeting quality assurance standards, to promulgate standards and regulations to assure the quality, accuracy, and precision of laboratory testing, and to delegate his licensure authority to States implementing laboratory quality assurance programs at least equal to the Federal program, and to take necessary actions against laboratories not meeting the quality assurance standards;

Authorizes the Secretary to establish an Office of Clinical Laboratories, the purpose of which would be to establish a uniform regulatory program for all laboratories subject to Federal jurisdiction, and to establish an advisory council to advise, consult with, and make recommendations to the Office of Clinical Laboratories concerning the development of quality assurance standards and the implementation of such standards;

Provides for exemption of physicians' office laboratories under certain conditions where physicians file an affidavit with the Secretary, including but not limited to a description of the qualifications of nonphysician laboratory personnel, the quality and type of tests conducted, and the score of proficiency testing examinations taken by such personnel.

Permits the Secretary to waive from the personnel standards laboratories located in rural hospitals with fewer than 100 beds and develop specific job-related proficiency tests for personnel in rural hospital laboratories;

Allows the Secretary to utilize the services of private, nonprofit entities for the provision of inspection and proficiency testing services;

Authorizes $15 million annually to permit the Secretary to provide technical and financial assistance to States to establish or administer laboratory quality assurance programs;

Authorizes the inspection of laboratories; authorizes the Secretary to seek revocation of a laboratory's license where it is found that the laboratory has engaged in kickbacks, bribes, or false, fictitious, or fraudulent billing practices, and directs the Secretary to make an annual report to Congress on the relationship between costs and prices of laboratory services; and

Prohibits discrimination by any licensed laboratory against any employee who has become involved in any activity concerning allegations that the laboratory is in violation of this section; and contains other provisions. S. 1737—Passed Senate April 29, 1976. (159)

Communicable disease control—consumer health education: Revises and extends for 3 years expiring authority for prevention and control of communicable and other diseases, venereal disease, diseases borne by rodents, and lead poisoning prevention programs; provides legislative authority and authorizations for research and for community programs in health information and promotion and health care education; and establish an Office of Consumer Health Education and Promotion within HEW to promote these programs. S. 1466—Passed Senate July 30, 1975; Passed House amended April 7, 1976; Senate agreed to House amendment with an amendment May 26, 1976. (VV)

Drug abuse office and treatment: Continues the current authorization of $45 million through fiscal year 1979 for drug abuse prevention and treatment programs; increases from $100 million to $200 million the figure used to determine the minimum formula grant to any State (currently $66,666, which would increase to $133,333 if there is no change in the ratio of actual to authorized appropriations); recognizes narcotic addiction and drug abuse as a serious, long-term problem requiring continuous effort; authorizes a scaled-down Office of Drug Abuse Policy in the Office of the President, to be headed by a director appointed with the advice and consent of the Senate, which will replace the Special Action Office for Drug Abuse Prevention; authorizes the Director to make recommendations to the President with respect to policies for, objectives of, and establishment of priorities for Federal drug abuse functions and make recommendations for the coordination of the performance of such functions by Federal Departments and agencies; authorizes $2 million annually to support the activities of the Office; transfers from the Special Action Office to the National Institute on Drug Abuse responsibility for the encouragement of certain research and development at a yearly authorization of $7 million through fiscal year 1978, and adds "less addictive" replacements for opium and its derivatives to the list of priority areas for research; extends the National Advisory Council for Drug Abuse until January 1, 1976; bars hospitals receiving Federal funds from discrimination in admissions and treatment of drug dependent persons and directs the Administrator of Veterans' Affairs to prescribe such regulations for veterans health care facilities; requires States to provide reasonable assurances that programs have proposed performances standards to measure their own effectiveness; and contains other provisions. S. 2017—Public Law 94-237, approved March 19, 1976. (VV)

Heart, lung, and blood research: Extends for 2 years the authority of the Department of Health, Education and Welfare to conduct research, experiments and demonstration programs regarding heart, lung, blood and blood vessel diseases; changes the name of the National Heart Lung Institute to the National Heart, Lung and Blood Institute and provides explicit authority for the Institute to conduct programs with respect to the use of blood products and the management of blood resources; amends existing law to authorize the development of 30 centers for research, training, and demonstrations (10 centers for heart diseases, 10 centers for lung diseases; and 10 centers for blood, blood vessel diseases, research in the use of blood products, and research in the management of blood resources); requires the National Heart, Lung and Blood Advisory Council to submit a report by November 30 each year to the Secretary for simultaneous transmittal to the President and Congress on the progress of the National Heart Blood Vessel, Lung and Blood Disease Program during the preceding fiscal year with the transition period July 1-September 30, 1976, to be considered as a fiscal year for such reporting purposes; and authorizes $10 million for fiscal year 1976 and $30 million for fiscal year 1977 for prevention and control programs, and $339 million for fiscal year 1976 and $373 million for fiscal year 1977 for the national heart, blood vessel, lung and blood diseases and blood resources program;

Extends for 2 years, through fiscal year 1977, the authority of the Secretary of HEW to provide awards to individuals and institutions for biomedical and behavioral research training and authorizes therefor $165 million for fiscal year 1976 and $185 million

for fiscal year 1977; changes the manner in which interest accrues on National Research Service Awards to make interest on the award computed from the time the United States becomes entitled to recover all or part of the award;

Requires that the President's Panel on Biomedical Research and the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research each conduct studies on the implications or disclosure to the public of information contained in the NIH research grants or contracts;

Expands the Director of NIH's authority to conduct research into genetic diseases including but not limited to sickle cell anemia, Cooley's anemia, Tay-Sachs disease, cystic fibrosis, dysautonomia, hemophilia, retinitis pigmentosa, Huntington's chorea, and muscular dystrophy; and authorizes the Secretary to award grants and contracts for research projects with respect to such diseases;

Contains provisions relating to regulation of vitamin and mineral products under the Federal Food, Drug and Cosmetic Act;

Amends the National Arthritis Act to clarify the definition of arthritis and to raise the authorizations under the act;

Extends the expiration date of the National Diabetes Commission (Public Law 93–354) to September 30, 1976;

Amends the Public Health Service Act to add ambulatory surgical services as a supplemental health service which could be offered by migrant health and community health centers; permits the Indian Health Service to utilize non-profit recruitment agencies to assist in obtaining personnel for the Public Health Service;

Prohibits consideration of political affiliation in making appointments to advisory committees established to assist the Secretary in implementing the Public Health Service Act, the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, and the Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970;

Equates active service of commissioned officers of the Public Health Service with active military service in the Armed Forces for the purposes of all rights, privileges, immunities, and benefits provided under the Soldiers' and Sailors' Civil Relief Act of 1940;

Authorizes the Secretary to make awards to outstanding scientists who agree to serve as visiting scientists at institutions of post-secondary education which have significant enrollments of disadvantaged students with the amount of the award commensurate with the salary or remuneration which the individual had received from the institution with which he has, or had, a permanent or immediately prior affiliation; and

Extends the authorizations for physician shortage area scholarships at $3.5 million for fiscal year 1975 and $2 million for fiscal year 1976, and for health professions student loans, at $60 million for fiscal year 1976. H.R. 7988—Public Law 94–278, approved April 22, 1976. (*578)

Helen Keller Center: Amends the Rehabilitation Act of 1973 to provide that the center for deaf-blind youth and adults established by the Act shall be known as the "Helen Keller National Center for Deaf-Blind Youths and Adults". H.R. 12018—Public Law 94–288, approved May 21, 1976. (VV)

Lead-based paint poisoning prevention: Authorizes $91.5 million for 3 years for programs under the Lead-Based Paint Poisoning Prevention Act (Public Law 91–695) designed to: (1) provide assistance for protecting against the lead-based paint poisoning hazard in homes where cases of childhood lead-based paint poisoning have been actually identified; (2) authorize the Department of Health, Education and Welfare to safeguard against the application of lead-based paints to any cooking, drinking or eating utensil; (3) authorize the Department of Housing and Urban Development to restrict the application of lead-based paint in residential structures constructed or rehabilitated by the Federal government, or with Federal assistance; (4) authorize the Consumer Product Safety Commission to prohibit the application of lead-based paints to any toy or furniture article; and (5) limit the amount of lead contained in residential interior paints to no more than .06 percent, unless a majority of the members of the Consumer Product Safety Commission agrees to another level, not to exceed one half of one percent lead by weight, within 6 months of enactment of the bill. S. 1664—Passed Senate February 19, 1976. (42)

Medical device safety: Authorizes the Food and Drug Administration to regulate the development and marketing of medical devices;

Classifies all medical devices intended for human use into one of the following three categories based on the extent of regulation necessary to assure safety and effectiveness: Class I—General Controls, consisting of devices for which sufficient data is available to assure their safety and effectiveness or for which insufficient information exists to determine that the controls are sufficient but are not used in supporting or sustaining life or preventing impairment of health and which do not present an unreasonable risk of illness or injury; Class II—Performance Standards, consisting of devices for which Class I controls are insufficient and it is determined that insufficient information is available to establish a performance standard to assure their safety and effectiveness; and Class III—Premarket approval consisting of devices which cannot be classified as a Class I or II device because of insufficient data to assure their safety and effectiveness and which are used in supporting or sustaining human life, in preventing impairment of human health, or present an unreasonable risk of illness or injury;

Requires the Secretary to establish panels of experts to evaluate the safety and effectiveness of devices, with members having adequately diversified expertise in such fields as clinical and administrative medicine, engineering, biological and physical sciences, and other related professions; provides for the appointment to each panel of 2 nonvoting members representing consumer interests and the manufacturer of the device; requires the panels to submit their recommendations with respect to the classification of devices to the Secretary who shall have such recommendations published in the Federal Register for public comment, and following review of such comments, classify the device;

Requires classification panels to submit recommendations to the Secretary respecting the classification of all "old" devices (those introduced into interstate commerce prior to the date of enactment) and places all "new" devices (those introduced into interstate commerce after the date of enactment) into Class III until they have been reclassified by the Secretary; requires that all old devices implanted into the human body or used in supporting or sustaining life be classified into class III unless there is sufficient data available to assure the safety and effectiveness of the device;

Contains provisions to assure that those who offer to develop performance standards are qualified and that a conflict of interest is not involved and provides for disclosure of information regarding the individual or group who is chosen to promulgate the standards;

Provides that a published notice requiring premarket approval of a Class III device contain an opportunity to request a change in the classification of the device which must be submitted within 15 days and acted upon within 60 days of the publication; authorizes administrative review of decisions by the Secretary with respect to premarket approval or scientific review, and product development protocols; requires that patients be notified of risks or hazards presented by devices; exempts custom devices from applicable requirements respecting performance standards and scientific review or premarket approval under specified conditions; authorizes the Secretary to limit the sale or distribution of devices under specified circumstances; contains transitional provisions designed to place articles which would be devices under the new definition of "device" but which are presently being regulated as new drugs into comparable regulatory status as devices; authorizes the export of devices which did not comply with the requirements relating to performance standards or to scientific review if the Secretary determines that such export is in the interest of public health and safety and had the approval of the country to which it is intended for export; and contains other provisions. S. 510—Public Law 94– , approved 1976. (*139)

Rehabilitation Act extension: Extends the authorizations for vocational rehabilitation services, research and training, grants for construction of rehabilitation facilities, vocational training for handicapped individuals, the National Center for deaf-blind youths and adults, and other programs under the Rehabilitation Act until September 30, 1977, with an additional 1-year extension if Congress fails to act on legislation extending the authorizations for programs under the Act by April 15, 1977. H.R. 11045—Public Law 94–230, approved March 15, 1976. (VV)

HOUSING

Housing—flood insurance: Permits homeowners interest subsidies under Section 235 of the National Housing Act to be extended to owners of two modular mobile homes; increases the mortgage limits eligible for insurance under Section 235 from $21,600 to $25,000 and from $25,200 to $29,200 in any geographical area where the Secretary of Housing and Urban Development (HUD) finds that cost levels so require, and from $25,200 and $28,800 to $29,200 and $33,400 respectively for a dwelling for a family with five or more persons; extends the expiration date for this program from June 30, 1976, to June 30, 1977; transfers all insurance obligations under the section 221 housing programs for moderate income and displaced families Below-Market-Interest-Rate program from the General Insurance Fund to the Special Risk Insurance Fund;

Amends Section 244 co-insurance program to (1) clarify the authority of the Secretary to co-insure mortgages on a basis which might require the "top" assumption of loss by the mortgagee with subsequent loss shared on a percentage or other basis with the Federal Government, (2) make the 20 percent limitation on co-insurance of mortgages or loans inapplicable where the lender is a "public housing agency," (3) authorize the Secretary to co-insure mortgages on projects which are under construction in those areas where public housing agencies are lenders, and (4) provide that the term "public housing agency" for the purposes of section 244 has the same meaning as it does in section 3(6) of the Housing Act of 1937;

Provides that assistance payments made with respect to a dwelling under the Housing Act of 1937 shall not be considered as income or as a resource for the purposes of determining eligibility under the Social Security Act or any Federal law; authorizes the section 8 subsidy housing program enacted under the Housing and Community Development Act of 1974, under which HUD pays the housing owner the difference between the tenant contribution and the approved rent a maximum of 20 years to be made available to units in rural areas financed under the Farmers Home

Administration section 515 rural rental program for the full period of the FmHA mortgage, which is generally 40 years;

Authorizes Federal savings and loan associations to invest in the share capital and capital of the Inter-American Savings and Loan Bank;

Provides that in the event of a short-fall in funding for the community development program in fiscal year 1977 that the short fall in hold-harmless funds shall be distributed equitably among all urban counties and all large metropolitan cities in order to minimize the total loss to any single jurisdiction and establishes a set-aside for discretionary balances to insure small cities access to the program;

Amends the National Flood Insurance Act to correct certain inequities resulting from the general statutory prohibition against federally supervised conventional mortgage lending in identified flood hazard areas of communities not participating in the national flood protection and insurance program, which requires compliance with HUD land use and construction standards as a prerequisite for obtaining Federally subsidized flood insurance as follows: (1) extends to nonparticipating communities the existing exception which permits conventional mortgage loans to be made for the purchase of existing, previously occupied residential dwellings, and broadens the exception to include the purchase of existing small business properties and to permit present owners of residential dwellings to extend, renew or increase the financing on their homes; (2) authorizes the making of conventional loans to finance improvements to existing residential structures up to an aggregate of $10,000 per dwelling; (3) permits the making of conventional loans to finance improvements or additions to an existing farm for non-residential agricultural purposes; and (4) eliminates the existing prohibition on Federal disaster assistance to non-participating communities which suffer disasters not involving flooding;

Amends the Securities and Exchange Act to clarify the authority of State or political subdivisions to tax stock transfers; and contains other provisions. H.R. 9852—Passed House October 20, 1975; Passed Senate amended January 23, 1976; Senate requested conference January 23, 1976. Note: (Provisions of this bill are contained in S. 3295, Housing Programs, which passed the Senate on April 27, 1976.) (VV)

Housing programs: Continues and expands section 8 housing assistance for low- and moderate-income people with increased emphasis on new housing construction areas; revises the framework governing the Department of Housing and Urban Development's use of funds for new construction under section 8 and conventional public housing, the two major assistance programs for low-income families, which include the earmarking of funds for new construction under section 8 and an increase in the funds authorized and earmarked for construction of public housing; increases the estimated $1 billion in funds available as of September 30, 1976, for housing assistance annual contributions contracts by $696 million in October 1, 1976, which is to be used as follows: for section 8 housing assistance for low- and moderate-income people—$265 million for new construction and $171 million for existing unit assistance; for conventional public housing—$200 million for new construction, and provides that the estimated available funds shall be used for new construction or substantial rehabilitation for other than section 8 housing in the same ratio as is provided in the authorization; increases the level of operating subsidies for conventional public housing to $576 million in fiscal year 1977;

Increases the earmarked funds to be set aside to assist in financing low income housing for families who are members of Indian tribes by $17.5 million on July 1, 1976;

Increases funding for the section 202 direct loan program to nonprofit sponsors of housing for the elderly and handicapped by $2.5 billion (with no expiration date placed on the authorization) to an aggregate of $3.3 billion and amends the programs's interest rate formula to tie it to the average rate on all outstanding Treasury obligations, which under current market conditions would bring the rate paid by the sponsor down from about 9 percent to approximately 7½ percent; extends the section 235 homeownership assistance subsidy program for lower income families until September 30, 1977, and adds $200 million in contract authority for this program to the current outstanding authority of $264 million; adds a new section 247 rental assistance payments program for lower income families in FHA-insured multifamily projects in or faced with foreclosure, and authorizes $154 million for this program for fiscal year 1977; extends the section 312 housing rehabilitation loan program until September 30, 1977, increases the authorization for fiscal year 1977 by $150 million, and requires an interest rate above 3 percent for higher income borrowers based on the Treasury's long-term borrowing rate plus administrative costs; extends the authorization for the section 701 comprehensive planning program for planning assistance to communities until September 30, 1977, and authorizes $100 million for fiscal year 1977; and extends the section 810 urban homesteading program through fiscal year 1978 at an authorization level of ——— and authorizes $5 million for each of fiscal years 1977 and 1978;

Extends the following programs until September 30, 1977, without new authorizations: Section 236 rental housing assistance, the Emergency Homeowners' Relief Act (a standby program for homeowners faced with foreclosure because of economic conditions), the Emergency Home Purchase Assistance Act which provides assistance to the housing market during periods of credit shortages by subsidizing interest rates, and the section 245 experimental financing program under which FHA insures loans which use flexible amortization plans corresponding to variations in family income;

Authorizes the FHA to make section 241 supplemental loans to hospitals for additions and improvements; amends the section 244 FHA loan coinsurance provisions to authorize exceptions regarding coinsurance terms applicable to public housing; broadens the section 518 compensation program for defects in housing purchased with FHA insured mortgages;

