ences to conduct a 1-year review and evaluation of all available information respecting the toxicity and carcinogenicity of food additives, including information respecting the ability to predict the effect on humans of food additives found to cause cancer in animals and whether there should be a weighing of risks and benefits in making regulatory decisions respecting such additives, and to direct the Secretary of Health, Education, and Welfare to permit the continued use of saccharin as a food, food additive, drug, and cosmetic for 18 months; to the Committee on Interstate and Foreign Commerce.

By Mr. ROONEY (for himself, Mr. CHAPPELL, and Mr. PERKINS):

H.R. 8046. A bill to regulate interstate commerce in wagering on horseracing, to maintain the stability of the horseracing industry, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mrs. SCHROEDER (for herself and Mr. DRINAN):

H.R. 8047. A bill to provide that a former spouse of a Federal employee who is married to such employee for 20 years or more shall be entitled to a portion of such employee's annuity and to a portion of the annuity of any surviving spouse of such employee; to the Committee on Post Office and Civil Service.

By Mrs. SMITH of Nebraska:

H.R. 8048. A bill to amend title 39, United States Code, to regulate the manner in which the U.S. Postal Service may consolidate rural delivery routes and close post offices serving rural areas and small communities and towns, and for other purposes; to the Committee on Post Office and Civil Services.

By Mr. THONE:

H.R. 8049. A bill to amend title II of the Social Security Act to repeal the earnings limitation for all workers age 65 and over, and for other purposes; jointly to the Committees on Ways and Means, Interstate and Foreign Commerce.

By Mr. GLICKMAN (for himself, Mr. BEDELL, Mr. PANETTA, Mr. LEACH, and Mr. BURGENER):

H.J. Res. 535. Joint resolution proposing an amendment to the Constitution of the United States providing for staggered 4-year terms for Representatives, for a limitation on the number of terms a person may serve in the House of Representatives or the Senate, and for other purposes; to the Committee on the Judiciary.

By Mr. LUJAN:

H.J. Res. 536. Joint resolution to designate the stone commonly known as turquoise as the national gemstone of the United States; to the Committee on Post Office and Civil Service.

By Mr. SCHULZE:

H.J. Res. 537. Joint resolution designating the American rose as the national floral emblem of the United States of America; to the Committee on Post Office and Civil Service.

By Mr. GILMAN (for himself, Mr. ALEXANDER, Mr. BURKE of Florida, Mr. DE LA GARZA, Mr. KAZEN, Mr. LAGOMARSINO, Mr. ROUSSELOT, Mr. RUDD, Mr. WRIGHT, and Mr. YATRON):

H. Con. Res. 265. Concurrent resolution to endorse the Hermosillo Declaration on Combatting Traffic in Drugs at the International Level and urge the President to encourage other nations to cooperate in eradicating narcotics trafficking; to the Committee on International Relations.

By Mr. WRIGHT:

H. Res. 658. Resolution to amend the Rules of the House of Representatives and establish a Permanent Select Committee on Intelligence; to the Committee on Rules.

By Mr. ANNUNZIO:

H. Res. 661. Resolution providing for two additional positions on the Capitol Police, and for other purposes; to the Committee on House Administration.

By Mr. BROOKS:

H. Res. 662. Resolution authorizing the printing as a House document the dedication ceremony of the portrait of the Honorable Peter W. Rodino, Jr., Chairman, Committee on the Judiciary; to the Committee on House Administration.

By Mr. MOTTL (for himself, Mr. BAUCUS, Mr. ERTEL, Mr. LEACH, Mr. LUJAN, Mr. MANN, Mr. MARTIN, Mr. MILLER of California, and Mr. ROE):

H. Res. 663. Resolution to create a select committee to conduct a study of the circumstances surrounding both product liability and professional liability insurance rate increases, and of any other product and professional liability insurance coverage issues the committee shall determine; to the Committee on Rules.

MEMORIALS

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

202. By the SPEAKER: Memorial of the Senate of the State of Colorado, relative to the proposed transfer of the Mining Enforcement and Safety Administration (MESA) from the U.S. Department of the Interior; to the Committee on Education and Labor.

203. Also, memorial of the Legislature of the State of Louisiana relative to the cost of relocating natural gas interstate pipelines in Louisiana; to the Committee on Interstate and Foreign Commerce.

204. Also, memorial of the Legislature of the Territory of Guam, relative to requesting Congress to call a Constitutional Convention for the purpose of proposing an amendment to the Constitution of the United States to guarantee the preservation of human life; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. MATHIS:

H.R. 8050. A bill for the relief of Lt. Col. John N. Hudgens, U.S. Air Force, retired; to the Committee on the Judiciary.

By Mr. PATTERSON of California:

H.R. 8051. A bill for the relief of Pedro Sagasti-Bilbao and Sylvia Alvarez de Sagasti and their children Karyn Sagasti-Alvarez, Veronica Del Pilar Sagasti-Alvarez, and Pedro Sagasti-Alvarez; to the Committee on the Judiciary.

By Mr. PEPPER:

H.R. 8052. A bill for the relief of Kathleen T. Gomez; to the Committee on the Judiciary.

By Mr. WHITEHURST:

H.R. 8053. A bill for the relief of Lt. Col. Charles D. Seymour; to the Committee on the Judiciary.

By Mr. WHITTEN:

H.R. 8054. A bill for the relief of Jessica Layug Patterson; to the Committee on the Judiciary.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 7932

By Mr. MITCHELL of Maryland:

Page 10, line 19, after line 18, insert:

JOINT COMMITTEE ON DEFENSE PRODUCTION

For salaries and expenses of the Joint Committee on Defense Production, $177,700.

By Mr. PRESSLER:

On page 36, after line 17, insert the following new section:

None of the funds appropriated by this act may be used for the congressional intern program established by House Resolution 420 of the 93d Congress unless for the purposes of the resolution a "similar institution of higher learning" is construed to include a postsecondary vocational school.

On page 36, after line 17, insert a new section as follows:

None of the funds appropriated in this act shall be used to fund the increase in salaries for members of the U.S. House recommended by the President on January 17, 1977, pursuant to section 225 of the Federal Salary Act of 1967.

H.R. 7933

By Mr. BURLISON of Missouri:

"Other Procurement, Air Force". Delete the amount $2,318,986,000 and insert in lieu thereof the following sum, $2,303,998,000."