Incorporates the provisions of H.R. 9852 concerning housing, mobile home loans, and flood insurance which passed the Senate by voice vote on January 23, 1976, and includes the following provisions: permits homeowners interest subsidies under section 234 of the National Housing Act to be extended to owners of two-modular mobile homes; increases the mortgage limits eligible for insurance under section 235; provides that assistance payments made with respect to a dwelling under the Housing Act of 1937 shall not be considered as income or as a resource in determining eligibility under the Social Security Act or any Federal law; provides that in the event of a short-fall in hold-harmless funds shall be distributed equitably among all urban counties and all large metropolitan cities in order to minimize that total loss to any single jurisdiction and establish a set-aside for discretionary balances to insure small cities access to the program; extends the time for area survey under the national flood insurance program until September 30, 1977, and amends the program to correct certain inequities resulting from the general statutory prohibition against federally supervised conventional mortgage lending in identified flood hazard areas of communities not participating in the national flood protection and insurance program; and contains other provisions. S. 3295—Passed Senate April 27, 1976; Passed House amended May 26, 1976. (155)

INDIANS

Indian Claims Commission: Authorizes $1.65 million for fiscal year 1977 to the Indian Claims Commission; extends the life of the Commission until September 30, 1980, to enable it to adjudicate the 155 claims which are presently pending; provides that if the Commission feels a pending case can be handled more expeditiously by the Court of Claims, the Commission shall certify the case to the Court subject to its approval; provides that any case still pending on September 30, 1980, shall be transferred to the Court of Claims for final adjudication; prohibits the Commission from conducting any hearings or initiating any proceeding during the last 9 months of its existence to allow the Commission 5½ months to complete final action on a claim prior to its expiration date, except that hearings or proceedings leading to a compromise settlement of a claim will be permitted; and requires the Commission to submit a semi-annual report to Congress on the progress and status of all remaining cases along with a projected completion date for each case. S. 2981—Passed Senate April 9, 1976. (VV)

Indian crimes: Amends the Indian Major Crimes Act (title 18, U.S.C.) to add the crime of kidnapping to the specified major crimes triable in Federal courts when committed by an Indian in Indian country and provides that such offenses shall be tried in the same courts and in the same manner as other persons committing such offenses within the exclusive jurisdiction of the United States thus insuring Indian defendents equal treatment under applicable provisions of law. S. 2129—Public Law 94- , approved 1976. (VV)

Palms and Cabazon mission Indians: Directs the Secretary of the Interior to convey the beneficial interest in 240 acres of land held in trust jointly by the Cabazon and Twenty-nine Palms Bands of Mission Indians, to the Twenty-nine Palms bands of Mission Indians, and to distribute from the tribal fund of the Cabazon Band to the Twenty-nine Palms Bands the sum of $2,825 plus interest collected as payment for a storm channel right-of-way. H.R. 1465—Public Law 94-271, approved April 21, 1976. (VV)

Pueblo Indians, New Mexico: Repeals a 1926 statute which subjects Pueblo tribal lands to condemnation pursuant to State law. S. 217—Passed Senate May 21, 1975; Passed House amended February 2, 1976; In conference. (VV)

INTERNATIONAL

Asian development fund: Amends the Asian Development Bank Act by adding a new section authorizing the United States Governor of the Bank to agree to contribute $50 million to the Asian Development Fund replenishment approved by the Bank in December 1975, and authorizes therefor $50 million. S. 3103—Passed Senate May 6, 1976. (VV)

Brussels conference: Expresses the solidarity of the American people with the efforts to enlarge human freedom by the participants in the Second Brussels Conference on Soviet Jewry to be held February 17 to 19, 1976. S. Con. Res. 93—Senate adopted February 5, 1976; House adopted February 10, 1976. (VV)

Commission on security and cooperation in Europe: Establishes a Commission on Security and Cooperation in Europe to monitor the acts of the signatories which reflect compliance with, or violation of the articles of the Final Act of the Conference on Security and Cooperation in Europe with particular regard to the provisions relating to cooperation in humanitarian fields and to monitor and encourage the development of programs to expand East-West economic co-

operation and cultural interchange; provides that the Commission shall consist of 15 members (6 from the House of Representatives, 6 from the Senate and 3 appointed by the President from the Departments of State, Defense and Commerce) with the Chairman appointed by the Speaker of the House; gives the Commission the authority to carry out its mandate including the power of subpena; requires the President to submit a semiannual report to assist the Commission in carrying out its duties which includes a detailed survey of actions of the signatories of the Final Act reflecting compliance with or violation of the provisions of the Act and a description of the planned programs and activities of the appropriate agencies of the Executive branch relating to East-West cooperation and to promoting a greater interchange of ideas and people between East and West; directs the Commission to report to Congress on a periodic basis and to provide information to Members as requested; and authorizes therefor $350,000 for each fiscal year to remain available until expended. S. 3107—Public Law 94– , approved 1976. (VV)

Discriminatory trade practices of EEC: States the sense of the Congress that the President seek immediate elimination of the discriminatory trade regulations approved by the Council of the European Economic Community (EEC) which require a surety deposit and certification system on all imported vegetable protein products thus directly affecting U.S. export of soybeans and violating certain provisions placing no duty on soybeans; and directs the President, in the event that the Community fails to eliminate these regulations, to obtain full compensation for such actions under Article XXIII of the General Agreement on Tariffs and Trade. S. Con. Res. 108—Senate adopted March 31, 1976. (VV)

Foreign investment in the United States: Authorizes the President or his designee to set up a regular and comprehensive data collection program to obtain current and continuing information from business enterprises on a wide variety of international investment issues and to publish such data on a regular and periodic basis; directs the Secretary of Commerce to conduct "benchmark surveys" of foreign direct investment in the United States and of American direct investments abroad at least once every 10 years; requires the Secretary of the Treasury to conduct a survey of foreign portfolio investment in the United States at least once every 10 years and to provide periodic benchmarks to measure such investments; grants the President and the Secretaries broad authority to determine the subject areas on which statistical information is to be gathered and for which studies may be prepared; authorizes the President, his designee, or the Secretaries to compel designated persons to keep pertinent records and to report relevant information to the agencies administering the information-collection programs; and prohibits the public disclosure of any information gathered under this act in such a way as to identify the company or individual making the report. S. 2839—Passed Senate May 19, 1976. (VV)

Foreign military assistance and arms export control: Authorizes appropriations for security assistance and related programs of $3,166,900,000 for fiscal year 1976 and $790 million for the transition period July 1–September 30, 1976, as follows:

Authorizes for grant military assistance (MAP) for fiscal year 1976 $196,700,000 to which is added $28.3 million in recoupment and reimbursements making a total of $225 million; allocates this amount as follows: $31 million to Greece, $13 million to Indonesia, $50 million to Jordan, $55 million to Korea, $17 million to the Philippines, $16 million to Thailand, $31 million to Turkey, $6 million to Ethiopia, and $6 million to unspecified countries;

Authorizes $1,766,200,000 for fiscal year 1976 for security supporting assistance programs of which not less than the following amounts will be available to the following countries: Israel, $730 million; Egypt, $705 million; Greece, $65 million; and as intended by the committee of conference, Jordan, $72.5 million; Syria, $80 million; Bahrain, $600 million; Malta, $9.5 million; Portugal, $52.5 million; United Nations Force in Cyprus, $9.6 million; Zaire, $18.9 million; and for Operating Expenses, $22.6 million;

Authorizes $1.039 billion for fiscal year 1976 for Foreign Military Sales Credits (FMS) financing; sets a ceiling of $2,374,700,000 on the aggregate total of FMS credits or participation in credits and of the principal amounts of loans guaranteed during fiscal year 1976; provides, with respect to the long-term repayments mandated for FMS financing provided to Israel that repayment shall be in not less than 20 years following a grace period of 10 years on repayment of principal:

Authorizes $50 million for the Middle East Special Requirements Fund for fiscal year 1976 and earmarks $12 million of this for use as a U.S. contribution toward the settlement of the deficit of the United Nations Relief and Works Agency for Palestine Refugees in the Middle East;

Makes the transition period authorizations on the same basis as the fiscal year 1976 authorizations;

Terminates authority to furnish grant military assistance (MAP) after September 30, 1977 (with the provision that the authority shall remain available until September 30, 1980 to carry out obligations incurred before September 30, 1977), unless Congress subsequently specifically authorizes assistance to a country; exempts the authority relating to stockpiling of defense articles for foreign countries from this termination requirement; restricts use of the President's emergency authority to draw on Department of Defense stocks and services for military assistance purposes to unforeseen emergencies requiring immediate action vital to U.S. security interests; reduces the authority from $150 million to $67.5 million in any fiscal year, and requires current reporting to Congress on the use of such authority; permits new stockpiles or additions to existing stockpiles of not to exceed $75 million in fiscal year 1976 and not to exceed $18,750,000 during the transition quarter; prohibits locating future stockpiles outside U.S. military bases except for stockpiles located in NATO countries; stipulates that stockpiled defense articles transferred to a foreign country may not be considered "excess" for valuation purposes; and requires the reporting to Congress of each new stockpile or of an addition to an existing stockpile having a value in excess of $10 million;

Places a ceiling of 34 on military assistance advisory groups and missions (MAAG's) effective September 30, 1976; authorizes $27 million for international military education and training and provides that such programs must be justified in the annual presentation to the Congress;

States the sense of Congress that the President should seek to initiate multilateral discussions for the purpose of reducing the international trade in arms and lessening the dangers of regional conflict; requires the President to conduct a comprehensive study of U.S. arms sales policies to determine whether such policies should be changed and to report to the Congress within one year; sets an annual ceiling of $9 billion on arms which are sold under the Foreign Military Sales Act or which are licensed or approved for export in connection with commercial sales for the use of a foreign country or international organization; permits the President to waive the ceiling on aggregate arms sales, on a case-by-case basis without declaring that an emergency exists if he determines that national security interests so require; provides criminal penalties for any person who attempts to avoid the ceiling by exporting without a license or approval as required; provides that the existing requirement in the Foreign Assistance Act that recipient countries must agree in advance not to transfer U.S.-supplied defense articles to a third country without prior U.S. consent shall also apply to related training and other defense services; prohibits third country arms transfers of $25 million or more unless the President certifies the transfers to the Congress and Congress does not disapprove within 30 calendar days or unless the President states an emergency exists which requires the transfer in the security interest of the United States;

Requires that all sales of "major defense equipment" in excess of $25 million must be handled on a government-to-government basis, except to NATO countries, to whom sales above that limit can continue to be made through commercial channels; requires the President to submit to Congress, for possible rejection by concurrent resolution within 30 calendar days, proposed government sales of "major defense equipment" of $7 million or more, all proposed government sales of any defense articles or services of $25 million or more and, regarding commercial sales, all proposed export licenses pursuant to commercial sales of "major defense equipment" of $7 million or more (except for those to NATO countries), with provision for waiver of the 30 calendar day waiting period if the President certifies that an emergency exists which requires the sale or the issuance of the license in the national security interest; contains provisions concerning the cancellation or suspension of licenses and contracts for arms sales if the national interest so requires;

Provides for the termination, within 90 days of continuous session, by Congress of security assistance to a country upon receiving a report from the Secretary of State that the government of a country is engaging in a consistent pattern of gross violations of internationally recognized human rights; provides for termination of assistance, sales, credits or guarantees and cancellation of export licenses, unless required by national security, to governments discriminating against U.S. nationals or persons; prohibits assistance to countries which aid, abet, or grant sanctuary to international terrorists unless required by national security;

Prohibits assistance of any kind to Angola, except for humanitarian purposes, unless specifically authorized by subsequent legislation; permits cash sales, credits, and guarantees of defense articles and services to Turkey as long as Turkey observes the cease-fire on Cyprus, does not increase its military forces or civilian poulation on Cyprus, and does not transfer to Cyprus any additional U.S. supplied arms; prohibits military assistance and sales credits to Chile; expresses the sense of Congress in support of negotiations to limit military deployments in the Indian Ocean; eases certain restrictions on nonstrategic trade with Vietnam which are to be reimposed after 180 days unless the President certifies to Congress that the Vietnamese have accounted for a substantial number of POW's and MIA's and returned the bodies of a substantial number of dead; prohibits U.S. personnel from participating in direct police arrest actions in a foreign country in connection with narcotic control; and contains other provisions. S. 2662—Vetoed May 7, 1976. (36, 175)

Guatemala relief authorization: Amends the Foreign Assistance Act of 1961 to authorize $25 million for fiscal year 1976 (which shall remain available until expended) for

relief and rehabilitation assistance to the people of Guatemala who were victims of the earthquakes which occurred in February of 1976; limits to $4 million the amount which may be used for rebuilding the Puerto Barrios Highway and encourages the use of seismic resistant materials in the rebuilding of housing; requires that such assistance be subject to the policy and general authority of section 491 of the Foreign Assistance Act of 1961 which provides a consolidated body of legislation on disaster relief and assistance; authorizes the transfer of funds only to reimburse appropriation accounts from which initial relief funds were drawn; directs that to the maximum extent practicable assistance is to be distributed through United States voluntary relief agencies and other international relief and developing organizations; and requires the President to submit to the Congress a report 60 days after enactment and quarterly thereafter on the programming and obligation of funds provided under this act. S. 3056—Public Law 94-276, approved April 21, 1976. (VV)

Guatemalan earthquake: States the sense of the Senate that the executive branch be urged to develop, in cooperation with governmental and private donors, programs to assist the people of Guatemala in their efforts to relieve the suffering caused by the recent earthquake and to rehabilitate their nation from the damage inflicted; and extends deepest sympathy to the President and the people of Guatemala in their hour of suffering and distress. S. Res. 390—Senate adopted February 17, 1976. (VV)

Inter-American Development Bank—African Development Bank: Authorizes $2.25 billion as the U.S. share of a replenishment of the funds of the Inter-American Development Bank (IDB) to be paid out in installments over a 3 and 4 year period; authorizes the U.S. Governor of the Bank to vote in favor of (1) resolutions increasing the authorized capital stock of the Bank to $5.303 billion and the resources of the Fund for Special Operations to $1.045 billion (includes therefor authorizations of $1.650 billion and $600 million respectively as the U.S. subscription for these increases) and admitting nonregional countries (10 European plus Japan and Israel) and the Bahamas and Guyana to membership in the Bank; and (2) amendments to the Agreement Establishing the Bank which provide for the creation of a new class of stock designated as Inter-Regional Capital Stock and for Bank lending to the Caribbean Development Bank; instructs the U.S. Executive Director of the Bank to propose a resolution providing for the development utilization of intermediate technologies as major facets of the Bank's development strategy and to report progress of the resolution to Congress;

Amends the Foreign Assistance and Related Programs Appropriations Act, 1975 (Public Law 94-11) to delete that portion of Title III, Investment in Inter-American Development Bank, which earmarks specific amounts of the appropriated U.S. contribution to the Fund for Special Operations;

Authorizes $25 million for U.S. participation in the African Development Fund (AFDF) to be paid in three annual installments of $9 million (1976), $8 million (1977) and $8 million (1978); instructs the Executive Director representing the U.S. in the AFDF to vote against loans to countries involved in unsatisfactory expropriations disputes with the United States;

Instructs the Executive Directors representing the U.S. in the IDB and AFDF to oppose loans to countries engaging in a consistent pattern of gross violations of human rights unless they directly benefit needy people or providing refuge to individuals committing acts of terrorism such as aircraft hijacking; and

States the sense of the Congress that the President should furnish assistance to foreign countries and international organizations for the investigation and planning for the control of swine influenza. H.R. 9721—Public Law 94- , approved 1976. (VV)

James Smithson bequest: Expresses appreciation and gratitude to Her Majesty, Queen Elizabeth II, upon the occasion of her visit to the United States, for the bequest of James Smithson, (a British subject, scholar and scientist) which enabled the U.S. to establish the Smithsonian Institution in Washington, D.C. S.J. Res. 196—Passed Senate May 13, 1976. (VV)

Laotian refugees: Amends the Indochina Migration and Refugee Assistance Act of 1975 (Public Law 94-23) to make Laotian refugees eligible for the same types of assistance as are now authorized for Vietnamese and Cambodian refugees. S. 2760—Passed Senate February 16, 1976. (VV)

Lincoln statue: Authorizes the President to accept, on behalf of the United States, a statue of Abraham Lincoln from its owners, Leon and Ruth Gildesgame, of Mount Kisco, New York, for presentation to Israel. H.J. Res. 406—Public Law 94-208, approved February 4, 1976. (VV)

Palm oil production loans: States as the sense of the Senate that the International Bank for Reconstruction and Development should direct its loan activities in underdeveloped countries to the production of food and fiber needed internally to prevent starvation and to upgrade the diets of all their citizens and cease further encouragement of palm oil production for export so long as the United States remains the only entirely open major import market for palm oil. S. Res. 444—Senate agreed to May 11, 1976. (VV)

Peace Corps authorization: Authorizes $81 million to finance the operation of the Peace Corps for fiscal year 1977 including additional funds for increases in salary, retirement, or other employee benefits that may be authorized in fiscal year 1977 and $10.1 million for payment of Peace Corps volunteer's readjustment allowance which was increased from $75 to $125 a month under Public Law 94-130. H.R. 12226—Public Law 94-281, approved May 7, 1976. (VV)

State Department authorization: Authorizes $1,364,020,953 for fiscal year 1977 for the operations of the State Department (including the Office of Foreign Buildings), the United States Information Agency and the Board for International Broadcasting which makes grants to Radio Free Europe and Radio Liberty;

Extends to State Department medical personnel malpractice protection similar to that now available to employees of the Public Health Service and the Veterans Administration; removes the existing prohibition against the State Department's development of a new Travel Document and Issuance System;

Places into law the principles governing broadcasts which are in the charter of the Voice of America; calls for the U.S. Ambassador to the United Nations to seek such changes in the U.N. system for apportioning rates of assessment as are necessary to assure that the rates are closely correlated to each nation's relative ability to pay; bars use of funds authorized by this or any other act for the benefit of any country which aids or abets international terrorism, permits use of its territory as a haven for international terrorists, or cooperates with or serves as a host to military forces from other nations seeking to carry out aggression against any other nation;

Establishes a Commission on United States Participation in the United Nations which is to study and report on the United Nations and the nature and extent of United States participation therein; prohibits the giving of gifts valued at over $50 which are paid for from appropriated funds or of appropriated funds in excess of $50 to any person of a foreign country; prohibits the acceptance by U.S. employees of gifts from persons of a foreign country, and requires a yearly report by the President on the gifts given;

Adds a new title to the Foreign Service Act to equate Foreign Service retirement benefits to civil service retirement benefits; provides that not less than 75 percent of the total number of positions of ambassador which are occupied shall be career personnel in the Foreign Service; requires the Secretary of State to transmit to Congress a comprehensive plan for improvement of the State USIA personnel system; and requires the President to transmit to Congress a report on projected U.S. needs for international broadcast facilities and ways in which existing facilities can be put to more efficient use. S. 3168—Passed Senate March 29, 1976. (105)

Treaties

Inter-American Women's Rights Convention: Provides that the right to vote and to be elected to a national office shall not be denied or abridged by reason of sex. Ex. D, 81st-1st—Resolution of ratification agreed to January 22, 1976. (2)

Radio regulations revision: Updates the Radio Regulations to take account of present technology and deals with such items as the reallocation of frequency channels for radiotelephone or for narrow-band direct printed telegraphy and fascimilies (maps), for intraship radio communications and the like, plus power limitations for such channels; contains a U.S. reservation in the final protocol concerning one of the revision's frequency allocation plans, which was felt to be incompatible with the official and public correspondence needs of the United States; and contains other provisions. Ex. G, 94th-1st—Resolution of ratification agreed to January 22, 1976. (6)

Telecommunications convention: Abrogates and replaces the International Telecommunications Convention of 1965; generally follows the provisions of the 1956 Montreux Convention, but includes a considerable number of minor improvements and a few major modifications; contains an agreement recognizing the International Telecommunications Union as a United Nations specialized agency; makes major changes in the organization of the International Telecommunication Union and the functions of its subordinate agencies; increases the Administrative Council's membership from 29 to 36 seats with the understanding that there be no provision for rotation of members; continues the membership at five of the International Frequency Registration Board; deletes from the new Convention the territories of Portugal, Spain, the United Kingdom, France, and the United States as members of the Union; and changes the financial contribution of the United States from 11½ percent of the total contribution to 7 percent. Ex. J, 93d-2d—Resolution of ratification agreed to January 22, 1976. (4)

Telegraph and telephone regulations: Simplifies and completely revises versions of the 1958 Telegraph and Telephone Regulations to make it easier for the international business system guided by the Regulations to keep pace with rapidly advancing telecommunications technology; provides the same substantive framework for continued international traffic in both telegraph and telephone service which requires that (1) sufficient international systems be maintained, (2) specified services be provided to users, (3) certain operating procedures be followed, and (4) determination of rates and charges and the accounting of the collection of same follow standardized practices; prohibits re-

bates on rates set by the general official tariff list and grants the right to terminal and transit telegraph offices to stop certain private telegrams, subject to reference to appropriate authorities, but not safety-of-life service of government telegrams; adds 2 reservations on the final protocol which make it clear that telegraph and telephone service on the North American continent is generally considered to fall within the scope of domestic service and is not governed by these regulations in order to insure that aeronautical service, which is primarily a private communications service, and operational communications of the airline industry are exempt; contains 2 Appendices on Payment of Balance of Accounts for converting currencies for the balances of international telecommunications accounts together with an escape clause which provides that the perscribed settlement procedures need not be observed should there be a "radical change in the international monetary system", Ex. E, 93d-2d—Resolution of ratification agreed to January 22, 1976. (5)

Women's political rights convention: Provides that women shall be entitled to vote in all elections on equal terms with men, without any discrimination; that women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination; and that women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination. Ex. J, 88th-1st—Resolution of ratification agreed to January 22, 1976. (3)

United States International Trade Commission: Authorizes $11,789,000 for fiscal year 1977 and $12,036,000 for fiscal year 1978 (plus such additional amounts as may be needed for statutory pay and employee benefit increases) for the operations of the United States International Trade Commission. S. 3420—Passed Senate May 17, 1976. (VV)

United States-Soviet relations: States the sense of the Senate that U.S. relations with the Soviet Union are a central aspect of U.S. foreign policy and that difficulties existing in that relationship should be sorted out notwithstanding the differences which separate the two governments; states that the basic premise of the U.S. approach to this relationship is that the U.S. must remain unchallengeably strong militarily to insure action in consultation with our allies; states that beyond this determination, that our national security policy should be to seek through negotiations to reduce, moderate, and stabilize the military competitions between the two governments by supporting: (1) balanced strategic arms limitation through Congressionally-approved agreements containing verifiable stipulations; (2) demonstration of mutual restraint and commitment to peace; (3) expanded relations through prudent initiatives; and (4) action in consultation with out allies; states that future treaties shall not limit the U.S. to levels of intercontinental strategic forces inferior to the limits provided for the Soviet Union; calls for a joint effort by the two governments to bring about the immediate withdrawal by Cuba of all forces from Africa; states that the American objective is to achieve individual freedom and peace in the world and that although cooperation between the U.S. and the Soviet Union may be limited it is the American purpose to enlarge that sphere of cooperation;

States the sense of the Congress (1) that there has been no change in the longstanding U.S. policy on the nonrecognition of the illegal seizure and annexation by the Soviet Union of the three Baltic nations of Estonia, Latvia, and Lithuania and (2) that it will continue to be the policy of the U.S. not to recognize their annexation. S. Res. 406—Senate adopted May 5, 1976. (168)

United States Winter Olympic Team: Expresses pride in and gratitude for the conduct and achievement of the athletes, coaches, trainers and Committee members of the 1976 United States Winter Olympic Team for their excellent performance at the XII Winter Olympic Games. S. Res. 386—Senate adopted February 16, 1976. (VV)

United States information agency (U.S.I.A.) authorization: Authorizes $266,777,000 for fiscal year 1976 and $71,900,000 for the transition period July 1–September 30, 1976, to the United States Information Agency which conducts cultural informational programs. H.R. 11598—Public Law 94-272, approved April 21, 1976. (VV)

Wilma Rudolph film: Authorizes the United States Information Agency to make available to Cappy Productions, Inc., of New York City, a master copy of the film "Wilma Rudolph Olympic Champion" in order that portions of the film may be used in a television program entitled "Women Gold Medal Winners", which will be used to promote the 1976 Olympic Games. H.R. 6949—Public Law 94-218, approved February 27, 1976. (VV).

MEMORIALS, TRIBUTES, AND MEDALS

Bernardo De Galvez statue: Authorizes the Secretary of the Interior to accept a statue of Bernardo de Galvez, the Spanish Governor of Colonial Louisiana during the Revolution as a gift from the Spanish Government to the United States for the Bicentennial. S. 3031—Public Law 94-287, approved May 21, 1976. (VV)

Charles Carroll medals: Directs the Secretary of the Treasury to strike and furnish to the Baltimore Museum of Art, Baltimore, Maryland, not more than 50,000 national medals commemorating the 200th anniversary of the signing of the Declaration of Independence by Charles Carroll of Carrollton, Maryland. H.R. 3427—Public Law 94-257, approved April 1, 1976. (VV)

Clarence M. Mitchell, Jr.: Honors Clarence M. Mitchell, Jr., for his contributions to the establishment of justice and equality in America by his service as Director of the Washington Bureau of the NAACP, Legislative Chairman of the Leadership Conference on Civil Rights, and various government posts, and expresses gratitude for his efforts to improve the quality of life for all Americans. S. Res. 353—Senate adopted January 26, 1976. (VV)

Commercial aviation's 50th anniversary: Provides recognition for the 50th anniversary of American commercial aviation. S. Res. 381—Senate adopted March 31, 1976. (VV)

Congressional Country Club: Congratulates the Congressional Country Club upon being selected to host the 58th PGA championship and, in so doing, compliments the Congressional Country Club on being such a renowned and respected championship golf course. S. Con. Res. 119—Senate agreed to May 27, 1976. (VV)

International Astronautical Federation: Recognizes the importance of the 27th Congress of the International Astronautical Federation (which is a federation of societies devoted to fostering the exploration of space through space science and the development of space technology and law) to be held in Anaheim, California, from October 10 through October 16, 1976: commends the Federation and its affiliated organizations for selecting the United States as the location for its Congress in recognition of the Bicentennial; and commends the U.S. host organizations for sponsoring the Congress. S. Res. 412—Senate adopted March 24, 1976. (VV)

Jerry L. Pettis Memorial Veterans' Hospital: Designates the Veterans' Administration hospital in Loma Linda, California, as the "Jerry L. Pettis Memorial Veterans' Hospital". H.R. 4034—Public Law 94-246, approved March 25, 1976. (VV)

John Witherspoon statue: Authorizes the Secretary of the Interior to permit the relocation of the John Witherspoon statue (located on government property at Connecticut Avenue and "N" Street, N.W., Washington, D.C.) to the National Presbyterian Center and conveys title to the statue to the National Presbyterian Church. S. 1996—Passed Senate May 4, 1976. (VV)

Library of Congress Thomas Jefferson Building: Renames the building known as the Library of Congress Annex as the Library of Congress Thomas Jefferson Building. S. 2920—Public Law 94-264, approved April 13, 1976. (VV)

Lincoln Memorial: Authorizes the Secretary of the Interior to inscribe the names of Alaska and Hawaii on the walls of the Lincoln Memorial in a manner and style consistent with the names of the other 48 States and upon approval of the design and plans for the inscription by the National Capitol Planning Commission, the Commission of Fine Arts, and the Advisory Council on Historic Preservation; and authorizes therefor such sums as necessary. S. 64—Passed Senate April 6, 1976. (VV)

101st Airborne Memorial: Authorizes the One Hundred and First Airborne Division Association to erect a memorial in the District of Columbia in honor of the "Screaming Eagles" of the 101st Airborne Division, United States Army, and requires approval of the Mayor if the selected site is under his jurisdiction. S. 1847—Public Law 94-211, approved February 6, 1976. (VV)

Torbert H. Macdonald, death of: Expresses the sorrow of the Senate over the death of Representative Torbert H. Macdonald of Massachusetts. S. Res. 452—Senate agreed to May 24, 1976 (IV)

William A. Barrett, death of: Expresses the sorrow of the Senate over the death of Representative William A. Barrett, of Pennsylvania. S. Res. 433—Senate adopted April 14, 1976. (VV)

William O. Douglas: Dedicates the Chesapeake and Ohio Canal National Historical Park in the District of Columbia and Maryland to Justice William O. Douglas and requires that the words "Dedicated to Justice William O. Douglas" be prominently displayed on all existing and future signs bearing the name Chesapeake and Ohio Canal National Historical Park. S. 2742—Passed Senate February 4, 1976. (VV)

Wright Patman, Death of: Expresses the sorrow of the Senate upon the death of Congressman Wright Patman, of Texas. S. Res. 402—Senate adopted March 9, 1976. (VV)

NATURAL RESOURCES—NATIONAL HISTORIC SITES

Boundary Waters Canoe Area: Authorizes additional funds of not to exceed $4.5 million, making a total authorization of $9 million, for the acquisition of lands in the Boundary Waters Canoe System within the Superior National Forest in northeastern Minnesota. S. 1526—Passed Senate April 27, 1976. (VV)

Chickasaw National Recreation Area: Establishes the Chickasaw National Recreation Area in southern Oklahoma consisting of the Platt National Park and the Arbuckle reservoir, plus certain connecting lands, to protect mineral springs and other natural features and to provide increased outdoor recreation opportunities. H.R. 4979—Public Law 94-235, approved March 17, 1976. (VV)

Eugene O'Neill National Historic site: Authorizes the Secretary of the Interior to accept the donation of, or purchase with donated funds, Tao House in Contra Costa, California, which was the home of Eugene O'Neill from 1937 to 1944 and to designate it as the Eugene O'Neill National Historic Site; provides that the site shall be administered under the basic management provisions of the 1916 Organic Act of the Park Service and the 1935 Historic Sites Act as a center for the performing arts; authorizes the Secretary to enter into cooperative agreements with the

Eugene O'Neill Foundation for theatrical productions (similar to those by which Wolf Trap Farm operates) with congressional oversight of any such agreement; and authorizes such sums as necessary which is estimated at between $200,000 to $400,000 per year for operations and maintenance. S. 2398—Passed Senate May 13, 1976. (VV)

Fire Island National Seashore: Amends the Act establishing the Fire Island National Seashore to increase the authorization for land acquisition relating to the Seashore from $16 million to $18 million. S. 867—Passed Senate April 7, 1976. (VV)

George W. Norris National Historic Site: Authorizes the Secretary of the Interior to acquire by donation or purchase with donated funds the home of Senator George William Norris (who, among other achievements, authored the 20th amendment to the Constitution which deals with Presidential and Congressional terms and the sessions of Congress, and the legislation which established the Rural Electrification Administration) in the State of Nebraska and to establish it as the "George W. Norris Home National Historic Site". S. 3476—Passed Senate May 21, 1976. (VV)

Gruber Wagon Works: Modifies the Blue Marsh Lake project to authorize and direct the Secretary of the Army, acting through the Chief of Engineers, to relocate and restore intact the historic structure and associated improvements known as the Gruber Wagon Wor' s in Berks County, Pennsylvania which was built in 1882 provides, upon completion of relocation and restoration, that title to the Wagon Works shall be transferred to Berks County upon condition that the county agree to maintain the property in perpetuity as a public museum at no cost to the Federal Government; and authorizes therefor $520,000 which will be in addition to the $590,000 in authority under the Reservoir Salvage Act of 1960, as amended, which limits cost for salvage of historical resources affected by any one project to 1 percent of the total project cost. S. 1497—Passed Senate April 28, 1976. (VV)

Land and water conservation fund—national historic preservation—oil shale revenues: Amends the Land and Water Conservation Fund Act to increase from $300 million to $1 billion the minimum annual level of the Fund; raises from 7 to 10 percent the maximum percentage of allocated grant funds to which a State is entitled in any one year; changes the formula for land acquisition grant monies from 50–50 to 70–30; requires States to submit their Statewide plans to the areawide clearing house created under the Intergovernmental Cooperation Act for comment; provides that not to exceed 25 percent of a State's annual allocation shall be available for sheltered facilities; requires States to account for funds received on a project-by-project basis; clarifies the extent to which Land and Water Funds can be used to acquire land for endangered species or wildlife refuges

Amends the National Historic Preservation Act of 1966 to change the formula for matching grants for planning, nationally significant properties, demonstration projects, and meeting houses from 50–50 to 70–30; repeals the 50 percent limit on planning; establishes a National Historic Preservation Fund and authorizes therefor $150 million per year over a 5-year period to carry out the purposes of the Act

Provides for Senate confirmation of future appointments to the office of: Director of the Bureau of Land Management, Director of the National Park Service, Director of the Bureau of Outdoor Recreation, Commissioner of Reclamation and Governor of American Samoa; and

Amends section 35 of the Mineral Leasing Act of 1920 to permit each State to use its share of oil shale revenues for planning, construction, and maintenance of public facilities and provisions of public services. S. 327—passed Senate October 29, 1975; Passed House amended May 5, 1976; Senate requested conference May 17, 1976. (VV)

Land and water resource conservation: Establishes a mechanism for making long-range policy to encourage the wise and orderly development of the Nation's soil and water resources by requiring that (1) the Secretary of Agriculture prepare an appraisal of the Nation's land, water, and related resources by December 31, 1977, and update it by December 31, 1979, and each fifth year thereafter; (2) the Secretary develop a National Land and Water Conservation Program which will set forth the direction for future soil and water conservation efforts on non-Federal land by December 31, 1977, and update it by December 31, 1979, and each fifth year thereafter; (3) the appraisal report and the program, together with a detailed statement of policy intended to be used in framing budget requests for soil conservation service activities, be submitted to Congress on the first day Congress convenes in 1978, 1980, and at each 5-year interval thereafter; (4) that programs established by law be carried out in accordance with the statement of policy unless either House of Congress within 60 days of receipt of the appraisal report, program, or statement of policy, adopts a disapproval resolution; (5) beginning with fiscal budget for 1979, requests sent by the President to Congress governing Soil Conservation Service activities express the extent to which the programs and policies projected under the budget meet the statement of policy approved by the Congress; and (6) the Secretary submit to Congress, beginning with fiscal year 1979, an annual report evaluating the programs effectiveness. S. 2081—Passed Senate May 25, 1976. (VV)

National parks mining regulations: Repeals the laws permitting mineral development under the Mining Law of 1872 in the 6 areas of the National Park System where such mining is presently permitted: Crater Lake and the Mount McKinley National Parks; Death Valley, Glacier Bay and Organ Pipe Cactus National Monuments; and Coronado National Memorial; provides express and broad authority for management by the Secretary of the Interior of mineral development on patented and unpatented mining claims within all areas of the National Park System; and imposes a 4-year moratorium on further surface disturbance within Death Valley and Organ Pipe Cactus National Monuments and Mount McKinley National Park in order to give the Secretary of the Interior an opportunity to determine the validity of existing mining claims and Congress an opportunity to decide whether to acquire any valid mineral rights in order to prevent further damage to these areas. S. 2371—Passed Senate February 4, 1976. (25)

National resource lands management: Provides the first comprehensive, statutory statement of purposes, goals, and authority for the use and management of about 448 million acres of federally-owned lands administered by the Secretary of the Interior through the Bureau of Land Management, which constitutes the largest system of Federal lands and comprises 20 percent of America's land base and 60 percent of all federally owned property;

Requires that the national resource lands be managed in accordance with the principles of multiple use and sustained yield and defines those principles; establishes the policy that, except where disposal is consistent with the purposes and conditions of the Act, the national resource lands will be retained in Federal ownership; includes, among other policies set by the Act, a fair return to the United States for the use of the national resource lands, full public participation, including hearings and the use of advisory boards, in decisionmaking concerning those lands, and coordination of the decisionmaking with State and local land use planning:

Repeals a number of the 3,000 public land laws which are either obsolete or conflict with the provisions of the Act; and contains other provisions. S. 507—Passed Senate February 25, 1976. (49)

National wildlife system administration: Amends the National Wildlife Refuge System Administration Act of 1966 to provide that all areas included in the System as of January 1, 1975, shall continue to be a part of the System and cannot be transferred or otherwise disposed of except by an Act of Congress; or in the case of lands acquired with duck stamp receipts, without the approval of the Migratory Bird Conservation Commission; and requires the Secretary of the Interior to administer the areas through the U.S. Fish and Wildlife System. H.R. 5512—Public Law 94–223, approved February 27, 1976. (VV)

Ninety Six and Star Fort National Historic Site: Authorizes the Secretary of the Interior to establish the Ninety Six and Star Fort National Historical Park in Greenwood, South Carolina, a 1,115 acre site consisting of the site of the village Old Ninety Six, the Star Fort with its Revolutionary War earthworks, and other historical and archeological remains associated with frontier life in South Carolina; provides that the site shall be administered as a part of the National Park system; and authorizes therefor $320,000 for land acquisition and $2 million for development. S. 2642—Passed Senate May 13, 1976. (VV)

Rangelands Management: Directs the Secretary of the Interior to establish an $895.5 million, 30-year range rehabilitation and protection program to halt deterioration and improve the quality of the rangelands on public lands administered by the Bureau of Land Management (BLM) in the Department of the Interior; requires that this rangeland thereafter be administered to insure full productive capacity consistent with the multiple use, sustained yield concept of land management; and authorizes $10 million for fiscal year 1977, with additional increases of $5 million per year for each fiscal year 1978 through 1980, and $500,000 each fiscal year thereafter through fiscal year 2006, which would be in addition to funds presently appropriated to the BLM for livestock management, soil and water, and wildlife. S. 2555—Passed Senate May 3, 1976. (162)

Reclamation projects authorization: Authorizes the Secretary of the Interior to construct, operate, and maintain (1) the Polecat Bench irrigation project of the Shoshone extension unit of the Pick-Sloan Missouri Basin program in northwest Wyoming, and (2) the Pollock-Herreid irrigation project in South Dakota; provides authority for the Secretary to modify the spillway of the existing Dickenson Dam in North Dakota to increase conservation storage and authorizes the construction of a new spillway to assure the safety of the dam from floods; and reauthorizes the existing McKay Dam in Oregon to increase the capacity of the spillway for safety purposes and to include flood control, fish and wildlife, and recreation as project functions. S. 151—Public Law 94–228, approved March 11, 1976. (VV)

River basin monetary authorizations: Authorizes a $9 million increase in the monetary authorization for the North Branch Susquehanna and the South Platte river basin projcts in order to avoid a delay in ongoing construction. S. 3432—Passed Senate May 18, 1976. (VV)

Santa Monica recreation area: Provides for the establishment of the Santa Monica Mountains and Seashore Urban Recreation Area in the State of California; creates a Federal land use planning Commission composed of members chosen by the State and local governmental subdivisions with jurisdiction over the area to ensure that local governments, which will have the ultimate responsibility for implementing a land use plan will have, in fact, drawn the plan; requires that he Commission develop a comprehensive land use plan which will achieve certain stated objectives of preservation, resource protection, and access; require that the plan inventory and classify lands within the area, indicate the permissible uses of such lands, specify the land use controls to insure such uses and prevent nonconforming uses, and identify the unit of Federal, State, or local government responsible for implementing the plan; provides for approval of the plan by the Secretary of the Interior to guarantee that the plan will meet the objectives in the legislation, that the identified units of Federal, State, or local government have the necessary authority to implement the plan and are willing to do so, and that there has been full public participation in the development of the plan; authorizes Federal grants in the total amount of $50 million for the acquisition of land and/or interest in land to assist State and local governments in implementing the plan; and assures California landowners affected by this bill due process through the State of California Federal circuit court system. S. 1640—Passed Senate February 6, 1976. (VV)

Wetlands loan extension: Extends from June 30, 1976, until September 30, 1983, the period during which the Department of the Interior can acquire wetlands for migratory waterfowl and increases therefor the authorization under the Wetlands Loan Act of 1961 from $105 million to $200 million; delays from July 1, 1976, until October 1, 1983, the date when repayment for advance loans from duck stamp receipts would begin; and changes the name of the "Migratory Hunting Stamp" to the "Migratory Bird and Conservation Stamp". H.R. 5608—Public Law 94-215, approved February 17, 1976. (VV).

Wilderness areas

Badlands National Monument: Designates approximately 64,250 acres in the Badlands National Monument, South Dakota, as wilderness under the provisions of the Wilderness Act of 1964. S. 1069—Passed Senate May 25, 1976. (VV)

Bristol Cliffs Wilderness: Modifies the boundaries of the Bristol Cliffs Wilderness Area, located in the Green Mountain National Forest, Vermont, by eliminating all privately owned lands and approximately 720 acres of noncontiguous National Forest lands thus reducing the size of the area from 6,500 acres to 3,775 acres. S. 2308—Public Law 94-268, approved April 16, 1976. (VV)

Eagles Nest Wilderness: Designates a 128,084 acre area in the Arapaho and White River National Forests, Colorado as the Eagles Nest Wilderness. S. 268—Passed Senate June 5, 1975; Passed House amended April 6, 1976; Senate requsted conference May 6, 1976. (VV)

Shenandoah National Park: Designates 79,019 acres in the Shenandoah National Park, Virginia, as wilderness under the provisions of the Wilderness Act of 1964. S. 895—Passed Senate April 7, 1976. (VV)

Wilderness areas studies

Kaiser roadless area: Directs the Secretary of Agriculture to review an approximate 28,000 acre area in the Sierra National Forest, California, known as the Kaiser Roadless Area, for possible inclusion in the National Wilderness Preservation System, and to report his findings to the President within 2 years from the date of enactment. S. 75—Passed Senate April 8, 1976. (VV)

NOMINATIONS

(Action by Roll Call Vote)

George Bush, of Texas, to be Director of Central Intelligence: Nomination confirmed January 27, 1976. (10)

S. John Byington, of Virginia, to be a Commissioner on the Consumer Product Safety Commission: Nomination rejected May 24, 1976; reconsidered and confirmed May 26, 1976. (190, 196)

George Henry Kuper, of the District of Columbia, to be Executive Director of the National Center for Productivity and Quality and Working Life: Nomination confirmed May 28, 1976. (208)

David M. Lilly, of Minnesota, to be Member of Board of Governors of Federal Reserve System: Nomination confirmed May 28, 1976. (207)

William L. Springer, of Illinois, to be Member of the Federal Election Commission: Nomination confirmed May 21, 1976. (189)

Willie J. Usery, of Georgia, to be Secretary of Labor: Nomination confirmed February 4, 1976. (26)

PROCLAMATIONS

Bald Eagle Days: States the sense of the Senate that the people of the United States observe the weekend beginning January 30, 1976, which is designated as "Bald Eagle Days", to recognize the national symbol of the United States. S. Res. 347—Senate adopted January 21, 1976. (VV)

Beta Sigma Phi Week: Designates the seven day period beginning on April 30 of each year as "National Beta Sigma Phi Week". S.J. Res. 76—Passed Senate March 31, 1976. (VV)

Employ the Older Worker Week: Designates the week beginning March 13, 1977, as "National Employ the Older Worker Week". S.J. Res. 35—Public Law 94-275, approved April 21, 1976. (VV)

Fair Housing Month: States that the Congress recognizes the month of April 1976 as "Fair Housing Month" and rededicates itself to the promulgation and practice of the letter and spirit of the Fair Housing Law throughout the month of April and thereafter. S. Con. Res. 112—Senate adopted April 27, 1976. (VV)

Family week: Designates the week beginning on November 21, 1976, as "National Family Week". S.J. Res. 101—Public Law 94-270, approved April 19, 1976. (VV)

Fourth of July holiday: Designates July 2, 1976, as an official holiday to create a 4-day holiday for the Bicentennial. S.J. Res. 151—Passed Senate March 31, 1976 (VV)

Horse week: Designates the period of May 9, 1976, through May 15, 1976, as "National Horse Week". S.J. Res. 182—Passed Senate May 6, 1976. (VV)

Independence Day: Designates July 4, of each year as "Independence Day". S.J. Res. 150—Passed Senate May 6, 1976. (VV)

Knights of Columbus: Designates March 29, 1976, as "National Knights of Columbus Day". S.J. Res. 183—Passed Senate March 18, 1976. (VV)

Small Business Week: Designates the week beginning May 9, 1976, as "National Small Business Week". S.J. Res. 163—Passed Senate May 6, 1976. (VV)

Tennis Week: Designates the fourth week in June as "National Tennis Week". S.J. Res. 172—Passed Senate March 31, 1976. (VV)

Thomas Jefferson Day: Designates April 13, 1976, as "Thomas Jefferson Day". H.J. Res. 670—Public Law 94-163, approved April 13, 1976. (VV)

World Habitat Day: Designates February 29, 1976, as "World Habitat Day". S. Res. 398—Senate adopted February 25, 1976. (VV)

SENATE

Cloture Rule: Provides that, except by unanimous consent, no amendments shall be proposed after the cloture vote unless they have been submitted in writing to the Journal Clerk prior to the end of the vote. S. Res. 268—Senate adopted April 6, 1976. (VV)

Commission on the Operation of the Senate: Authorizes the Secretary of the Senate to advance sums to the chairman of the Commission on the Operation of the Senate for expenses of the Commission not involving personal services. S. Res. 410—Senate adopted March 23, 1976. (VV)

Extends from September 30, 1976, to December 31, 1976, the date for the Commission to submit its final report. S. Res. 423—Senate adopted April 6, 1976. (VV)

Oklahoma Senate contest: Senate tabling of S. Res. 356, relating to a determination of the contested 1974 Oklahoma Senate election involving Senator Henry Bellmon and former Representative Ed Edmondson. *Subsequently* the Senate agreed to a motion to seat Senator Bellmon unconditionally.

Old Senate Chamber: Provides that on June 16, 1976, the Senate shall recess at 4:00 p.m. and immediately reassemble in legislative session for ceremonies in the Old Senate Chamber (used by the Senate from 1810 to 1859) for the dedication and reopening of the chamber in honor of the Bicentennial; provides that the taking of photographs or recording of the proceedings of the legislative session shall be done in accordance with procedures established by the Commission on Art and Antiquities of the Senate; and invites the Vice-President to address the Senate on this occasion. S. Res. 446—Senate adopted May 13, 1976. (VV)

Select Committee on Committees: Establishes a temporary select committee of the Senate to conduct a study of the Senate committee system composed of 12 Members of the Senate (6 from the Majority party and 6 from the Minority party) appointed by the President of the Senate upon the recommendation of the majority and minority leaders; directs the Committee to conduct a thorough study of the Senate committee system including structure, jurisdiction, number and optimum size of committees, number of subcommittees, committee rules and procedures, media coverage of meetings, staffing, and other facilities and to make recommendations which promote optimum utilization of a Senator's time, optimum effectiveness of committees in the creation and oversight of Federal programs, clear procedures for the referral of legislation falling within the jurisdiction of two or more committees, and workable methods for the regular review and revision of committee jurisdictions; requires the Committee to submit a final report of its findings by February 28, 1977, with authorization to submit such interim and supplemental reports as it deems appropriate and authorizes therefor $275,000 of which not to exceed $30,000 shall be for the procurement of the services of individual consultants or organizations. S Res. 109—Senate adopted March 31, 1976. (VV)

Select Committee on Intelligence: Establishes a permanent Select Committee on Intelligence to oversee and make continuing studies of U.S. intelligence activities; provides that its members be selected by the Majority and Minority leaders with 2 Senators each from the membership of the Committees on Appropriations, Armed Services, Foreign Relations, and the Judiciary and 7 others from the Senate at large (4 selected by the Majority Leader and 3 by the Minority Leader); provides that the chairman shall be chosen by the Majority members and that service on the select committee shall not be counted against a member's service on any

other committee and may be in addition to other assignments; provides that the Majority and Minority Leaders shall be non-voting ex officio members of the committee; limits service on the committee to 8 years (not including 1976 service) on a rotating basis so that approximately ⅓ of the membership will be new by the 97th Congress and each successive Congress:

Provides the Committee exclusive legislative authority over the Central Intelligence Agency and shared budgetary and oversight authority with the standing committee formerly responsible—the Armed Services Committee for the Defense Intelligence Agency, National Security Agency and other military intelligence units and the Judiciary Committee for the Federal Bureau of Investigation; provides for concurrent sequential referral of legislation and authorizations with an automatic discharge if the second committee does not act within 30 days;

Provides that the committee notify the President if it votes to disclose classified information submitted by the Executive Branch; provides for release of such information unless the President notifies the Committee within 5 days of his objection; provides that if the committee still wishes to release the data it may, by majority vote, report the matter to the full Senate for a decision within 9 days on whether or not to disclose all or any part of the information or to refer it back to the committee for its decision; and

States the sense of the Senate that the heads of intelligence agencies or departments keep the Committee informed of intelligence activities and report immediately all intelligence activities which violate the constitutional rights of any person, law, executive order or agency regulation. S. Res. 400—Senate agreed to May 19, 1976. (181)

Select Committee on Intelligence Activities: Amends S. Res. 21 to extend to March 15, 1976, the date for the temporary Select Committee to submit a final report of the results of the investigation and study conducted by it with respect to intelligence activities; provides that the committee shall cease to exist on May 31, 1976; and authorizes an additional $300,000 for the 3-month period, March 1 to May 31, 1976, of which not to exceed $10,000 shall be for the procurement of consultants. S Res. 377—Senate adopted March 1, 1976. (VV)

Amends S. Res. 377 to increase the authorization for the 3-month period March 1, to May 31, 1976, from $300,000 to $350,000 of which not to exceed $15,000 shall be for the procurement of consultants. S. Res. 414—Senate adopted March 31, 1976. (VV)

Amends S. Res. 377, as amended, to increase the authorization for the 3-month period March 1, 1976, to May 31, 1976, from $450,000 to $515,000. S. Res. 435—Senate adopted May 3, 1976. (VV)

Select Committee on Small Business: Amends S. Res 58 (81st Congress) to give legislative jurisdiction over all proposed legislation primarily relating to the Small Business Administration to the Select Committee on Small Business, which was originally created on February 20, 1950, without legislative authority and is composed of 17 members appointed in the same manner and at the same time as the chairman and members of the standing committees of the Senate. S. Res. 104—Senate adopted April 29, 1976. (158) Res. 104—Senate adopted April 29, 1976. (158)

Watergate reform legislation: States the sense of the Senate that the Senate should make every effort to reach, by July 2, 1976, a final passage vote on watergate reform, tax reform, and intelligence oversight legislation. S. Res. 437—Senate adopted May 4, 1976. (163)

TRANSPORTATION—COMMUNICATIONS

Airport and airways development: Authorizes the Secretary of Transportation to make airport development grants of $540 million for fiscal year 1976, $580 million for 1977, $620 million for 1978, $660 million for 1979 and $700 million for 1980; authorizes $250 million for each of the fiscal years 1976 through 1980 for acquiring, establishing and maintaining air navigation facilities and $50 million annually for research, development and demonstration projects with specific reference to research on a fog disperson system;

Increases the obligational authority for airport development grants for the 10 year period ending September 30, 1980 from $2.5 billion to $4.695 billion;

Amends the definitions in the Airport and Airway Development Act of 1970 to permit grants to be made not only for airfield projects but also for terminal area development such as for snow removal equipment, noise suppression barriers, devices and noise suppression landscaping on airport property, purchasing of land adjacent to airports as a noise buffer area, and the development of multimodal passenger terminals which aim to provide a common interchange point with several modes of public transportation;

Provides for the development of a revised national airport system plan to provide a basis for planned, orderly airport development throughout the nation;

Authorizes utilization of surplus Airport and Airway Trust Fund monies to maintain air safety equipment;

Changes the formula by which airport development grant funds are to be apportioned by increasing the Federal share to 90 percent with 10 percent local funding on all projects except at large hub airports which will receive 70 percent matching funds; provides that all projects involving terminal area development or improvements—as contrasted with airfield development—will receive funds based on a 50-percent Federal and 50-percent local formula; and contains other provisions. H.R. 9771—Passed House December 18, 1975; Passed Senate amended March 25, 1976; In conference. (101)

Alaska highway: Authorizes $70 million in addition to sums otherwise made available to Alaska under title 23, U.S.C., and section 7(b) of the Federal-Aid Highway Act of 1966 for repair of highways in the State which are facing substantial deterioration because of construction of the Trans-Alaska pipeline, and directs the Secretary of Transportation to report to Congress by January 1, 1977, the feasibility of Alaska repaying, out of future mineral revenues it receives, any sums paid to the State pursuant to appropriations authorized by this Act. S. 2071—Passed Senate January 26, 1976. (VV)

Boat safety programs: Amends the Federal Boat Safety Act of 1971 to increase and extend the authorization assistance for State boating safety programs for fiscal years 1977 and 1978 from $7.5 million annually to $10 million; authorizes the Secretary of Transportation to expend not to exceed 1¼ percent of the total funds appropriated annually for audit expenses; and continues the 33⅓ percent limitation on the Federal share of the annual cost of a States boating program. H.R. 5630—Passed House November 17, 1976; Passed Senate amended May 19, 1976. (VV)

Common carrier tariff proceedings: Extends to 90 days the period of time required for notification of a change in a common carrier tariff and extends to 5 months the period during which the Federal Communications Commission may suspend the effectiveness of new or revised tariff schedules. S. 2054—Passed Senate May 27, 1976. (VV)