By Mr. GILMAN:

Page 58, immediately after line 7, insert the following new section:

SEC. 862. None of the funds appropriated by this Act may be obligated or expended to conduct any review of the status of United States military personnel listed as missing-in-action in Southeast Asia other than—

(1) a review with respect to which the Federal officer or employee conducting such review has physical evidence of the actual fact of death, and

(2) a review under chapter 10 of title 37 of the United States Code which is requested by any individual who is a dependent of any such personnel so listed and who is receiving monetary benefits from the United States by reason of being a dependent of such personnel.

SENATE—*Monday, June 27, 1977*

(Legislative day of Wednesday, May 18, 1977)

The Senate met at 12:30 p.m., on the expiration of the recess, and was called to order by Hon. EDWARD ZORINSKY, a Senator from the State of Nebraska.

PRAYER

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

Study to shew thyself approved unto God, a workman that needeth not to be ashamed, rightly dividing the word of truth.—II Timotry 2:15.

Let us pray.

God of our Fathers and our God, who has safely brought us to the beginning of this new week, grant us a holy stewardship of office and of work in this place. Help us rightly to divide the word of truth, shunning all that is untrue, rejecting half-truths, separating the important from the unimportant, the trivial from the crucial, refining legislation according to the needs of the whole Nation and in accord with Thy will. As we work make us more concerned with Thy judgment of us than with our judgment of Thee.

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Guide by the light of Thy presence, the President, all our leaders, and the citizens of this land, to make America a blessing to all mankind. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., June 27, 1977.

To the Senate:

Under the provisions of Rule I, Section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable EDWARD ZORINSKY, a Senator from the State of Nebraska, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. ZORINSKY thereupon assumed the chair as Acting President pro tempore.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Friday, June 24, 1977, be approved.

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

UNANIMOUS CONSENT CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of measures that have been cleared on the Unanimous Consent Calendar.

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

GASPAR LOUIS SAYOC

The Senate proceeded to consider the bill (S. 142) for the relief of Gaspar Louis Sayoc, which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and insert the following:

That, notwithstanding the provision of section 212(a)(23) of the Immigration and Nationality Act, Gaspar Louis Sayoc may be issued a visa and admitted to the United States for permanent residence if he is found to be otherwise admissible under the provisions of that Act: *Provided*, That this exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the enactment of this Act.

The amendment was agreed to.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–289), explaining the purposes of the measure.

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

EXCERPT

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to waive the excluding provision of existing law relating to one who has been convicted of a violation relating to the illicit possession of a narcotic in behalf of the son of a U.S. citizen. The bill has been amended to reflect recent amendments to the Immigration and Nationality Act.

ANGELO B. CORTES

The bill (S. 344) for the relief of Mr. Angelo B. Cortes, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–290), explaining the purposes of the measure.

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

EXCERPT

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Mr. Angelo B. Cortes. The bill provides for the payment of the required visa fee and for an appropriate visa number deduction.

"The beneficiary is married. His widowed mother, three brothers and a sister reside in the Philippines. His spouse, two adult sons, and three teenage siblings also reside in the Philippines. His spouse owns land in her own right which furnishes subsistence and livelihood for his family in addition to the amounts he remits from his earnings.

"The beneficiary was admitted to the United States on February 24, 1974, as a temporary visitor for business. He failed to apply for an extension of stay. Deportation proceedings have not been instituted pending disposition of his application for naturalization under section 329 of the Nationality Act of 1940. The beneficiary received the following military awards and commendations: World War II Victory Medal; Philippines Independence Ribbon; and the Army of Occupation Medal with Japan clasp."

Senator Daniel K. Inouye, the author of the bill, submitted the following statement of support:

"STATEMENT BY DANIEL K. INOUYE IN SUPPORT OF S. 3734, FOR THE RELIEF OF ANGELO B. CORTES

"Angelo B. Cortes, presently of Honolulu, was born on September 8, 1922, in Dasol, Pangasinan, Philippines. He entered the United States as a visitor for business.

"Mr. Cortes served in the U.S. Army in the Philippines from 1944 until he was honorably discharged on March 31, 1949. He served as a company clerk and supply sergeant from 1944 to 1946 and a fire control repairman and acting shop foreman of the artillery division until his discharge. He received the World War II Victory Medal, the Philippine Independence Ribbon, and the Army of Occupation Medal with Japan Clasp.

"From 1952 until 1956, Mr. Cortes served as the municipal secretary in Dasol, Pangasinan, and from 1956 until January 31, 1974, he was the provincial inspector of the Bureau of Health in Dasol.

"Mrs. Joaquina P. Cortes is a housewife and is presently in the Philippines with their four sons and one daughter. His oldest son is studying in the Philippine School of Business Administration in Manila. The second son is serving in the Philippine Air Force. The other three children are attending public schools in Dasol. Mr. Cortes hopes to obtain the citizenship of the country in whose Armed Forces he served faithfully and honorably in order that he can avail himself of the great opportunity in the United States to benefit his family."

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 344) should be enacted.

CHIU-PING HASKELL

The Senate proceeded to consider the bill (S. 614) for the relief of Chiu-Ping Haskell, which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and insert the following:

That, in the administration of the Immigration and Nationality Act, Chiu-Ping Haskell, the widow of a citizen of the United States, 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 to this case.

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 for the relief of Chiu Ping Haskell.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–291), explaining the purposes of the measure.

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

EXCERPT

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to grant the status of an immediate relative to Chiu Ping Haskell, to which status she would have been entitled were it not for the death of her husband, a citizen of the United States. The purpose of the amendment is to conform the language to established precedents and to correct a typographical error in the beneficiary's name.

SOO JIN LEE

The bill (H.R. 1437) for the relief of Soo Jin Lee, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–292), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill is to facilitate the admission into the United States of the prospective adoptive child of U.S. citizens.

TULSEDEI ZALIM

The bill (H.R. 3838) for the relief of Tulsedei Zalim, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–293), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill is to facilitate the entry into the United States of an immediate relative of the adopted child of a U.S. citizen.

HEE KYUNG YOO

The bill (H.R. 4246) for the relief of Hee Kyung Yoo was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–294), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill is to facilitate the admission into the United States of the prospective adoptive child of citizens of the United States.

Through the auspices of the Korea Social Welfare Society Inc., the beneficiary is being proposed for adoption by Mr. and Mrs. Donald Weicht, of Elk River, Minn. The adoptive parents have no natural children, and have previously adopted two other Korean orphans. One of these children, Amie Lee Weicht, died on February 12, 1976. Mr. and Mrs. Weicht plan to adopt the beneficiary in the United States.

The beneficiary is prevented from being issued a visa number under the provisions of section 101(b)(1)(F) of the Immigration and Nationality Act because of the limitations contained in section 204(c) of the act concerning the approval of only two petitions in behalf of a child, as defined in section 101 (b)(1)(F), or (F) from any one petitioner. While the beneficiary could be registered as a nonpreference applicant, this is not considered to be a viable alternative due to the continued lack of visa numbers for Korean-born nonpreference applicants. At the present time there are no nonpreference numbers available and the beneficiary could face a wait of at least several years before her case could be actively considered.

The beneficiary underwent a medical examination on August 16, 1976, and at that time she was found to have "class A" tuberculosis, which would render her ineligible to receive a visa. She was also found to have pneumonitis.

In December 15, 1976, she was admitted to Seoul Adventist Hospital as a result of convulsions. An electroencephalogram (EEG) and a series of X-rays were done at that time, with no abnormal findings. The examining physician's conclusion was that the beneficiary suffered from "convulsive disorder" of unknown origin. On April 19 of this year the beneficiary was given another medical examination. X-rays taken during this examination revealed no sign of pulmonary tuberculosis. The examining physician noted that the beneficiary had been receiving chemotherapy, and he has recommended that she continue the therapy for an additional 3 months, at which time she could be considered completely cured. The examining physician also noted her previous medical history of convulsion, and stated that he could not rule out the possibility of epilepsy. He suggested, in this regard, careful observation of the beneficiary, and recommended, that should she suffer from convulsions again, an electroencephalogram be done as soon as possible.

The Embassy's investigation revealed no derogatory information concerning the beneficiary.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to move to reconsider en bloc the votes by which the bills were passed.

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

Mr. ROBERT C. BYRD. I so move.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, there are three items on the Executive Calendar that have been cleared beginning with the Department of Justice. I ask unanimous consent, if the distinguished assistant Republican leader has no objection on his side, that the Senate go into executive session to consider the nominations on the Executive Calendar.

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

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

DEPARTMENT OF JUSTICE

The second assistant legislative clerk read the nomination of Joseph J. Harvey, of Washington, to be U.S. marshal for the western district of Washington.

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

NEW REPORTS (DEPARTMENT OF JUSTICE)

The second assistant legislative clerk read the nominations of J. Jerome Bullock, of Georgia, to be U.S. marshal for the District of Columbia; and Lee A. Limbs, Jr., of Arizona, to be U.S. marshal for the district of Arizona.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nominations.

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

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I have no other matters to present.

The ACTING PRESIDENT pro tempore. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I yield the time under the special order that I have reserved to the Senator from New York.

The ACTING PRESIDENT pro tempore. The Senator from New York is recognized.

Mr. STEVENS. Mr. President, I yield back the leadership time that we have.

The ACTING PRESIDENT pro tempore. The Senator from New York is recognized for 15 minutes in his own right.

PRESIDENT CARTER'S MIDEAST PEACE PROPOSAL

Mr. JAVITS. Mr. President, I asked for this time this morning to speak about the President's peace proposals respecting the Middle East. Before I make my remarks in chief, I wish to make a short statement respecting my discussion with the President in the company of Senator CASE, the Vice President, and Mr. Brzezinski, the President's adviser on national security affairs.

On Friday morning last, Senator CASE and I met with President Carter, the Vice President and Mr. Brzezinski to discuss with the President the Mideast, Arab-Israel issues and the perspective set out in the body of my speech being delivered in the Senate today.

The meeting was friendly and constructive. I share with the President the same objectives respecting the Mideast and our meeting was a discussion and not a confrontation. The President listened attentively to what I had to say and I

was most interested in his comments. We did not seek to reach an agreement at this time on how U.S. Mideast policy is to be articulated and how differences which remain may be adjusted. But I am satisfied that we share the objective of a just and lasting peace in the Mideast and I feel that the President can greatly forward the prospects for success.

In this spirit, I felt encouraged by the President to place my position on the public record so as to invite informed debate on the crucial issues that are involved. This is the spirit in which I speak today.

It is my hope to work with the President and the President's advisers, with the Vice President, and the Secretary of State, and to do all I can to help to achieve the Mideast peace objective of the President and of the American people I believe in time we have a good chance to accomplish it.

Also, I have advised the President of my intention to go to the Mideast as a member of the Senate Foreign Relations Committee during the July 4 recess and the President has most generously invited me to continue our discussion further before I leave.

My purpose this morning is to open the dialog on a vital element of U.S. foreign policy from this time forward. We cannot erase, nor does anyone seek to erase what the President has said—that is history. Therefore, I would not ask any President to do that, certainly not President Carter, deeply as he has this issue in his heart.

Speaking in San Francisco on June 17, Vice President MONDALE presented an official statement of President Carter's Mideast peace proposals. In my judgment, President Carter's intentions respecting peace in the Mideast are entirely creditable. Serious questions remain, however, as to whether the specifics of the Carter proposals, as spelled out by Vice President MONDALE, will accomplish the results which are sought by the President. Indeed, there are reasons to conclude that the Carter proposals will not succeed in their objective because they are unrealistic and fail to take account of certain of the key factors in the situation. By asking so much of Israel, and thereby requiring Israel as a matter of its very survival, to ask so much from the Arabs in return—things which may exceed Arab willingness to concede—the Carter proposals may in themselves undercut the possibility of a successful U.S. role as mediator.

My purpose is to open the dialog on this vital element of U.S. foreign policy from this time forward so that it may crystallize in the most constructive U.S. position and the most likely to forward Mideast peace.

The idea of trading territory for peace, which is the essence of the Carter proposals, is not a new one. Several years ago Israel's policy was described by Prime Minister Rabin as being one of trading a "piece of territory for a piece of peace" on a step-by-step basis. Now, President Carter is proposing a well nigh total trade of all the Arab territory administered by Israel for "total peace." In addition to Israel's return "to approximately the borders that existed prior to the war of 1967," President Carter has also proposed the establishment of "a Palestinian homeland or entity—preferably in association with Jordan" in the territory Israel withdraws from.

The persistent public advocacy by the President of the United States of Israeli withdrawal to approximately the pre-June 1967 borders and the establishment of a Palestinian "homeland or entity"—before the convening of the Geneva Conference, before there has been any meeting without preconditions between Israeli and Arab negotiators, even before Israel's new government took office—can only continue to feed Arab illusions that President Carter will deliver to them what they have been unable to deliver to themselves by any other means including the recurrent recourse to war.