ConRail acquisition of bankrupt rail property: Provides that pursuant to the final system plan formulated by the United States Railway Association (USRA) to restructure the midwest and northeast railroad system, the transfer of the rail properties of 11 insolvent railroads along with their subsidiaries and affiliates to ConRail shall not result in the recognition of gain or loss to the transferor companies and that the shareholders and security holders of the transferors will not recognize gain or loss on exchanging their existing interest for ConRail stock and USRA certificates of value; provides that the basis of the assets transferred to ConRail is to be the same for ConRail as the transferor; provides that no net operating losses are to be transferred from the transferors to ConRail; and contains a provision that net operating losses eligible for carry over to years after the date of the transfer are to be kept alive for tax purposes beyond their normal expiration date, but only for use by the transferor against any future income arising from awards of the courts (and the redemption of certificates of value) with respect to the transfer of their rail assets to ConRail. H.R. 12490—Public Law 94-253, approved March 31, 1976. (VV)

ConRail Stock: Amends the Regional Rail Reorganization Act of 1973, as amended, to change language describing the process of making adjustments to reflect stock splits, stock combinations, reclassifications and similar transactions that might occur after the time of the distribution of the securities pursuant to the provisions of the Act; sets the initial authorized number of series B preferred stock at 35 million; and provides that the Corporation may issue initially, for the purpose of the required deposit, such numbers of series B preferred and common stock as the Association shall certify to the Special Court including any modifications in the numbers of shares as may be ordered by the Special Court. S.J. Res. 184—Public Law 94-248, approved March 25, 1976. (VV)

Educational broadcasting facilities: Extends and perfects the matching grant program for construction of noncommercial educational radio and television broadcasting facilities and authorizes therefor $7.5 million for the transition period July 1-September 30, 1976, and $30 million for fiscal year 1977; and establishes a telecommunications demonstration program administered by HEW to promote the development of nonbroadcast telecommunications facilities for the transmission, distribution, and delivery of health, education and public or social service information whereby the Secretary of HEW is authorized, upon application, to make grants and enter into contracts with public and private nonprofit agencies, organizations and institutions to carry out this purpose and authorizes therefor $250,000 for the transition period July 1-September 30, 1976, and $1 million for fiscal year 1977. H.R. 9630—Public Law 94- , approved 1976. (VV)

Federal-Aid Highway authorization: Authorizes appropriations for the interstate system of $3.625 billion for each of fiscal years 1980 through 1990; provides authorizations out of the Highway Trust Fund for fiscal years 1977 and 1978, for various highway programs, including authorizations of $1.35 billion for each of these years for the Federal-aid primary system in rural areas, the extensions of the system in urban areas, and the priority primary routes, and $800 million for each of these years for the Federal-aid urban system; amends the Interstate transfer provision to allow funding of highway projects on the Federal-aid primary, secondary or urban systems in lieu of a non-essential Interstate link and to provide that the nationwide aggregate costs of substitute projects shall not exceed the nationwide aggregate costs of withdrawn routes, with the costs to be adjusted to the date of enactment of this act; requires States to spend 30 percent of their interstate funds during fiscal years 1978 and 1979 for the completion of intercity projects that would close essential gaps in the system; provides for increased transferability of funds between categories of highways; expands the carpool program to make it permanent and to include van pools, the purchase of vehicles, and carpooling opportunities for the elderly and handicapped within the program; authorizes a traffic control signalization program for demonstration

of new technology, and a demonstration project for use in urban mass transportation of the Automated Guideway Transit system now in operation at the Dallas/Fort Worth Regional Airport; changes the apportionment for the primary system to a formula weighted two-thirds to the existing primary formula and one-third to the ratio of population in all urban areas, which reflects the change in the Federal-aid primary system to include urban extensions;

Contains authorizations for fiscal years 1977 and 1978 for programs carried out by the National Traffic Highway Safety Administration and by the Federal Highway Administration; prohibits the requiring of a State ot adopt or enforce a motorcycle law requiring motorcycle operators or passengers 18 years of age or older to wear a safety helmet; and contains other provisions. H.R. 8235—Public Law 94-280, approved May 5, 1976. (*585)

Hazardous materials transportation: Amends the Hazardous Materials Transportation Act to authorize $7 million for each of fiscal years 1977 and 1978 to implement the programs relating to the transportation of hazardous materials: strikes the word "extremely" from the requirement that shippers, carriers, and manufacturers of containers for "extremely" hazardous materials must register with the Department of Transportation; and clarifies the provision that the Secretary's authority to grant exemptions to manufacturers of hazardous materials extends to manufacturers of hazardous materials containers as well as to shippers and carriers. S. 2991—Passed Senate May 19, 1976. (VV)

Rail negotiations: Expresses the sense of the Congress that the public interest requires that the Chessie and Southern Railway Systems and the Railway Labor Organizations should resume negotiations forthwith with the assistance of the Secretaries of Labor and Transportation and exercise unusual diligence to resolve their differences to assure the acquisition and rehabilitation of properties currently owned by bankrupt railroads in the Midwest and Northeast Region pursuant to the final system plan developed by the Consolidated Rail Corporation (ConRail). S. Con. Res. 97—Senate adopted March 4, 1976; House adopted March 9, 1976. (VV)

Railroad revitalization: Provides the means to rehabilitate and restore the financial stability of the railway system of the United States; in title II, amends part I of the Interstate Commerce Act to provide for an extensive overhaul of railroad rate regulation by the Interstate Commerce Commission (ICC), which includes the establishment of new standards for determining whether a railroad rate is just and reasonable and the modification of the power of the Commission to suspend proposed railroad rates which are alleged to be unlawful; in title III, contains provisions to reform and improve the process by which the ICC regulates the railroad system; in title IV, contains provisions designed to expedite and rationalize Commission action on applications for mergers and consolidations of rail services;

In title V, establishes in the Treasury a Railroad Rehabilitation and Improvement Fund to be administered by the Secretary of Transportation for the purpose of providing the capital necessary for rehabilitation and improvement of railroads, including ConRail; directs the Secretary to issue and sell Fund anticipation notes to the Secretary of the Treasury who is to buy the notes to the extent of appropriated funds; provides that the proceeds are to be used by the Secretary of Transportation to purchase "redeemable preference shares" issued by railroads whose applications for financing are approved by the Secretary; authorizes $600 million for the Fund through September 30, 1978;

In title VI, provides for the implementation of the Final System Plan for the Northeast/Midwest Regional rail system; authorizes the United States Railway Association to purchase up to $2.1 billion of ConRail securities unless the Association's Finance Committee (composed of the Secretaries of Transportation and the Treasury and the Chairman of the Association) makes an affirmative finding that ConRail has not fulfilled a commitment to the Association, has failed to obtain the overall operating and financial results projected in the Final System Plan, or cannot achieve the results without requiring Federal assistance substantially in excess of that authorized by this act; provides that an affirmative finding by the Committee to cut off funds for ConRail will become effective after 30 calendar days of continuous session of Congress unless either House passes a resolution of disapproval: authorizes $230 million for pre-conveyance loans by the Association to Conrail to purchase material, supplies and services in anticipation of its operation;

In title VII, provides for the implementations of the Northeast Corridor project for establishment of high speed intercity rail passenger service in the heavily populated eastern seaboard, which includes the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland and the District of Columbia; provides that the projectis to be funded by the Secretary of Transportation in order to achieve within 5 years the establishment of regularly scheduled intercity service operating on at least a 3 hour and 40 minute schedule between Boston and New York City and a 2 hour and 40 minute schedule between New York City and Washington; authorizes $1.75 billion to meet this goal; sets as other goals the improvement of service on routes from the Northeast Corridor main line, improvement of stations, rail commuter service, rail freight service, and passenger radio telephone service; directs the Secretary to report to Congress in 2 years on the results of the project and on the practicability of establishing passenger service between Boston and New York City on at least a 3 hour schedule;

In title VIII, clarifies the ICC's authority over railroad abandonments and discontinuances; establishes a local rail service assistance program on a nationwide basis and authorizes $360 million for this purpose over a 5 year period; makes several changes in the local rail service assistance program for the northeast/midwest region originally provided in the Regional Rail Reorganization Act of 1973; contains various miscellaneous provisions in title IX, including the requirement of a study by the Secretary of the American Rail System and an analysis of Federal rail assistance; and contains other provisions. S. 2718—Public Law 94-210, approved February 5, 1976. (*552, *609, 16)

Translator broadcast operations: Amends section 318 of the Communications Act of 1934, as amended, to enable the Federal Communications Commission to authorize translator broadcast stations to originate limited amounts of local programing, and to authorize frequency modulation (FM) radio translator stations to operate unattended in the same manner as is now permitted for television broadcast translator stations. S. 2847—Passed Senate May 27, 1976. (VV)

VETERANS

American Battle Monuments Commission travel expenses: Authorizes members of the American Battle Monuments Commission (which was established after World War I to provide plans and cost estimates for suitable memorials to commemorate the services of the American Armed Forces on foreign soil), when traveling outside the continental United States, variable per diem rates identical to those authorized for members of the uniformed services in special status, and makes a technical amendment consistent with the changes made by the Travel Expense Amendments for Government employees (Public Law 94-22) concerning travel by members of the Commission within the continental United States. H.R. 8507—Public Law 94-256, approved April 1, 1976. (VV)

Veterans' housing loans: Amends chapter 17, title 38, U.S.C., to extend eligibility for housing benefits to veterans who served in the Armed Forces after World War II and before the Korean conflict (July 25, 1947, to June 27, 1950); increases the maximum loan available through the Veterans' Administration direct home loan program from $21,000 to $30,000 and further increases the maximum amount for a direct home loan in "excess cost" areas from $25,000 to $35,000; makes the V.A.'s loan guaranty and direct home loan programs on going permanent programs; increases the maximum mobile home loan guaranty for the purchase of mobile homes from 30 to 50 percent; and preempts, under certain conditions, State constitutional usury provisions which limit interest rates chargeable on FHA and VA mortgages by a certain class of lenders but which do not impose such rate limits on mortgages made by another class of lenders. S. 2529—Passed Senate May 13, 1976; Passed House amended May 18, 1976. (VV)

Veterans' insurance: Amends title 38, U.S.C., to permit any Veteran insured under Servicemen's Group Life Insurance (SGLI) the right to convert to an individual policy of commercial life insurance including a term policy; permits Veterans insured under Veterans' Group Life Insurance when exercising their conversion privilege the right to choose an individual commercial policy of term insurance (convertible at a time specified in the policy to a permanent plan of insurance) or a whole life policy; extends for 1 year after enactment the period during which veterans extended retroactive eligibility by Public Law 93-289 for Veterans' Group Life Insurance may apply for such policies; and makes technical amendments to chapter 19, title 38, U.S.C., to clarify language, restructure sections and eliminate unnecessary gender references. S. 1911—Passed Senate March 15, 1976. (VV)

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene on Wednesday, June 2, at the hour of 11 a.m.

After the two leaders or their designees have been recognized under the standing order, Mr. HASKELL will be recognized for not to exceed 15 minutes, and then Mr. MANSFIELD will be recognized for not to exceed 15 minutes, following which there will be a period for the transaction of routine morning business, not to extend beyond the hour of 12 noon with statements therein limited to 5 minutes each.

Shortly after noon—about 12 or 15 minutes after noon—Senators will assemble for the purpose of going in a body to the Hall of the House of Representatives to attend a joint meting which will be addressed by the King of Spain. Following that address, Senators will return to the Chamber, whereupon the Senate will be called to order by the Chair.

Rollcall votes may occur during Wednesday afternoon on various and sundry items. Mr. MANSFIELD will have returned at that time.

I would say that the business before the Senate on that afternoon could very well be resumption of debate and action

on amendments in relation to the antitrust legislation. It could very well be, instead, that the unfinished business, S. 3439, a bill to amend the Foreign Assistance Act of 1961 and Foreign Military Sales Act, would be called up. It also could be possible that the Clean Air Act would be called up.

Other measures that have been cleared for action could come up on that afternoon. Conference reports could be called up. Rollcall votes could occur.

ORDER THAT NO ROLLCALL VOTES OCCUR ON WEDNESDAY, JUNE 2, 1976, PRIOR TO 4 P.M.

Mr. President, I ask unanimous consent, for the protection of Senators, that no rollcall votes occur on Wednesday, June, prior to the hour of 4 p.m.

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

Mr. ROBERT C. BYRD. Mr. President, on Thursday, June 3, the Senate will vote under the rule 1 hour after it convenes, and a quorum is established—which may be changed by unanimous consent on Wednesday, June 2, if it be the will of the Senate—on the motion to invoke cloture on the antitrust legislation.

Other votes may occur on that day. So, there will be rollcall votes, and Senators are so alerted. The leadership urges all Senators to make every attempt to be present on Thursday, June 3. I would anticipate a large number of rollcall votes on that day.

Mr. President, for the information of Senators, only 69 days remain—counting Mondays through Fridays—until the hoped-for adjournment date of October 2. Of course, the Senate may have to come in on some Saturdays in the meantime. But excluding Saturdays, only 69 weekdays remain for the Senate to complete its business if it is to adjourn sine die by October 2.

For the information of Senators I ask unanimous consent to include in the RECORD a digest of certain measures on the Senate calendar of business, keeping in mind that other measures will appear from time to time.

I will attempt, in my whip notices, to keep Senators informed as to the continuing digest of measures on the Senate calendar of business.

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

DIGEST OF CERTAIN MEASURES ON THE SENATE CALENDAR OF BUSINESS

H.R. 71: The bill would provide hospital and medical care to U.S. citizens who served with the armed forces of nations allied or associated with the U.S. in World War I or II. Present law covers only those who were members of U.S. forces.

It would apply to those who were with the British Royal Air Force, for example, or the Polish resistance. Citizens who served with allied nations would be treated only on a space available basis with U.S. veterans given priority.

S. 3219: (Clean Air) Requires States to submit plans for prevention of significant deterioration of air quality in clean air regions, subject to the approval of the EPA administrator. It establishes guidelines for classification of those regions and imposes limitations on projected increases in concentrations of particulate matter and sulfur dioxide for each class of such regions. And, it requires that new sources constructed in such regions utilize the best available control technology and certify that emissions from the facility will not contribute to a cumulative change in ambient air quality greater than the appropriate limits.

S. 1624: Interstate transportation of wine. To eliminate obstructions to free flow of commerce resulting from discriminatory and unreasonable taxes or regulations affecting wine.

Prohibits any State which permits transportation or importation of wine from applying tax measures, regulations, and other measures against wines produced outside that State unless applied in same manner as to wine of same class in State seeking to impose tax or regulation. States still retain control over purchase, sale, and distribution of wines in State jurisdiction.

S. 2477: Lobbying—Requires broad public disclosure of the efforts of individuals and organizations paid to influence or attempt to influence issues before the Congress or the Executive Branch without interfering with the right of citizens to petition the government for redress of grievances.

Covers communications or lobbying solicitations to Congress or the Executive Branch which may be expected to reach 500 or more persons.

Reports must be filed with the Comptroller General on a quarterly basis.

S. Res. 436: Expresses the support of the Senate for the basic principles and positions which Secretary of State Henry Kissinger expounded in his address at Lusaka, Zambia, on April 27, 1976.

S. Res. 68: To amend Rule XVIII of the Standing Rules of the Senate. Declares that at any time during the consideration of a bill or resolution in the Senate, it shall be in order to move that no amendment which is not germane or relevant to the subject matter of the bill or resolution shall thereafter be in order.

Any such motion must be agreed to by the affirmative vote of two-thirds of the Senators present and voting.

S. 12: To provide benefits for survivors of Federal judges. Provides that judicial officials are entitled to the same survivor annuity benefits as survivors of Members of Congress with specified limitations and that a survivor shall not be prohibited from simultaneously receiving an annuity under this act and any other annuity to which the survivor may be entitled.

S. 1284: Improvement and enforcement of the antitrust laws. It would revise discovery procedures and requirements for antitrust investigations; increase civil penalties for failure to file reports or obey subpoenas as required by the Federal Trade Commission Act; and permits the Attorney General of a State to initiate civil action to recover damages on behalf of certain classes of persons or the State for injuries resulting from violation of Federal antitrust laws.

Also requires premerger notification in order to prevent acquisition of stocks or shares or assets of another person or persons if the acquiring person or persons assets or net sales exceed certain limitations, until 60 days after filing of the notification of merger with the Department of Justice and the Federal Trade Commission.

H.R. 11559: This bill authorizes an appropriation of $6,470,000 for fiscal year 1977 to carry out programs under the Saline Water Conversion Act of 1971.

S. 1776: Authorizes the Secretary of the Interior to establish the Valley Forge National Historical Park in the Commonwealth of Pennsylvania, not to exceed 3,500 acres. Also authorizes appropriation of necessary funds.

H.R. 13069: An act to extend for one year (until September 30, 1977) the period for making loans to the unemployment fund of the Virgin Islands and increases the authorized funds by $10,000,000.

H.R. 5360: An act to increase detention benefits provided to American civilian internees in Southeast Asia from $60 per month to $150 per month under the War Claims Act of 1948.

S. 2837: A bill to amend the Act of August 30, 1890, so as to except a tract of ground located in Carbon County, Wyoming from right-of-way reservations for ditches or canals imposed on such land.

S. 972: Public Safety Officers Memorial Scholarship Act. Authorizes the U.S. Commissioner of Education to award a scholarship to any eligible applicant for full time undergraduate study at an eligible institution. An applicant must be certified by the head of the agency which employed the Public Safety Officer as a dependent of that Officer who was the victim of a homicide while engaged in the performance of his official duties.

H.R. 8532: Anti-trust—An act to authorize the Attorney General of any State to bring civil action charging unlawful monopoly practices under the Clayton Act and to recover damages for any injury to the general economy of the State or any political subdivision.

The U.S. Attorney General is directed to notify States' Attorneys General of any instances where States are entitled to bring action for violations of the act.

S. 3424: A bill to minimize the use of energy in housing, nonresidential buildings, and industrial plants through State energy conservation implementation programs and Federal financial incentives and assistance.