Moreover, the President's advocacy of Israel's return to its precarious 1967 borders, side by side with a Palestinian homeland or entity is having the effect of putting the Israelis in fear of their survival and thus hardening the terms they feel they must insist upon. This in turn will make it harder for the Arabs to agree. As a result, the chances for Mideast peace may be lessened and the danger of war enhanced by a breakdown in the peace seeking process through overreaching.

This clash of frustrated Arab illusions and burgeoning Israeli fears when compressed into the pressure cooker of a short-term, "wrap it up" Geneva Conference can only produce more not less tensions and danger of yet another Middle East war. What had been hoped for as a move forward—and understandably different from Henry Kissinger's step-by-step diplomacy—was a call upon all the parties to Geneva and all issues to be on the table for negotiation without preconditions and with the United States in a mediating role between the parties. Even Prime Minister Begin accepts this approach.

But, to be as specific as Vice President MONDALE's blueprint of the administration's position, in advance of Geneva, has raised both Arab expectations and Israeli fears, thereby inviting failure.

It is not enough to state this conclusion. It is necessary to go further and to analyze why the proposals of the administration as confirmed by Vice President MONDALE are becoming unrealistic.

As President Carter himself has emphasized, the United States is morally committed to the survival and integrity of Israel. And, notwithstanding the magnitude of the American contribution, the burden of assuring Israel's survival and integrity rests squarely upon the Israelis themselves—and rightly so.

Thus, the quality of the decisions which Israel makes over the coming year with respect to the life and death issues that will be posed for it at the Geneva conference is of the highest importance to the United States as well as to Israel.

I am convinced that the highest quality of decision can only be made by an Israel which does not feel pressed to the wall. Nations under the threat of coercion from friends—or enemies—seldom make the most clear-sighted decisions. And, wrong decisions by Israel—either conceding too much or not conceding enough—carry the eventual risk of renewed war.

The three tangible Carter-Mondale suggestions are for:

First. Israel's return to 1967 borders with minor modifications, with security zones forward of these borders to be phased out as relations between Israel's neighbors—that is, Jordan, Egypt, and Syria—and Israel are normalized;

Second. A "homeland" for the Palestinians, "preferably" in some association with Jordan; and

Third. Diplomatic recognition of Israel by the Arab States and a phased achievement of real peace: with trade, open borders, et cetera.

Why are these positions unrealistic?

First. To establish forward security borders for Israel means some reasonable zone—say 20 to 25 kilometers—and in that zone it will be impossible to administer affairs for long—what with the PLO riflemen in the wings, the irredentism and pressure to get Israel out will be enormous—no organized administrative continuity is possible, propaganda and disorder will be the order of the day.

Second. The use of the term "Homeland" establishes at once a parallelism with the Jewish National Home in Israel and exactly contradicts an association with Jordan. Indeed, the basis for this association has not been properly laid on the Arab side. In addition, such an association neither assures control of policy nor even its own continuity. As a precedent there is Syria's abrupt denunciation of its union with Egypt in the United Arab Republic.

Third. The administration's proposals respecting a Palestinian entity is qualified by the phrase "preferably in association with Jordan." This phrase is loaded with ambiguity and uncertainty. Yet, the status of the proposed Palestinian entity is one of the most crucial and disputed issues of the entire controversy. Whose "preference" is to govern? The Palestine Liberation Organization, PLO, continues to be recognized by the Arab governments as the "sole" representative of the Palestinian people. At the meeting of its governing national council in March of this year—the PLO conspicuously refused to moderate its demand for the destruction of Israel as a Jewish state. Moreover, the political declaration issued at the close of that meeting gives no indication of PLO interest or willingness to federate a Palestine entity with the Kingdom of Jordan, as was formally proposed a few years ago by King Hussein and despite reported heavy pressure on the PLO to do so by Egypt and Saudi Arabia.

Fourth. The administration proposals are silent on three of the issues most crucial to the achievement of a lasting peace—Jerusalem, Lebanon, and the Golan Heights. Does the return of Israel to approximately the 1967 borders mean that Jerusalem is again to be a divided city—a Middle East Berlin—with Israeli access again as difficult as in the year before 1967? What is envisaged under the Carter proposals for the Golan Heights and for Lebanon? Is Lebanon to remain territorially intact and under Syrian hegemony; and is the PLO to continue to have the right to exist as a "state within a state" there? These questions are crucial in themselves and related inextricably to the Golan Heights issue and the 1967 borders issue.

Fifth. The administration proposals suffer from the multiple deficiency of being too detailed in some respects, silent in other crucial respects, and—worst of all—open-ended in the final analysis. Hitherto, international efforts to achieve Mideast peace have rested upon U.N. Resolution 242 as reinforced by resolution 338. But now, according to Vice President MONDALE'S speech:

> Resolution 242 does not by itself provide all that is required. We, therefore, decided to work with the parties concerned to outline the overall framework for an enduring peace. Our concept was to use this framework as the basis for a phased negotiation and implementation of specific steps toward peace.

The implications of the above-quoted sentences are far-reaching indeed and may open a Pandora's box of new difficulties. How does one define "the parties concerned" as used above? Is the new "overall framework for enduring peace" intended to be merely additive to the existing language of resolution 242—which makes no mention of a "Palestinian homeland or entity"—or are its basic concepts to be opened up to redefinition or renegotiation? Is the Soviet Union to be a party to the definition of the new "overall framework for enduring peace"? Is the Security Council of the United Nations, which now includes the Peoples Republic of China, to pass upon or give it sanction to the new overall framework? By calling into question the status of resolution 242 and 338, the administration proposals raise new uncertainties. I believe that the central position of U.N. Resolution 242 should not be undermined directly or by implication. Its acceptance has been reiterated by the new Government of Israel and by all the other parties other than the PLO and it should be the basis for negotiations at Geneva.

The major criticism of the administration's proposals, in terms of the reaction of many of Israel's supporters in this country, derives from what appears to be an imbalance in what the Israelis and the Arabs are being called on to do.

Israel is being asked to agree in advance to retreat to its 1967 borders in return for a peace which will be phased in over a number of years. The territorial concessions which Israel is asked to make are of dual significance to the very essence of its national security. First, the territories which it has administered since 1967 constitute virtually the totality of Israel's bargaining power with its Arab neighbors. Second, Israel is convinced that its 1967 borders are virtually indefensible under modern battle conditions and as such would be a constant invitation to attack rather than a reinforcing element of a lasting peace.

On the other side, the Arabs are being asked to promise to accept Israel in peace at the conclusion of "phased negotiation and implementation of specific steps toward peace." This seems like being asked to pay heavily now in return for only the promise of a reciprocal benefit which is to be delivered at some indefinite time in the future.