S. 230: Public Safety Officers Group Life Insurance Act. Authorizes the purchase of group life insurance policies to insure any public safety officer employed on a full time basis by a State or local government which has applied to participate in the program and has agreed to deduct from officers' pay the premiums payable for coverage.

Eligible insurance companies must be licensed in all 50 States and the District of Columbia and have in effect at least 1% of the total amount group life insurance in effect in the United States.

The act provides that each policy issued shall include a schedule of basic premium rates and for any adjustments. The act also sets forth the order of precedence in which survivors of officers will be awarded benefits.

An Advisory Council established by the bill and the Attorney General would meet at least once annually to review the Administration of the Act. The sum of $20,000,000 is authorized to be appropriated for fiscal year ending September 30, 1977.

H.R. 5465: An act to allow Federal employment preference to employees of the Bureau of Indian Affairs of the Indian Health Service, who are not entitled to the benefits of, or who have been adversely affected by the application of Federal laws allowing employment preference to Indians. The act defines eligible employees.

H.R. 11439: An act to amend Title 5, U.S. Code, to restore eligibility for health benefits coverage to certain individuals. It would permit a surviving spouse whose civil service annuity was terminated due to remarriage to enroll in a civil service health benefits plan upon restoration of such spouse's annuity if the spouse was covered by a health benefits plan at the time the annuity was terminated.

H.R. 11481: An act to authorize the appropriation for the Department of Commerce for the Fiscal Year 1977: (1) $403,721,000 for obligations incurred for operating dif-

ferential subsidy; (2) $19,500,000 for research and development activities; (3) $4,560,000 for reserve fleet expenses; (4) $13,260,000 for maritime training at the Merchant Marine Academy; and (5) $3,741,000 for financial assistance to State Marine schools.

Authorizes additional appropriations for personnel, maintenance, and other expenses of the Merchant Marine Academy.

S. 3267: A bill to amend the Motor Vehicle Information and Cost Savings Act to add a new title (Research and Development) to the act. The purpose is to encourage development of advanced, automobiles designed to meet long term goals relative to fuel economy, safety, environmental protection and to facilitate competition in development of existing and alternative automotive vehicles and components.

The Secretary of Transportation is authorized to make contracts and grants and other efforts to achieve the objectives of the bill. It authorizes the appropriation of up to $175,000,000 to pay interest on obligations and the principal balance of obligations, guaranteed by the Secretary when the obligor has defaulted.

Annual reports to Congress are required by the bill.

S. 1632: A bill to authorize the Energy Research and Development Administration to initiate programs and enter contracts for the purpose of developing and producing significant numbers of urban passenger and commercial vehicles utilizing electric propulsion systems.

Authorizes an appropriation of $40,000,000 for each of the Fiscal Years 1976, 1977, and 1978.

S. 2228: A bill to amend the Public Works and Economic Development Act of 1965 by extending the authorizations for appropriations for an additional three years until September 1979.

S. 3281: Federal Program Information Act. It creates an information center to establish and maintain a computerized system capable of identifying all existing Federal domestic assistance programs. Identification should be sufficient to allow a prospective beneficiary to determine whether personal qualifications meet requirements for eligibility.

Requires publication of an annual catalogue of domestic assistance programs.

S. 2304: Prohibits member banks of the Federal Reserve System from making loans or extensions of credit to any of their officers, directors, or other specified persons who have an interest in such bank where such loans or extension of credit exceeds statutory limits on loans to one borrower. The prohibition is extended, under the Federal Deposit Insurance Act, to non-member insured banks. Directors, officers, employees, and agents, and insured banks are subject to cease-and-desist proceedings and orders. Civil penalties for any violations are established.

S. 1926: A bill to amend the Public Health Service Act so as to eliminate the requirement that health maintenance organizations offer annual open enrollment for individual membership, and makes the offering of supplemental health services optional.

It includes State and local government employers among those who must offer employees the option of membership in a health maintenance organization.

Extends authorization of appropriations an additional two years.

S. 3369: An Act to amend the Small Business Act to increase the authorization for loans for specified small business loan programs including: (1) displaced business disaster loans; (2) loans for the handicapped; (3) the small business investment company program; and (4) loans to State and local development companies.

It increases authorization for loans in urban or rural areas having high proportion of unemployed or low-income individuals, or to businesses owned by low-income individuals.

S. 3370: A bill to amend the Small Business Investment Act of 1958 by increasing the authorization for the Surety Bond Guarantee Fund by $53,000,000 (from $35,000,000 to $88,000,000).

S. 2212: A bill to amend the Omnibus Crime Control and Safe Streets Act. Provides that any unused funds reverting the Law Enforcement Assistance Administration may be reallocated among the States. Grants to States may be used to devise methods to strengthen the court system.

LEAA may waive State liability and pursue legal remedies where a State lacks proper forum to enforce grant provisions imposing liability on Indian tribes. Permits LEAA to increase grants to Indian tribes under certain conditions.

S. 3165: A bill to establish the Office of Marine Resources, Science and Technology within the National Oceanic and Atmospheric Administration. The purpose is to initiate long term research and development programs in marine science and technology. An advisory service would impart useful information and techniques to interested organizations and individuals. Programs would be submitted to the Congress and the President and annual reports would be submitted to the Congress by the Secretary of Commerce.

The bill also establishes a National Sea Grant program for research, education, training and advisory services in ocean and coastal resource development, assessment and conservation.

S. 2069: A bill to create a Consumer Controversies Resolution Act to assure consumers a mechanism which is fair, effective, inexpensive and expeditious. It directs the Federal Trade Commission to establish a Bureau of Consumer Redress. The FTC shall perform various duties including allocation to States of funds appropriated for financial assistance under cooperative agreements; review of each State's plan for resolution of consumer controversies; and evaluation of goals for a model State System of Consumer Controversy resolutions.

The bill authorizes an appropriation not to exceed $500,000 for Fiscal Year 1976 and $20,000,000 for Fiscal Year 1977.

S. 3131: Amends the Rail Passenger Service Act by authorizing the National Railroad Passenger Corporation to establish a through route and rate with qualified motor carriers. It authorizes appropriations through Fiscal Year 1978 to the Secretary of Transportation for the benefit of the Corporation: (1) to meet specified expenses; (2) for capital acquisitions and improvements; and (3) for the payment of the principal amount of obligations of the Corporation.

S. 2323: National Traffic and Motor Vehicles Safety Act of 1966. The bill authorizes appropriations of $13,000,000 for the fiscal year 1976 transitional period, $60,000,000 for the fiscal year 1977, and $60,000,000 for fiscal year 1978.

S. 3119: Federal Railroad Safety Authorization Act. The bill would require any common carrier to provide its employees with sleeping quarters having controlled temperatures and located away from areas where switching and other disturbing operations occur. It forbids any crew members of wreck or relief trains from working 16 consecutive hours in any 24 hour period. It sets forth required safety procedures for protection against following or on-coming trains, and for employees working on, under, or about an engine, car, or train.

It divides the Federal Railroad Administration into ten regional offices for administration and enforcement of Federal railroad safety laws.

S. 2184: A bill to authorize the Secretary of Commerce to participate in the organization, planning, design and construction of facilities in connection with the 1980 Olympic Winter Games at Lake Placid, New York. It authorizes an appropriation of $50,000,000.

H.R. 11670: An Act to authorize specified appropriations for the Coast Guard for fiscal year 1977 for vessels and aircraft procurement and for facilities construction. The Act would authorize a year-end strength for active duty personnel and establish average military student loads for fiscal 1977.

S. 2150: Solid Waste Utilization Act. It directs the Administration of the Environmental Protection Agency to provide financial assistance to each State to: (1) assist in developing a State solid waste management plan; (2) assist the State in the administration of the program; and (3) develop, implement, operate, and enforce State programs for the control of hazardous waste disposal.

The Administrator must develop and implement guidelines and implementation of programs for disposal of solid or hazardous wastes.

Appropriations authorized to the Secretary of Commerce for purposes of the Act are $20,000,000 for each of the fiscal years 1976, 1977, and 1978, and $5,000,000 for the fiscal transitional period ending September 30, 1976.

S. 3037: Federal Water Pollution Control Act. A bill to authorize the appropriation of seven billion dollars for fiscal year 1977 for the construction of waste treatment works.

S. 3437: Federal Water Pollution Control Act. An original bill to authorize certain appropriations for the purpose of carrying out the provisions of the Act.

Sections of the Act affected, in brief, are 104(u), 105(h), 107(e), and 113(d).

S. 3438: Clean Air Act. Section 104(c) of the Act is amended by the authorization of an appropriation of $148,194,700 for the fiscal year ending September 30, 1977.

S. 2872: Federal Energy Administration Act of 1974. The bill extends the expiration date of the Act to September 30, 1979. It revises requirements for conflicts of interest disclosure of information and record keeping under the Act. The Federal Energy Administrator shall be afforded an opportunity to comment upon proposed Environmental Protection Agency regulations affecting energy exploration and development.

S. 3439: (Unfinished Business) Foreign Assistance Act of 1961 and the Foreign Military Sales Act.

H.R. 3650: A bill to amend Title 5, United States Code, section 8344. It provides for the termination of Federal Civil Service Annuity payments upon the reemployment of specified employees. It further provides for termination of payments upon reemployment on part-time basis for periods equivalent to at least one year of full-time service. And, it provides for termination of payments to annuitants appointed by the President to specified positions covered by civil service retirement.

S. 3105: Energy Research and Development Administration. The bill authorizes appropriations of certain sums for the following purposes: (1) $4,935,362,000 for nuclear energy research and development and other purposes; (2) $312,550,000 for non-nuclear research and development and other purposes; (3) $612,408,000 for environmental research and safety, and basic energy sciences, and for other purposes.

The bill amends prior appropriations acts to increase amounts authorized for specific energy research projects and extends authorizations through fiscal 1977.

S. 2657: Higher Education Act of 1965 and Vocational Education Act of 1963 Amendments.

The bill extends the Higher Education Act until October 1, 1982 and revises provisions dealing with grants and loans to students and regulations thereof, and repeals sections relative to attracting and qualifying teachers to meet teacher shortages.

It extends the Vocational Education Act until October 1, 1982 and provides for assistance to States to improve methods for using every available resource for vocational and manpower training. Requires establishment of State boards for vocational education in States desiring to participate in the program.

Establishes procedures for States and State boards to apply for funds, submit program plans, and maintain proper fiscal control of funds received.

Establishes various levels of educational and vocational responsibility under the U.S. Commissioner of Education and authorizes appropriations necessary to carry out the provisions of the bill.

H.R. 12987: A bill to authorize appropriations of sums necessary for fiscal year 1976 and for the transition period ending September 30, 1976 to carry out the purposes of Title VI of the Comprehensive employment and Training Act of 1973.

An emergency job program extension—it requires that not less than 85 percent of the funds for public service employment programs be used only for wages and employment benefits, with the remainder of such funds to be available for administrative costs, supplies, and equipment.

H.R. 5546: Public Health Service Act Amendments. A bill consisting of nine titles and authorizing appropriations necessary to carry out its provisions for fiscal years 1976, 1977, and 1978, for the following general purposes:

(1) Grants for trainees, construction, loan guarantees and interest subsidies, financial distress and scholarship grants; (2) training requirements for physician assistants, nurse practitioners, etc. and bars against discrimination; (3) construction of teaching facilities for medical and health personnel; (4) sets limits on student loans; (5) grants to health profession schools; (6) special project for medical and dental schools; (7) grants for graduate programs in health administration; (8) restrictions on first year medical residency training programs; (9) Secretary of HEW to contract or arrange for studies relative to the distribution of physicians geographically; to classify allied health personnel; to identify costs in each classification and shortages of critical personnel.

S. 3239: Health Professions Educational Assistance Act. The bill amends the Public Health Service Act to extend appropriation authorizations for specified medical training and education programs through Fiscal Year 1977.

The bill, consisting of 15 titles provides, in general, for the following:

(1) Extension of current authorities through Fiscal Year 1977;

(2) Recruitment of health personnel speaking language of local population;

(3) Establishes limits, conditions, eligibility, and insurance requirements for student loans;

(4) Directs Secretary of HEW to designate health manpower shortage areas, to provide health services to such areas, and to submit annual reports to Congress;

(5) Establishes post graduate physician training relating to geographic needs of physicians in certain specialties;

(6) Restricts alien immigration of foreign medical school graduates who come to the U.S. principally to perform medical services, as well as medical professionals who were granted visitor status while attending U.S. health professional schools;

(7) Develop standards for State licensing of physicians and dentists, and for continuing education programs for doctors and dentists;

(8) Prohibits grants to medical, dental and other health schools unless certain conditions for enrollment, Federal aid, and other qualifications are met;

(9) Directs Secretary of HEW to make annual grants to schools of Optometry, Pharmacy, Podiatry, and Veterinary medicine;

(10) Directs Secretary of HEW to make annual grants to public or non profit private educational institutions to support graduate health programs;

(11) Directs Secretary to make grants for allied health programs: administrators, supervisors, etc.;

(12) For special project grants and contracts in beginning, or related, or special areas of health education;

(13) Occupational health training and education centers;

(14) Construction of primary health care teaching facilities;

(15) Miscellaneous grants by the Secretary.

S. 2548: Emergency Medical Services Amendment. A bill to revise provisions of the Public Health Services Act relative to emergency medical service systems including: (1) grants and contracts for establishment and operation; (2) grants and contracts for improvement; and (3) grants and contracts for research in emergency medical techniques.

The bill authorizes an appropriation of $5,083,000 for grants during the transitional quarter ending September 30, 1976, and for additional funds through Fiscal Year 1979.

H.R. 3348: A bill to amend Title 38 of the United States Code, sections 5054 and 5055, for the purpose of continuing and improving the exchange of medical information between the Veterans' Administration and the medical community.

H.R. 10268: An act to amend Title 38 of the United States Code. It sets forth the conditions under which the Administrator of Veterans' Affairs may release names and addresses of present and former personnel of the armed services and their dependents.

Penalties for unauthorized release of such data by organizations and agencies are provided.

S. 2035: Nuclear Fuel Assurance Act. A bill to authorize the Energy Research and Development Administration to enter into arrangements with private enterprise for the production and enrichment of uranium, for technical assistance, for acquisition of equity in such enterprise, and for other purposes.

S. 2661: Independent Safety Board Act Amendments. The bill directs the Board to prohibit the disclosure of information obtained from an investigation of an aircraft accident or incident when conducted by a foreign state unless the state which conducted the investigation authorizes such disclosure.

S. 1872: A bill to enlarge the boundary of the Cibola National Forest in the State of New Mexico.

S. 3091: A bill to amend the Forest and Rangeland Renewable Resources Planning Act of 1974. It directs the Secretary of Agriculture to provide for public participation in the formulation and review of proposed land management plans for units of the National Forest System and to establish procedures for developing such land.

The bill authorizes the Secretary to appraise and sell trees and other forest products in accordance with the principles of the Multiple Use and Sustained Yield Act and repeals the prohibition against sale of forest products outside the State in which the timber is located.

S. 3422: The Natural Gas Act repeals authority of the Federal Power Commission to regulate the sale of new natural gas sold to a natural gas company for resale in interstate commerce. Producers are prohibited from charging more for natural gas than the applicable ceiling prices.

For a period of seven years from the date of enactment of S. 3422 interstate pipelines are prohibited from paying more than the "onshore price" for new natural gas produced from onshore lands.

The bill continues cost-based regulation under the existing Natural Gas Act for all old gas which is all the flowing and dedicated gas for the interstate market that is not eligible for treatment as new natural gas.

New natural gas is defined as gas dedicated for the first time to interstate commerce on or after January 1, 1976; natural gas producted from newly discovered reservoirs or extensions of existing reservoirs; and natural gas available after the expiration of short term or emergency contracts.

S. Res. 448: An original resolution. The purpose is to express the hope of the Congress for the early restoration of peace in Lebanon, and also to express the willingness of the United States to assist in Lebanese relief and reconstruction.

H.R. 8948. A bill to amend the Accounting and Auditing Act of 1950. It directs the Comptroller General of the United States to make audits of the Internal Revenue Service and of the Bureau of Alcohol, Tobacco, and Firearms. The Comptroller General is required to report annually to the Congress on the results of such audits.

S. 2849. A bill to amend the Investment Advisers Act of 1940. It authorizes the Security and Exchange Commission to establish standards for investment advisers and associated persons relative to training, experience, competence and other appropriate qualifications. The SEC is authorized to promulgate rules and regulations in the public interest to protect investors, to create advisory committees, employ experts, and hold public hearings.

S. Con. Res. 105. A resolution expressing the sense of the Congress that the United States reaffirms a sympathetic interest in Italian democracy and democratic institutions. It expresses the sense of the Congress that the United States is willing to participate in efforts to provide assistance to Italy through the proposed OECD Special Financing Facility with the assistance of other friends and allies of Italy.

S. 3084. A bill to amend the Export Administration Act of 1969 so as to extend for three years the authority granted under the Act to regulate exports.

S. 2343. A bill to amend the Communications Act of 1934 by increasing the maximum fines which may be imposed on an individual for violations of FCC regulations.

S. 3063. A bill to designate the Ozark Lock and Dam on the Arkansas River as the Ozark-Jeta Taylor Lock and Dam.

Mr. ALLEN. Mr. President, reserving the right to object, and I do not plan to object, as I understand the majority leader's request, the debate would be on the motion to invoke cloture, and this would not make the antitrust bill the pending business during such debate. Is that correct?

The PRESIDING OFFICER. There is no unanimous-consent request pending. It was merely a statement of the plan and program of the Senate.

Mr. ALLEN. I will ask the question then. Would the debate on the motion to invoke cloture constitute making the antitrust bill the pending business, or would the pending business merely be, Shall debate on the pending measure be brought to a close?

The PRESIDING OFFICER. The rule provides for no debate on the motion to invoke cloture.

Mr. ALLEN. No request has been made for time.

The PRESIDING OFFICER. It merely provides for a vote after 1 hour, after a quorum has been established.

Mr. ALLEN. Does the majority leader plan to set aside a portion of the time for debate on the motion?

Mr. ROBERT C. BYRD. I did not so plan today. That could be done on Wednesday.

Mr. ALLEN. But even if debate is provided, is not the debate on the question, "Shall debate be brought to a close?" rather than on the bill itself?

The PRESIDING OFFICER. The Chair informs the Senator that it depends on what the unanimous-consent request is for.

Mr. ALLEN. There has been none this far; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. ALLEN. And until the bill becomes the pending bill, there would be no debate, unless there is unanimous consent that the debate was on the antitrust legislation?

The PRESIDING OFFICER. If there is a request for debate on the antitrust legislation, it would come before the Senate.

Mr. ALLEN. There has been no request thus far; is that correct?

The PRESIDING OFFICER. That is correct—no request so far.

Mr. ALLEN. Very well. I remove my objection.

The PRESIDING OFFICER. What is the pleasure of the Senate?

ADJOURNMENT UNTIL WEDNESDAY, JUNE 2, 1976, AT 11 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the provisions of House Concurrent Resolution 646, that the Senate stand in adjournment until 11 a.m. on Wednesday, June 2, 1976.

The motion was agreed to; and at 2:52 p.m. the Senate adjourned until Wednesday, June 2, 1976, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate May 28, 1976:

Department of Defense

David P. Taylor, of Virginia, to be an Assistant Secretary of Defense, vice William Keith Brehm.

National Labor Relations Board

John A. Penello, of Maryland, to be a member of the National Labor Relations Board for the term of 5 years expiring August 27, 1981 (reappointment).

Department of Justice

George O. Houser, Jr., of Wyoming, to be U.S. marshall for the district of Wyoming for the term of 4 years, vice Charles R. Wilcox, resigned.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 28, 1976:

Federal Reserve System

David M. Lilly, of Minnesota, to be a member of the Board of Governors of the Federal Reserve System for the unexpired term of 14 years from February 1, 1964.

National Center for Productivity and Quality of Working Life

George Henry Kuper, of the District of Columbia, to be Executive Director of the National Center for Productivity and Quality of Working Life.

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 Army

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

To be lieutenant general

Lt. Gen. John Howard Elder, Jr., [redacted] Army of the United States (major general, U.S. Army).

The following-named Army Medical Department officers for appointment in the Regular Army of the United States, to the grade indicated, under the provisions of title 10, United States Code, sections 3284, 3306, and 3307:

To be major general, Medical Corps

Maj. Gen. Robert Bernstein, [redacted], Army of the United States (brigadier general, Medical Corps, U.S. Army).

Maj. Gen. Marshall Edward McCabe, [redacted] Army of the United States (brigadier general, Medical Corps, U.S. Army).

Maj. Gen. Robert Wesley Green, [redacted] Army of the United States (brigadier general, Medical Corps, U.S. Army).

To be brigadier general, Medical Corps

Brig. Gen. Charles Calvin Pixley, [redacted] Army of the United States (colonel, Medical Corps, U.S. Army).

To be brigadier general, Veterinary Corps

Col. Thomas George Murname, Jr., [redacted] Veterinary Corps, U.S. Army.

The following-named Army Medical Department officers for temporary appointment in the Army of the United States, to the grades shown, under the provisions of title 10, United States Code, sections 3442 and 3447:

To be major general, Medical Corps

Brig. Gen. Charles Calvin Pixley, [redacted], Army of the United States (colonel, Medical Corps, U.S. Army).

Brig. Gen. Kenneth Ray Dirks, [redacted], Army of the United States (colonel, Medical Corps, U.S. Army).

To be brigadier general, Medical Corps

Col. Raymond Holmes Bishop, Jr., [redacted] Medical Corps, U.S. Army.

Col. Enrique Mendez, Jr., [redacted], Medical Corps, 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. Rolland Valentine Heiser, [redacted] Army of the United States (brigadier general, U.S. Army).

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

To be lieutenant general

Lt. Gen. William Charles Gribble, Jr., [redacted] Army of the United States (major general, U.S. Army.)

The following-named officers for appointment in the Regular Army of the United States to the grade indicated, under the provisions of title 10, United States Code, sections 3284 and 3306:

To be brigadier general

Maj. Gen. Robert C. Kingston, [redacted], Army of the United States (colonel, U.S. Army).

Maj. Gen. Gerd S. Grombacher, [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. Richard G. Fazakerley, [redacted] Army of the United States (colonel, U.S. Army).

Lt. Gen. Eugene J. D'Ambrosio, [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. Ennis C. Whitehead, Jr., [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. Robert L. Kirwan, [redacted], Army of the United States (colonel, U.S. Army).

Brig. Gen. Hugh F. T. Hoffman, Jr., [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. John L. Osteen, Jr., [redacted], Army of the United States (colonel, U.S. Army).

Brig. Gen. George L. McFadden, Jr., [redacted] Army of the United States (colonel, U.S. Army).

Maj. Gen. Julius W. Becton, Jr., [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. Raphael D. Tice, [redacted], Army of the United States (colonel, U.S. Army).

Brig. Gen. Harry A. Griffith, [redacted], Army of the United States (colonel, U.S. Army).

Brig. Gen. Charles I. McGinnis, [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. Richard L. Prillaman, [redacted] Army of the United States (colonel, U.S. Army).

In the Navy

Vice Adm. Daniel J. Murphy, U.S. Navy, having been designated for commands and other duties commensurate with the grade of admiral determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of admiral while so serving.

Rear Adm. Vincent A. Lascara, Supply Corps, U.S. Navy, having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

Rear Adm. William O. Miller, Judge Advocate General's Corps, U.S. Navy, to be Judge Advocate General of the Navy with the rank of rear admiral, for a term of 4 years.

In the Air Force

Air Force nominations beginning Robert W. Johnson, to be captain and ending Robert L. Davison, to be lieutenant colonel, which nominations were received by the Senate and appeared in the Congressional Record on April 26, 1976.

Air Force nominations beginning Danny J. Acock, to be second lieutenant, and ending Timothy O'Hagan, to be second lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on May 6, 1976.

In the Army

Army nominations beginning Verlin L. Abbott, to be second lieutenant, and ending Dennis M. Skelly, to be second lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on April 26, 1976.

Army nominations beginning William F. Carroll, to be permanent professor of mathematics, U.S. Military Academy, and ending

Francis R. Southcott, Jr., to be second lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on April 26, 1976.

Army nominations beginning Roy K. Flint, to be permanent professor of history, U.S. Military Academy, and ending Joseph R. McLaughlin, to be second lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on May 24, 1976.

IN THE NAVY

Navy nominations beginning Philip M. Abbott, to be ensign, and ending Terrell W. Williams, to be lieutenant (j.g.), which nominations were received by the Senate and appeared in the Congressional Record on April 26, 1976.

Navy nominations beginning Robert F. Fremont II, to be a permanent lieutenant (j.g.) and a temporary lieutenant, and ending Lt. (j.g.) Macgregor H. Paul, to be a permanent ensign and a temporary lieutenant, which nominations were received by the Senate and approved in the Congressional Record on May 6, 1976.

Navy nominations beginning Randall S. Arrington, to be ensign, and ending Dennis A. Rhyne, to be commander, which nominations were received by the Senate and appeared in the Congressional Record on May 11, 1976.

Navy nominations beginning Peter Darby Abbott, to be commander, and ending Julia H. Porter, to be commander, which nominations were received by the Senate and appeared in the Congressional Record on May 11, 1976.

IN THE MARINE CORPS

Marine Corps nominations beginning Richard F. Armstrong, to be colonel, and ending Gerald H. Turley, to be colonel, which nominations were received by the Senate and appeared in the Congressional Record on May 4, 1976.

Marine Corps nominations beginning Ray D. Ammon, to be lieutenant colonel, and ending Mark E. Zeitvogel, to be first lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on May 4, 1976.

Marine Corps nominations beginning Crystal M. Chamberlain, to be second lieutenant, and ending Kenneth L. Williams, to be second lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on May 6, 1976.

EXTENSIONS OF REMARKS

TEACHERS, STUDENTS, AND PARENTS JOIN IN JEFFERSON COUNTY BICENTENNIAL CELEBRATION

HON. JENNINGS RANDOLPH

OF WEST VIRGINIA

IN THE SENATE OF THE UNITED STATES

Friday, May 28, 1976

Mr. RANDOLPH. Mr. President, during this Bicentennial Year there will be celebrations and festivals marking the progress of our Nation. There was a glorious and graphic display of our country's achievements in the "America Unfolds Parade" last Saturday at Shepherdstown, W. Va. It was a panorama of past events, depicting with floats and other visual displays, the significant highlights of our 200-year history.

Planning for this historical event involved more than 6,000 students of Jefferson County schools, plus 350 teachers. More than 2,000 students from 12 schools participated in the parade. A year in the making, the final result was a chronological study of America's history.

Host for the day was County School Superintendent Harold L. Pickens; Keith DuBois was the parade coordinator; Mary Stocks, who spent the past year in organizing the activities, served as coordinator.

Winners of the parade judging were: South Jefferson Elementary, "Civil War," first place; Ranson Elementary, "Roaring '20's," second place; and Shepherdstown Elementary, "Westward Expansion," third place. Judges were: Dr. Millard Bushong, professor of history, Shepherd College; Fred Weiss, newscaster with Washington's WMAL-TV; and Mrs. Victoria Goens, West Virginia University extension agent.

I was delighted to join the parade festivities with two colleagues from West Virginia, Senate Assistant Majority Leader ROBERT C. BYRD and Representative HARLEY O. STAGGERS.

Mr. President, the spirit of cooperation and pride which produced this spectacular program is deeply ingrained in the minds and methods of the citizens of Jefferson County. It was a countywide undertaking. Ms. Stocks, coordinator of "America Unfolds," commented:

Most of our schools solicited help from parents so that in the last few weeks before the parade, our schools were busy community centers with mothers making costumes and fathers building floats.

Mr. President, communitywide involvement in our Bicentennial celebrations is the key to the success and enjoyment of our unique history. I ask unanimous consent that the parade participants and the float competitors be placed in the RECORD, with brief remarks on the historical significance of the Jefferson County area that I prepared for the celebration:

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

WELCOME TO JEFFERSON COUNTY SCHOOLS
AMERICA UNFOLDS PARADE

Parade Host, Superintendent Harold L. Pickens.

Coordinator of Bicentennial Events, Mary Stocks.

Parade Coordinator, Keith DuBois.

The public is cordially invited to attend an awards program immediately following this parade at the Shepherd College Stadium. Special bicentennial trophies will be awarded to the three schools best depicting their time periods in American history. Dignitaries and special guests will be introduced at this time.

JUDGES

Dr. Millard Bushong, Professor of History, Shepherd College.

Mr. Fred Weiss, Newscaster with WMAL Television.

Mrs. Victoria Goens, West Virginia University, Extension Agent.

Special thanks are due to the Jefferson County Chamber of Commerce and Shepherdstown Elementary for sponsoring a luncheon today for special guests participating in the parade.

PARADE LINEUP

1. Police Escorts.
2. Banner: Jefferson County Schools Present America's History in Parade.
3. Jefferson County Schools:
Superintendent—Harold L. Pickens.
Associate Superintendent—Raymond Frazier.
Assistant Superintendent—Lucille Heflebower.
4. United States Senator—Jennings Randolph.
5. United States Congressman—Harley O. Staggers.
6. West Virginia Senator—William J. Oates, Jr.
7. West Virginia Delegate—James M. Moler.
8. West Virginia Delegate—Luke E. Terry.
9. West Virginia Delegate—Joseph E. Caudle.
10. Mayor of Shepherdstown—Charles E. Bosley.
11. Mayor of Ranson—Kelly Lance and Mayor of Charles Town—D. C. Master.
12. Mayor of Harpers Ferry—Bradley D. Nash and Mayor of Bolivar—Robert B. Menefee.
13. Jefferson County Board of Education—Richard E. Neal, President; C. C. Hammann, Vice-President; M. S. Briscoe, Martha Josephs, Kenneth Sims.
14. Charles Town Junior High Band.

DIVISION I

Colonial Period—C. W. Shipley Elementary School Bicentennial Chairman, Mildred Hammond.

15. School Banner.
16. Float—Robert Harper and His Ferry Boat.
17. Marching Unit—Thirteen Students Representing the Thirteen Original Colonies.
18. Float—Colonial Home.
19. Marching Unit—Drum and Bugle Corp.
20. Marching Unit—Bee Line to Boston.

DIVISION II

Revolutionary War—North Jefferson Elementary School Bicentennial Chairman, Rebecca Willingham.

21. Banner—North Jefferson Patriots.
22. Marching Unit—Drum and Fife Corp.
23. Banner—Revolutionary War.
24. Mini-float—Betsy Ross and the American Flag.
25. Marching Unit—Colonial Dress.
26. Marching Unit—Famous Patriots.
27. Marching Unit—Minutemen.
28. Float—Boston Tea Party.
29. Marching Unit—Redcoats.
30. Marching Unit—King George in Effigy.
31. Marching Unit—Tar and Feathered Governor.
32. Mini-float—George Washington at Valley Forge.
33. Marching Unit—Representatives from the Thirteen Colonies.
34. Mini-float—Signing of Declaration of Independence.
35. Marching Unit—Symbols of Liberty.
36. Mini-float—Raising of Liberty Pole.

DIVISION III

Birth of a Nation—Charles Town Junior High School Bicentennial Chairman, Keith DuBois.

37. School Banner.
38. Float—George Washington's Inauguration.
39. Marching Unit—Famous People of the Period.
40. Marching Unit—Time Line of Events of the Period.
41. Harpers Ferry Junior High Band.

DIVISION IV

Westward Expansion—Shepherdstown Elementary School Bicentennial Chairman, Nancy Maddex.

42. School Banner.
43. Covered Wagon.
44. Marching Unit—Johnny Appleseed and His Apple Trees.
45. Float—Church Time from "Little House on the Prairie".
46. Marching Unit—Pony Express.
47. Marching Unit—Gold Rush.
48. Float—Lewis and Clark Expedition.
49. Famous Old West Personalities.
50. Connestoga Wagon—"Pike's Peak or Bust."
51. Horse Rider—Pecos Bill.
52. Marching Unit—Trails Used in Opening the West, Western States Join Union.

DIVISION V

Jacksonian Era—Jefferson High School Bicentennial Chairman, Sandra Cookson, William Coyle, and Marie Chisholm.
53. School Banner.
54. Float "Andrew Jackson—Choice of the Common People."
55. Jefferson High School Marching Band.
56. Float—Newspaper of the 1830's.
57. Float—"Congress in the Jacksonian Era."
58. Float—Sponsored by Junior Civitan.

DIVISION VI

Civil War—South Jefferson Elementary School Bicentennial Chairman, Linda Work.
59. School Banner.
60. Marching Unit—Union and Confererate Soldiers.
61. Marching Unit—The Firing on Fort Sumter.
62. Marching Unit—Battle of Gettysburg.
63. Marching Unit—Battle of Antietam.
64. Marching Unit—Battle of Vicksburg.
65. Marching Unit—The Navy's Part in the Civil War.
66. Marching Unit—West Virginia Becomes a State.
67. Marching Unit—Famous People of the Civil War Period.
68. Marching Unit—Abraham Lincoln, "He Held Us Together."
69. Float—Lee and Grant at Appomatox.

DIVISION VII

Progressive Era—Shepherdstown Junior High School Bicentennial Chairman, Timothy Holland.
70. School Banner.
71. Float—"Country Roads" (Based on Award Given this County in 1909 for Best Country Roads).
72. Miss Bicentennial of Shepherdstown Junior High.

DIVISION VIII

World War I—Harpers Ferry Junior High School Bicentennial Chairman, Doris Costello.
73. School Banner—Torn Pages of History.
74. Marching Units—President Woodrow Wilson, League of Nation, Liberty Bonds, Sinking of the Lusitania, Women's Suffrage, Doughboys, Selective Service Act, General Pershing.
75. Float—World War I Airplane.
76. Shepherdstown Junior High School.

DIVISION IX

Roaring 20's—Ranson Elementary School Bicentennial Chairman, Nancy Alexander.
77. School Banner.
78. Float—Speakeasy.
79. Lindberg's "Spirit of St. Louis."
80. Model T and Gangsters.
81. Marching Unit—Will Rogers, Jack Dempsey, Al Jolson, Babe Ruth, Newspaper Boy, Women's Right to Vote.
82. Automobile of the 20's.

DIVISION X

Depression Era—Wright Denny Elementary School Bicentennial Chairman, Mary Elinor Peters.
83. School Banner.
84. Marching Unit—Wall Street Crash.
85. Marching Unit—Soup Lines.
86. The Walton Family.
87. Marching Unit—Apple Sellers.
88. President Franklin Roosevelt.
89. Salvation Army.

DIVISION XI

World War II—Page Jackson Elementary School Bicentennial Chairman, Denise Burns and Bonnie Curry.
90. School Banner.
91. World War II Banner.
92. Float—Iwo Jima.
93. Marching Unit—World War II Soldiers.
94. Marching Unit—World War II Work Force.
95. Float—United Nations Float.
96. Marching Unit—United Nations Flag.
97. Marching Unit—Walt Disney Characers.

DIVISION XII

Space Age—Blue Ridge Elementary School Bicentennial Coordinator, Martha Putz.
98. School Banner—"Blast Off With Blue Ridge."
99. Marching Units—Endangered Species, Space Age Fashions, Computers, Famous Americans of the Space Age, and Women's Liberation.
100. Float—"One Giant Step."

Jefferson County Schools wish to thank the following for their cooperation in sponsoring the America Unfolds Parade:

Mr. Paul Courtney, Mr. D. Lee Morgan, Shepherd College, Mayor Charles Bosley, the parents of Jefferson County students, and the citizens of Shepherdstown.

REMARKS BY SENATOR JENNINGS RANDOLPH

It is a privilege for me to join in this inspiring and impressive Bicentennial celebration. The living panorama of our Nation's history portrays better than any textbook the saga of American independence. The many hours of study and effort that produced "America unfolds" is a moving example of teaching history—history that is exciting and enduring. I congratulate the teachers and students of Jefferson County and commend the administration of the Jefferson County school system.