The Israelis will clearly feel impelled to make high reciprocal demands on the Arabs in return for what President Carter is asking of them—demands which the administration proposals do not now seem to encompass.

If the Arab States come to believe that the Arafat "nonnegotiable demands" approach to relations with Israel can succeed, the temptation could be strong for them to try the Arafat approach to relations with the West in general respecting the OPEC oil cartel and North-South issues in particular. The United States has a very real and direct interest in seeing that the Arab States come to recognize that their relations with Israel must be based on a genuine acceptance of Israel's national integrity and vital national interests, too. On the grounds of national interest and security alone our interest in a secure Israel must be put among our priorities.

Several Senators addressed the Chair.

Mr. JAVITS. Mr. President, I yield to Senator BROOKE.

Mr. BROOKE. Mr. President, I first want to commend the distinguished senior Senator from New York, our most able colleague, for having made this statement. I know how strongly he feels about the Middle East. I know he has been concerned, as have many of us, about recent administration statements on the subject of peace between Israel and her Arab neighbors.

Mr. President, purposeful ambiguity has its role in the arcane world of diplomacy so long as it makes a positive contribution to the achievement of desired ends. Recognizing this, many of us have been willing until now to forego extensive comment on the administration's ambiguous statements regarding the Middle East.

But ambiguity can also be of great detriment if it creates misperceptions as to actual intent. And it is becoming increasingly apparent that this is the danger that besets the current administration's approach to the Middle East.

It had been my hope that by now the administration would have clearly reiterated, by its actions and statements, a U.S. refusal to coerce Israel into accepting a dictated settlement. Unfortunately, this has not been the case. And I fear that the administration is drifting dangerously toward acceptance of the view that an imposed settlement might be justified. Such an approach would have a high probability of setting the stage for escalating tensions and greater disasters in the Middle East.

One of the serious consequences of the administration's ambiguous statements on the Middle East may be the creation of the perception in the minds of many in the Arab world that direct negotiations with Israel will be unnecessary because the United States will deliver Israel to Geneva to sign a prearranged dictat. Such an Arab expectation will never be fulfilled. Its creation, either by design or ineptness on the part of some U.S. officials could, however, stimulate an understandable hardening of Israeli positions in response to Arab intransigence stemming from such an expectation. Thus, ill-conceived statements on the part of the administration could threaten the very cause of peace which they are intended to promote.

This period of uncertainty requires constant affirmation of fundamental principles providing the anchor for U.S. Middle East policy. Three such principles come to mind.

First, Israel as an independent democratic state is a vital interest of the United States. Its assured existence is intimately linked to the survival of the values upon which our own freedom and form of government are based.

Our unqualified commitment to Israel's survival does not exclude a U.S. desire and need for amicable relations with the Arab States. There is no question that continued improvement of relations with various Arab States is also of crucial importance to our country. But, and this is fundamental, lasting improvement in relations with the Arab States cannot be obtained through a lessening of resolve to assure a viable Israel. Should that resolve weaken, the United States would sacrifice its claim to be a country of principle and honor. Friend and foe alike would have little confidence in our policies or intentions.

Second, it is peace, meaning not only the cessation of a state of belligerency but also normal intercourse between Israel and her neighbors, that is the goal. We must reject the temptation to impose "quick fixes" that do little more than provide interludes between periods of armed conflict.

Finally, the proper role for the United States in the Middle East must be as a mediator and not as a dictator of agreements. Those who would be tempted to impose a settlement on Israel are wrong. It is the Israelis, not ourselves, who must endure the immediate consequences of any agreements. And it would be totally unacceptable for the United States to condition its relations with Israel on Tel Aviv's willingness to accept risks that we ourselves would find intolerable if confronted with similar circumstances.

Much has been said recently about a "peace offensive" by the Arab States. We

all naturally welcome indications of moderation and restraint on the part of the opponents of Israel. But we also recognize that the term "peace" does not have a universal meaning for Israeli and Arab alike.

To many radicals in the Arab world, "peace" could only be achieved if Israel ceased to exist. Their "peace" would be that of the sword. Without question, these perpetrators of violence and hatred must be rejected.

Others in the Arab world believe "peace" means only a cessation of conflict with Israel by overt military action. To them it does not mean unqualified acceptance of Israel's sovereign status. "Peace" in this view, is merely the continuation of the struggle against Israel by means other than military force. To Israel and the United States, this restricted definition of "peace" is unacceptable. While it may promise a brief or even moderately extended respite from open warfare, it also will sow the seeds for future violence.

I am convinced that peace in the Middle East, to be worthy of the name, must include the following:

First. Recognized borders that provide adequate military and political security for the Middle East States.

Second. An end to the preaching of hatred and animosity toward one's neighbors.

Third. Free exchange of peoples and ideas between the various societies.

Fourth. Open trading relationships between Israel and her Arab neighbors.

Fifth. An end to "political warfare" against Israel in various international forums.

But I also am convinced that it is the fundamental right of the conflicting parties to make the decisions regarding the risks to be taken in seeking peace. And only in direct negotiations will the opportunity present itself for the parties to hammer out agreements that will be effective in promoting peace in the area.

The United States can legitimately encourage the accommodation process in several ways.

First, it can indicate to all parties that its commitment to the continued existence of Israel is a principled one that will not be sacrificed to expediency or weakened by acceptance of nebulous formulas for peace. The best means of doing so continues to be a U.S. willingness to provide clearly needed economic and military assistance to Israel. Indeed, as many realize, unless the United States is true to its moral and security-related commitments to Israel, it could never be trusted as a reliable friend of Arab countries.

Second, it can demonstrate that support of Israel and good relations with Arab countries are not mutually exclusive goals. The extensive amounts of U.S. aid provided Egypt, Syria, and Jordan in recent years and the close relations we have with Saudi Arabia are ample proof that this is not the case.

Finally, the United States can continue to offer its "good offices" as a mediator in the search for peace. While doing so it must clearly indicate that it will not seek to dictate the terms of a settlement, either by itself or in conjunction with other outside powers.

True peace in the Middle East can only be achieved through covenants freely agreed to by the involved parties in direct negotiations. Solutions imposed from without will be too fragile to accommodate the tensions that will continue to be characteristic of the Middle East for years to come. Israel and her Arab neighbors must be fully committed to the terms of an agreement if peace is to exist. Such commitment would be impossible under an imposed settlement.

There should be no doubt that pressures will increase for the United States and Israel to accept simple formulas for peace. Indeed, voices are being raised in this country insisting that Arab expressions of a desire for peace are sufficient justification for extensive concessions by Israel. These "simple formulas" remind one of H. L. Mencken's statement:

> For every difficult and complex problem, there is an obvious solution that is simple, easy and wrong.

There are no simple, easy solutions in the Middle East. And neither Israel nor the United States can afford to be wrong in the choices that are made. Too much is at stake.

It is time for the present administration, the Congress and the American people to understand that the process of peace will be very protracted in time if it is to bring to pass the desired results. Our commitment must be for the long haul. And we must accept the financial and psychological burdens that such will entail.

Mr. President, the United States cannot afford to be an "uncertain trumpet" as it seeks to encourage the negotiating process in the Middle East. It is important that we do not mislead others into thinking that we will attempt to coerce Israel into accepting a settlement. To do so would be to risk miscalculations on the part of Israeli and Arab alike, the end result of which would likely be a disaster of unmitigated proportions. Therefore, it is important that the administration clearly indicate, in its statements and actions, that the United States rejects a coercive approach in its relations with Israel even while it undertakes to do everything that it can to encourage direct negotiations without prior conditions between Israel and the Arab States.

In closing, I would like to ask the Senator from New York one question. Is it a crucial point, and one that the Israelis have persistently and consistently argued, that they must negotiate directly with the Arab States?

Mr. JAVITS. That is correct.

Mr. BROOKE. But the Arabs have consistently said they will not negotiate directly with Israel; is that correct?

Mr. JAVITS. Exactly.

Mr. BROOKE. It is a question of direct negotiation between Israel and the Arab States if we are going to get on with peace in the Middle East.

Mr. JAVITS. The Senator is exactly correct.

Mr. BROOKE. That is the point the Senator has tried to make.

Mr. JAVITS. That is exactly right.

Mr. BROOKE. I appreciate having that clarification, not that I had any serious question about it, but I think it ought to be made time and time again. The administration must be made more sensitive to the need for direct negotiations without preconditions between Israel and the Arab States if peace is to be given a chance. A dictated "Carthaginian" peace is unacceptable.

Mr. JAVITS. That is correct.

Mr. BROOKE. I thank my distinguished colleague.

Mr. PACKWOOD. Mr. President, will the Senator yield?

Mr. JAVITS. Yes. I yield.

Mr. PACKWOOD. Following up the statement of the Senator from Massachusetts, can the Senator envision any kind of peace in the Middle East that is imposed on either side being acceptable to either?

Mr. JAVITS. I cannot.

Mr. PACKWOOD. Unless the United States is prepared, if we want to force a settlement, and have a modern day pax romana, to police it perpetually, not only would it be adverse to Israel and the Arab interests, but certainly to our interests, to try to impose something that they do not want.

Mr. JAVITS. And to Western European interests, which are so involved in the area.

Mr. PACKWOOD. Exactly. That is what I have had for years misgivings about. We can offer our good offices, if we can encourage the parties to meet in Geneva, to meet in Tanzania, anyplace where they can negotiate a settlement either face to face or, as the Senator has indicated, through the intermediary of some other parties that both can accept, that is fine.

But in the last analysis, an area that has lived together, sometimes in war but often in peace, for 3,000, 4,000, or more years, is going to have to settle its disputes among themselves. For our country, well-intentioned as we may be—and I emphasize well-intentioned, because we were doing wrong at the start, but we tried to impose in Vietnam our idea of a settlement, our idea of how that government should operate, and it did not work. We had neither the omniscience nor the omnipotence to impose our ideas of correctness.

To enforce our ideas of correctness in the Middle East, I just hope we do not make the same mistake there.

Mr. JAVITS. I thank my colleague for his contribution.

I yield to Senator SCHWEIKER.

Mr. SCHWEIKER. I thank the distinguished Senator, my friend from New York, for yielding. I would like to associate myself with the important speech of the distinguished Senator from New York. I think he was most articulate and most eloquent in his usual ability in expressing the concerns that many of us feel.

I think particularly the two points, as I see them, are, first of all, that we cannot, no matter what intentions or whatever our misguided idealism might be, expect that we are going to effectively thrust down someone's throat or impose a settlement on the parties that they are not in full accord with and are not of a mind as being a fair and equitable way to handle the situation.

Second, I believe if we get away from the principles of secure and defensible borders we are only kidding ourselves, and we have kidded ourselves before, because of the very turbulent nature of the Middle East, and we have got to have some long-lasting settlement that recognizes defensible and secure borders.

I again commend the distinguished Senator.

Mr. President, I would like to associate myself with the important speech of the distinguished Senator from New York (Mr. JAVITS). I fully support his goal of stimulating the dialog on U.S. policy toward the Mideast. Peace in this divided region remains an important—if not the most important—element of our foreign policy, and we must proceed carefully and confidently. The distinguished Senator from New York has eloquently raised very important questions regarding administration proposals in this area, and I believe several of his key points are worthy of reaffirmation.

First, I feel the United States cannot and must not impose a peace settlement on the nations of the Middle East. Statements that merely imply this possibility, as the Senator from New York has pointed out, can only create fear and uncertainty in Israel, and renewed intransigence on the part of Arab nations. Second, Israel must be guaranteed secure and defensible borders if any forthcoming settlement is to be permanent. Surely we have learned this important point repeatedly during the history of the State of Israel.

Peace in the Mideast will not come about tomorrow—and may not come about at all if we do not respect the hopes and fears of the parties involved, as well as the political realities of the area. I would like to reiterate my feeling that, by raising these important concerns, the Senator from New York has performed a great service—not only to those of us in the United States, but to the citizens of all the nations of the Middle East.

Mr. HAYAKAWA. Mr. President, will the Senator yield?

Mr. JAVITS. I yield to the Senator from California.

Mr. HAYAKAWA. I want to thank the Senator from New York for his great and enlightening speech about the administration's plan regarding the Middle East.

I would like to ask a question basically to repair my ignorance of recent history.

On page 5 of his statement the Senator says:

> The use of the term "'homeland" establishes at once a parallelism with the Jewish National Home in Israel and exactly contradicts an association with Jordan.

I believe the use of the word "homeland" is applicable in one case and is not applicable in the other, and I agree on that certainly very profoundly. But I would like enough historical background—if the Senator please—to explain in what way this exactly contradicts an association with Jordan. Will the Senator comment on my lack of knowledge of the history of that?