Within the proverbial stone's throw of this college campus are many places where significant events of America's past unfolded. We are intimately aware of these important occurrences. Many members of the Washington family settled in and around the county seat of Charles Town. In this audience today, there might be a youngster or two whose great-great grandfather strolled along the banks of the Potomac or Shenandoah rivers with young George Washington.

I share with you some brief glimpses of this area.

Sheperdstown is the oldest settled town in West Virginia. The Governor of Virginia signed charters for Shepherdstown (known as Mecklenberg) and Romney on December 23, 1762. It is believed that this community was settled between 1730 and 1734, perhaps as early as 1719. The town's name was changed to Shepherd's-Town in 1798 for Thomas Shepherd, founder of the town. It was again changed to Shepherdstown in 1867. Thomas Shepherd built his mill here in 1739.

Shepherdstown is not only an historical community but a city with spirit. In 1974, it received the West Virginia Community of the Year Award.

Shepherdstown is one of five national historic districts in our State to be named to the national register of historic places.

There are now 95 Bicentennial communities and 45 such counties in West Virginia.

In 1790, Shepherdstown was one of three proposed sites for the Nation's Capitol.

At Shepherdstown in 1790, Nathaniel Willis, a Boston printer, set up the first printing office in the territory that is now West Virginia and developed the first Shepherdstown newspaper—the Potowmack Guardian.

The first post office in West Virginia was built here in 1793.

Jefferson County was created from Berkeley County by an act of the Virginia Assembly on January 8, 1801. This county was named after Thomas Jefferson, third President of the United States and author of the Declaration of Independence.

Charles Town, the county seat, is located on land owned by Charles Washington, brother of George Washington. We do well to honor the past and our heroes. From their example a new nation emerges for those who have the heart and the courage to make it happen.

We are grateful for the two hundred years of American history, for what has been good in it and regretful for its failures. We must allow neither the past glories, nor the failures, to keep us from our own destiny in forging a new tomorrow.

Thomas Jefferson spoke the following words in the early 19th century and they apply to the challenges we face today:

"As new discoveries are made, new truths discovered, and manners and opinions change with the change in circumstances, institutions must advance also and keep pace with the times."

This day is not just another day—it is a new day.

OUTSTANDING SERVICE IS RECOGNIZED DURING NATIONAL PUBLIC WORKS WEEK

HON. JENNINGS RANDOLPH

OF WEST VIRGINIA

IN THE SENATE OF THE UNITED STATES

Friday, May 28, 1976

Mr. RANDOLPH. Mr. President, earlier this week a luncheon, sponsored by the Virginia-District of Columbia-Maryland chapter of the American Public Works Association—APWA—at the Washington Navy Yard, called attention to the 16th annual observance of National Public Works Week which ends tomorrow.

Outstanding public service is recognized as APWA presents the "Top Ten" Public Works Men of the Year Awards each year during the special week.

Selection of the "Top Ten" is made by a panel of judges representing APWA, the American Society of Civil Engineers, the American Water Works Association, the Council of State Governments, the Institute of Transportation Engineers, the National Association of Counties, the National League of Cities, and the Water Pollution Control Federation. By such contributions of public works officials, APWA hopes to encourage excellence and loyal, dedicated service; to increase citizens' understanding of public works; and to have talented young people prepare for careers in the public works field.

The week is especially significant this year, because it coincides with the release of APWA's "History of Public Works in the United States, 1776–1976," the association's Bicentennial contribution to the Nation. At a ceremony held at Congress Hall in Philadelphia in September 1971. APWA resolved to produce this volume "so that future generations may benefit from a comprehensive review of public works in perspective." I serve as chairman of the Senate Committee on

Public Works and honorary cochairman of the APWA Bicentennial Commission. I have supported the project. I introduced on February 15, 1972, Senate Joint Resolution 204 "To authorize the preparation of a history of public works in the United States." This resolution became Public Law 92-564 on October 25, 1972. It asked that "all public works oriented agencies of the Federal Government, the Library of Congress, and the appropriate congressional committees be requested to cooperate in carrying this important project forward."

This publication is a valuable document. It portrays the accomplishment by people working within the framework of the American system. The comprehensive 750-page book discusses engineering and technological achievements within the context of broad social, economic, and political themes to illustrate how the development of public works has enhanced our national life. It surveys the growth of urban services such as water supply, sewers and wastewater treatment, solid waste disposal, and drainage and flood control. It covers streets and highways, traffic controls, urban mass transit, waterways, and airports. Other topics relating to community life include public buildings, educational facilities, public housing, parks and recreation, and power utilities. Irrigation public works are discussed as is the development of military installations and the aerospace program.

The project was directed by Dr. Ellis L. Armstrong, a renowned public works engineer-administrator. He edited the history and served as Chairman of the APWA Bicentennial Commission. Dr. Armstrong was formerly U.S. Commissioner of Public Roads—1958-61, and Commissioner of the U.S. Bureau of Reclamation—1969-73. The associate editors, Michael C. Robinson and Suellen M. Hoy, are professional historians who received their doctorates from the University of Wyoming and Indiana University. In 1975 APWA founded the Public Works Historical Society as an ongoing institution to enhance public works programs and promote better understanding of their role in the growth and development of civilization. This institution will continue the work begun by the APWA Bicentennial Commission.

APWA received assistance from many public agencies as well as professional societies. Many portions of the "History of Public Works in the United States, 1776-1976" are based on contributions from Federal agencies in accordance with Public Law 92-564. I commend the following Federal departments and agencies for their endeavor: Department of Transportation—Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, U.S. Coast Guard, Urban Mass Transit Administration; Department of Defense—Army Corps of Engineers, U.S. Military Academy, Naval Facilities Engineering Command, U.S. Air Force; Department of the Interior—Bureau of Reclamation, Bonneville Power Administration, Bureau of Outdoor Recreation; Department of Agriculture—Forest Service, Rural Electrification Administration, Soil Conservation Service; Department of Health, Education, and Welfare—Office of Education; Department of Commerce—Economic Development Administration; Department of Housing and Urban Development; General Services Administration; U.S. Postal Service; Veterans' Administration; Environmental Protection Agency; Energy Research and Development Administration; Federal Power Commission; Tennessee Valley Authority; and the National Aeronautics and Space Administration.

The volume offers an analysis of some of the basic workings of Government. This perspective is especially important in the Bicentennial Year as the United States examines its past to determine the best means of using its resources to provide essential public works. Information about the book and historical society is available from the American Public Works Association, 1313 East 60th Street, Chicago, Ill. 60637 or the Public Works Historical Society, 1776 Massachusetts Avenue NW., Washington, D.C. 20036.

Mr. President, I ask unanimous consent that the list of the men of the year and biographical information on each of them be printed in the Extensions of Remarks.

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

THE TOP TEN PUBLIC WORKS MEN OF THE YEAR FOR 1976

Joe H. Berrier, Director of Public Works, Winston-Salem, N.C.

Enos B. Cape, Director of Public Works, Houston, Tex.

Jean L. DeSpain, Director of Public Works, King County, Wash.

Robert A. MacEwen, Director of Public Works, Needham, Mass.

Thomas D. Moreland, Commissioner and State Highway Engineer, Georgia Dept. of Transportation.

James T. Pott, Director, Transportation Agency, County of Santa Clara, Calif.

Capt. William F. Reed, Jr., Deputy Commander for Facilities Management, Naval Facilities Engineering Command, Dept. of Navy.

Walter A. Schaefer, Director of Public Works, Maplewood, N.J.

Marshall Suloway, Commissioner of Public Works, Chicago, Ill.

Donald H. Swets, Director of Public Works, Kalamazoo, Mich.

JOE H. BERRIER

With the advent of Community Development Block Grant funding from HUD in early 1975, Joe Berrier assumed the responsibilities for managing Winston-Salem's program. Faced with the task of organizing six city departments and two public agencies in planning and implementing a $15.5 million grant program, Berrier created a management team from the leaders of each operating department.

Mixing traditional public works, redevelopment, code enforcement, and rehabilitation techniques with imaginative loan and home ownership incentive, Berrier's efforts have lead to the initiation of pioneer urban renovation projects in the center city and to a new approach to life in long-established areas of the community.

Recently Berrier, who has been Winston-Salem's Director of Public Works since 1965, was Project Director of a research study to develop a checklist methodology for assessing hazards of methane gas generation and movement at solid waste disposal sites.

Berrier was also instrumental in developing the first local erosion control law in North Carolina.

ENOS B. CAPE

Providing municipal services to Houston's rapidly growing metropolitan areas is a challenging task. The city's high degree of success in keeping these services abreast of its explosive growth is due in large measure to the director of its Public Works Department, Enos B. Cape. His planning and construction of more than $550 million in public works projects in the past six years encompasses sanitary sewerage, water resource development and distribution systems, storm drainage, paving, municipal buildings, bridges, recreational facilities, and air transportation facilities. The work included installation of some 895 miles of water mains and 6,700 fire hydrants.

Cape became head of Houston's Public Works Department in 1964 and has since guided such monumental projects as the opening of Houston International Airport; construction of the $81.5 million Livingston Dam; completion of the Lake Conroe Dam; and construction of Houston's $15 million Civic and Convention Center.

JEAN L. DE SPAIN

Since 1967 he has been Director of Public Works, King County, Wash., heading a department responsible for maintaining 2,400 miles of roads and streets, managing Boeing Field International; solid waste disposal for all of King County except the City of Seattle; and flood control and river bank maintenance along the county's five major rivers. It is a department employing 800 people and having an annual budget exceeding $30 million.

DeSpain is also Chairman, River Basin Coordinating Committee of the Municipality of Metropolitan Seattle.

From 1973 to 1975 he was a member of the National Commission on Productivity, whose purpose was to assist state and local solid waste management agencies in stimulating productivity.

Among his accomplishments as King County's Director of Public Works, DeSpain implemented a maintenance management system using work standards and planning techniques for estimating and controlling the work of the Operations section of the Roads Division on a systematic basis.

DeSpain is a Past President of APWA's Institute for Municipal Engineering.

ROBERT A. MACEWEN

Robert A. MacEwen receives his second major APWA-related award within a year. In June 1975, the title of "Man of the Year" was bestowed upon him by the New England Chapter . . . which he served as President in 1969.

MacEwen has been employed by the Town of Needham, Mass. for more than 22 years, and has been its Director of Public Works since January 1972. During that time his accomplishments have been legion. Among them . . . conducted a snow school for public works personnel; introduced a merit system for public works employees; conducted thorough investigations of the rate of application of rock salt by means of mechanical spreaders; pioneered the use of Dix Seal as a thin overlay in the maintenance of roadway pavements, and published an article on that subject for Public Works Magazine; introduced a program for equipment replacement and cost; participated in a rock salt test with International Salt; and has conducted successful programs for developing labor service employees into supervisory and management personnel.

THOMAS D. MORELAND

When Thomas Moreland was appointed Commissioner in the Georgia Department of Transportation in April 1975, the state's General Assembly honored him in a unique

way. They amended the State Transportation Code, permitting him to retain his prior post as State Highway Engineer.

Among his achievements are:

A program of cost-effectivness which has rendered $20 million in additional highway improvements for Georgia's transportation efforts during fiscal 1976.

Reduction of department personnel by 10% to 7,280 through attrition, without decreasing the ability to deliver services. Net identifiable savings: $19 million annually for fiscal 1976.

Chief advisor to the Chairman of the National Governors' Conference Transportation, Commerce, and Technology Committee.

Coordinated rescue, salvage, and reconstruction activities for the Sidney Lanier Bridge after a ship collision took ten lives and destroyed three spans.

Instituted significant operational improvements to Georgia's highway system through a program of improved maintenance and traffic safety.

Initiated a motorist aid program for Georgia.

Obtained annual contract sources of supply for aggregates, asphalt, etc., used in highway maintenance.

Chaired a panel for pavement design that upgraded pavement design used by the agency.

Reduced testing by 33% as a result of a program of materials acceptance.

Coauthored the AASHTO Manual on Foundation Investigation.

Prepared soils-related portion of the Georgia Standard Specifications.

Developed Georgia's nationally recognized Soils Investigation Unit.

JAMES T. POTT

As Director, Transportation Agency and Assistant Executive Director, Santa Clara County (Calif.) Transit District, James Pott is responsible for the operation and development of a countywide (population 1.2 million) publicly-owned bus transportation system and for planning other surface transportation modes to achieve a balanced transportation network.

Pott is also responsible for managing 333 miles of highway system in Santa Clara County. About 84 miles of the system is constructed to expressway standards and serves not only the unincorporated area, but several incorporated cities.

Pott also initiated and guided development of the TELLUS program, a computer-aided environmental impact assessment methodology which facilitates comparison of environmental consequences of physical alternatives considered during the design of public works projects.

He prepared a comprehensive report on transportation problems and potential solutions entitled, "On Having and Financing Balanced Transportation."

CAPT. WILLIAM F. REED, JR.

At Danang, in 1967–68, Captain William Reed, Jr. was responsible for the largest public works organization in U.S. naval history. What began as a working force of 3,000 grew to 6,400 military and civilian personnel supporting public works projects in the entire Corps area. The Command received the Navy Unit Commendation for its performance.

Captain Reed's naval career began with his entrance into the U.S. Naval Academy in 1947, from which he earned a BS in civil engineering. From 1963 through 1965, he was an Executive Officer of the Public Works Center, Yokosuka, Japan, where he was responsible for the organizational planning, negotiations, and labor relations involved in combining the public works departments of five separate commands and a separate construction office into a single operating entity.

In 1968 he handled a Maintenance and Operations Contract in Southeast Asia for which the Naval Facilities Engineering Command had received responsibility.

He assumed his present position as Deputy Commander for Facilities Management and Assistant for Facilities Management (Chief of Naval Operations) Naval Facilities Engineering Command in 1973, and is responsible for a myriad of far-flung facilities.

WALTER A. SCHAEFER

In 1969, Maplewood, N.J. received a citation cosponsored by a national magazine and the National Municipal League largely through the work of Walter A. Schaefer, Maplewood's Director of Public Works. Since assuming his post in 1955, Schaefer instituted a variety of programs to enhance the lifestyle of the township's residents.

Long before the present intense interest in ecology was prevalent, Schaefer was inaugurating programs to upgrade and protest Maplewood's environment. His leaf collection and composting program provided the citizenry with fertilizer for their gardens while saving the cost of disposal and eliminating the need for polluting the air with the smoke of burning leaves.

Under Schaefer's directorship a communitywide beautification program was expanded to maintain the "greenness" of Maplewood.

To provide Maplewood residents with recreation as well as beauty, Schaefer and his department built Richard Walter Park which contains, among its many facilities, the first municipal paddle tennis courts in New Jersey.

Schaefer restructured the Bureau of Public Works from nine independent departments into four allied sections. This move resulted in consolidation of manpower and equipment, leading to a more efficient and economical operation.

MARSHALL SULOWAY

Marshall Suloway, Commissioner of Public Works of Chicago has been greatly involved in providing modern, effective transportation modes for the citizens of his huge metropolis.

Suloway was responsible for completion of major segments of the Interstate Highway System, including the final four-mile link of the Eisenhower Expressway, the entire 11-mile Dan Ryan Expressway, and all of the 17-mile section of the Stevenson Expressway.

As for public transportation, he was responsible for design and construction of the Dan Ryan Expressway Rapid Transit Line which was put into operation on Sept. 28, 1969, and had similar involvement in the design and construction of the Kennedy Expressway Rapid Transit Line, opened Feb. 1, 1970.

Suloway coordinated the design and construction for expansion of Chicago's main airport.

Suloway has also participated in several landmark environmental programs. As Chief Engineer of the Bureau of Engineering, Department of Public Works, a position he held from September 1967 through May 1973, Suloway coordinated the design and construction of the largest household refuse incinerator in the Western Hemisphere. He was also instrumental in setting up a system of vehicle emission testing stations throughout the city. As Commissioner of Public Works, he coordinated the design and construction of a $14 million refuse processing and recycling plant.

DONALD H. SWETS

Donald H. Swets has guided Kalamazoo's vast wastewater collection and treatment program, beginning with the supervision of construction and operation of the city's original sewage treatment plant in the 1950s when Swets was Assistant City Engineer. At that time, the Kalamazoo River was grossly polluted by industrial firms located upstream of the treatment plant. Swets made this his personal concern and became the key figure in developing a joint industrial-municipal program which eventually transformed the river from an "open sewer" to one presently inhabited by fish and water fowl.

The entire scheme became a reality in 1967 after Swets became Director of Public Works and City Engineer when an expanded secondary treatment plant was put into operation.

Swets is a member of U.S. EPA's Technical Advisory Group for Municipal Wastewater Programs. He served on the Transportation Committee of the Michigan Municipal League from 1967 to 1969, and was instrumental in developing a formula for distribution of major street funds to cities and villages throughout the state.

HOUSE OF REPRESENTATIVES—*Tuesday, June 1, 1976*

The House met at 12 o'clock noon.

The Reverend Harvey L. Moore, First Presbyterian Church, Lexington, Nebr., offered the following prayer:

Father in Heaven and Lord of Daily Life, give us a sense this day that Your strong hand is on our shoulder, providing us a new lift, a new love, and a new light.

Thank You for all blessings, but especially for families, friends, associates, and the country we love and serve.

Enter with us into the necessary and practical matters of the day. Be the unseen guest in every deliberation, the sensitive listener in every debate, and the positive influence in all our decisions.

May we set principles above parties and set Your will above all else.

Forgive, at times, our foolish human ways. "Take from our souls the strain and stress, and let our ordered lives confess the beauty of Your peace." Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment a concurrent resolution of the House of the following title:

H. Con. Res. 305. Concurrent resolution providing for the printing of additional copies of the committee print entitled "Court Proceedings and Actions of Vital Interest to the Congress, Final Report for the 93d Congress, December 1974."