Mr. JAVITS. Yes. The reason is that the virtue of the Jewish homeland was precisely in its sovereignty and autonomy. And the fact, the central theme, of the Jewish homeland was that persecuted Jews from everywhere, after the loss of 6 million in the Hitler holocaust, could gain admission simply by coming there to a place of Jewish sovereignty—a refuge. In this sense there is no analogy to a Palestinian "homeland." The Palestineans are Arabs and can, and have, found a "home" in many Arab nations. They are probably the largest group of all in Kuwait. Since, independence, sovereignty, autonomy was a prime requirement for a Jewish homeland, then the "homeland" analogy is particularly inappropriate for a Palestinian entity which "preferably" is to be federated with the Kingdom of Jordan and thus not sovereign and autonomous in the realm of foreign policy and defense.

Palestinian Arab refugees are already settled in many of the Arab countries, there is certainly no analogy to the lonely, persecuted dangerous position of the Jewish minority in the displaced persons camps of Europe who came into Israel when it was established as a state.

Mr. HAYAKAWA. I thank the distinguished Senator from New York. That explains it very, very well.

I would like to ask further, then, in what existing nations is the Palestinian population spread at the present time?

Mr. JAVITS. To give the Senator the best—I think our time is up. May I ask the majority leader whether we are going to have a morning hour?

Mr. ROBERT C. BYRD. Mr. President, by way of answer, is the Senator's time up?

The PRESIDING OFFICER (Mr. MELCHER). The Senator's time has expired.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a brief period for the transaction of routine morning business of not to extend beyond 15 minutes with statements limited therein to 5 minutes each.

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

PRESIDENT CARTER'S MIDEAST PEACE PROGRAM

Mr. JAVITS. Mr. President, I do not intend to use this time to speak, I will just use it in answering the questions. I yield.

Mr. HAYAKAWA. I simply wanted to ask that question.

Mr. JAVITS. Yes, where the populations are.

Mr. HAYAKAWA. The entities.

Mr. JAVITS. Well, the populations are concentrated, and I am drawing on my memory, as follows: There are roughly 350,000 in the Gaza Strip, about 50,000 of those work every day in Israel.

There are roughly a half million or more in the West Bank. There are smaller numbers in Lebanon. My recollection is there are maybe 200,000, something like that, in Lebanon which includes a lot of the armed PLO.

In Syria there are smaller numbers. But the bulk of the population is concentrated in the West Bank and in Gaza and on the East Bank in Jordan.

In Jordan, itself, a majority of the population is said to be Palestinian. But the refugees in the camps are concentrated in the West Bank and in the Gaza Strip and in Lebanon. Those are the major concentrations of the Palestinian refugees who are professional "refugees" getting U.N. assistance.

Mr. HAYAKAWA. If the fondest dreams of the Palestinians were recognized and they were assigned a place for a homeland, does that mean there would be a movement of Palestinians from other parts of the world into that homeland the way in which the Jews went to Israel?

Mr. JAVITS. The only contemplation of that migration that I see is the concept of the incursion of a lot of PLO riflemen into the West Bank. The West Bank has 500,000 people now and it is not a very big place, so there is probably not too much accommodation just to move in, as it were, to vacant territory. No doubt there would be pressure to encroach on Israeli territory.

Those are, as the Senator has developed, a number of the reasons that motivated what I said about that issue.

I do not wish to let it go without saying that for years I have worked and fought for the support of the Palestine-Arab refugees in their resettlement, intelligent normalization of their conditions, and for the rights of the Arabs in Israel as full 100-percent citizens of that country.

I have no truck with any discrimination of any kind or character against them anywhere, including in Israel.

But that is a very different concept from the threat which the Israelis feel pointed at their heart in a PLO West Bank state in the present rather crude state or relations between them and the Arab confrontation states.

Mr. HAYAKAWA. I am grateful to the distinguished Senator from New York.

Mr. JAVITS. I thank my colleague.

Mr. President, Senator CASE could not be here this morning. He accompanied me when we together went to see the President on Friday, and he has asked me to have printed in the RECORD a brief statement by him together with the text of a statement which he issued following his talk with the President.

I ask unanimous consent that these statements be printed in the RECORD.

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

ADDITIONAL STATEMENT SUBMITTED

Mr. CASE. Mr. President, I would like to comment briefly on the meeting Senator JAVITS and I held with President Carter on Friday. It was a most useful

meeting, in my view, and such discussions help underline the continuing efforts to work out foreign policy matters on a bipartisan basis.

Because of the strong interest in the issue we discussed Friday—the Middle East—I thought it might be helpful to comment for the record on my views of some points which must be kept in mind in trying to work out a lasting Middle East settlement. We discussed these points at the hour-long meeting, which also was attended by Vice President MONDALE and the President's national security adviser.

The attachment is as follows:

COMMENTS BY SENATOR CLIFFORD P. CASE ON HIS MEETING WITH PRESIDENT CARTER CONCERNING THE MIDDLE EAST

Speaking for myself, I raised the following issues with the President. I underscored the importance for the United States to keep Israel strong and to help Israel's economy as far as possible. I raised a number of specific coproduction requests made by Israel which have not yet cleared through the State Department and the Defense Department, despite the President's commitment to do his best in this respect. I emphasized that ambiguous statements by top administration officials encourage those in the bureaucracy who oppose coproduction to drag their feet. I agreed to, and I will, make available to the President a detailed memorandum outlining the specific cases and indicating where they are stuck in the system.

I also pointed out to the President that there were a number of reported violations of the Sinai agreements by Egypt, some of which are confirmed by the United Nations Emergency Force in the area. At the President's request I am preparing a brief on the matter.

I also emphasized my concern that some administration statements on the "homelands" question may cause unrest among the Arabs in the West Bank and possibly stimulate a power struggle among the local inhabitants and the PLO. It seems to me this would harm the effort to work toward peace in the Middle East.

Finally, I discussed with the President the effect of administration statements and "codewords" used in those statements in respect of progress toward a Geneva conference. It seems to me essential the U.S. carry on its discussions with the confrontational states in the Middle East with a view toward acting as honest brokers as those states move toward Geneva. One real danger now is that American statements will raise unrealizable Arab expectations and Israeli fears in the area which will lead to further, and serious, instability, undermining our effectiveness.

In my view, which I made clear to the President, the bed rock of American policy must be to keep Israel strong and able to provide its own defense.

Mr. JAVITS. Mr. President, as I conclude may I say two things?

First, this issue has always been a very strongly bipartisan issue. I hope it will continue so.

Mr. President, second, may I say that I have a deep and profound respect for the President, the Vice President, Secretary Vance and Dr. Brzezinski, for their good faith and good will in this matter. I hope that they will take what I have said as an honest expression of another view, which must be tested in the public domain just as the policy outlined by Vice President MONDALE must be. As we know from recent history, American foreign policy must have public and congressional understanding and support.

Mr. STONE. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. STONE. Mr. President, the Senator from Florida states that as chairman of the Near East Subcommittee of the Foreign Relations Committee our subcommittee welcomes the dialog and discussion of the steps that are now being taken and proposals now being made in order to bring peace to the Middle East.

Unless all of the views, those of the administration, and of those who raise questions, are aired we could in the process of trying to make peace stumble to everyone's great detriment and particularly now that the climate seems possible to have a meaningful dialog for peace.

The Senator from Florida assures the Senator from New York that his remarks, thought, and discussion with the administration are welcomed by all.

Mr. JAVITS. I am grateful to my colleague. He has helped me to put the matter exactly in the right context.

I yield to my chairman of the Foreign Relations Committee, Senator SPARKMAN.

Mr. SPARKMAN. Mr. President, I compliment and commend the distinguished Senator from New York for presenting a very clear and explicit viewpoint that no one could misunderstand.

He has always acted in that way. I have never found it difficult to agree with the Senator in his presentation.

After all, one objective toward which we all look and pray is the permanent peace in that troubled part of the world. I believe that all of this is aimed at that purpose.

I commend the Senator for presenting his views so clearly this morning.

Mr. JAVITS. I deeply appreciate that, Senator SPARKMAN, especially from so revered a Member as yourself. I pledge to you, as I pledged to Senator STONE and everyone on both sides of the aisle, that my full efforts will be expended in this spirit, on behalf of a just and lasting peace in Mideast.

Mr. President, I yield the floor.

ADDITIONAL STATEMENT SUBMITTED

Mr. DOMENICI. Mr. President, it is with pleasure I have the opportunity to join in this important dialog with my distinguished colleague from New York, Mr. JAVITS.

Like him, I believe it is time to formulate a constructive Mideast policy. Certainly our primary responsibility lies with bringing the Israeli and Arab States together. Our policy must not heighten already existing pressures, but instead, must offer temperate suggestions which may pave the way to a negotiated settlement.

I do not believe we need to reiterate the reasons why Israel must be acknowledged as a sovereign State. We all know she is. She has a right to expect that our overall objectives will be the preservation of her sovereignty. I do not believe it serves any nation's advantage to prescribe preconditions to resolution of the conflict. We should not feel compelled to set the standards for settlement. We should, however, impose with the most urgency, the necessity for reconciliation of the opposing factors.

The United Nations Security Council Resolution No. 242, adopted in 1967, together with SCR 338, have been accepted in principle as guidelines for future negotiations. Ambassador Arthur J. Goldberg recently said:

Despite the passage of time since the adoption of Resolution 242—and, perhaps, because of it—I adhere to the view that the Resolution does provide the basis to achieve a peaceful and accepted settlement between the parties, provided they will come to share the will and courage to achieve a just and lasting peace, which is the goal of the Resolution.

As the Ambassador, I, too, believe we have a set of principles within which we may work. I see no reason to try to alter, or reexamine, or try to improve upon them at this point in time. We can be flexible, but this flexibility must come when all parties are gathered around the negotiating table.

In conclusion, I agree with my distinguished colleague when he said that the "United States is morally committed to the survival and integrity of Israel." Moreover, his statement that "Nations under the threat of coercion from friends—or enemies—seldom make the most clear-sighted decision," is absolutely correct.

I, therefore, urge the administration to implement its most persuasive diplomacy in drawing the Arab and Israeli States together. But, I do hope the President will refrain from setting arbitrary standards for settlement before the parties concerned can mediate their diffrences in the proper negotiating atmosphere.

We all have an important stake in the outcome of this settlement. Let us hope we have the time to reach a settlement before it is too late.

Thank you.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer 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 PRESIDING OFFICER laid before the Senate the following communications which were referred as indicated:

EC–1559. A letter from the Secretary of Housing and Urban Development transmitting, pursuant to law, the Twelfth Report on the Emergency Homeowners' Relief Act (with an accompanying report); to the Committee on Banking, Housing, and Urban Affairs.

EC–1560. A letter, dated June 23, 1977, from the Assistant Legal Adviser for Treaty Affairs of the Department of State transmitting,

pursuant to law, international agreements other than treaties entered into by the United States within the past sixty days (with accompanying papers); to the Committee on Foreign Relations.

EC–1561. A letter from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "U.S. Participation in International Organizations" (ID–77–36) (with an accompanying report); to the Committee on Governmental Affairs.

EC–1562. A letter from the Executive Secretary to the Department of Health, Education, and Welfare transmitting, pursuant to law, a document concerning the Guaranteed Student Loan Program which has been transmitted to the Federal Register for scheduled publication (with accompanying papers); to the Committee on Human Resources.

EC–1563. A letter from the Executive Secretary to the Department of Health, Education, and Welfare transmitting, pursuant to law, a document concerning the Indian Education Act, Part B, Part 187—Final Rulemaking which has been transmitted to the Federal Register for scheduled publication (with accompanying papers); to the Committee on Human Resources.

EC–1564. A letter from the Executive Secretary to the Department of Health, Education, and Welfare transmitting, pursuant to law, a document concerning the Indian Education Act, Part C, Part 188—Final Rulemaking which has been transmitted to the Federal Register for scheduled publication (with accompanying papers); to the Committee on Human Resources.

EC–1565. A letter from the Executive Secretary to the Department of Health, Education, and Welfare transmitting, pursuant to law, a document concerning the Final regulations for Women's Educational Equity Act Program which has been transmitted to the Federal Register for scheduled publication (with accompanying papers); to the Committee on Human Resources.

EC–1566. A letter from the Executive Secretary to the Department of Health, Education, and Welfare transmitting, pursuant to law, a document concerning Emergency School Aid which has been transmitted to the Federal Register for scheduled publication (with accompanying papers); to the Committee on Human Resources.

EC–1567. A letter from the Commissioner of the Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, 613 reports covering the period June 1 through June 15, 1977 concerning visa petitions that have been approved according the beneficiaries of such petitions third- and sixth-preference classification under the Immigration and Nationality Act (with accompanying papers); to the Committee on the Judiciary.

REPORTS OF COMMITTEES SUBMITTED DURING THE RECESS

Under authority of the order of June 24, 1977, the following reports of committees were submitted during the recess of the Senate:

By Mr. CANNON, on June 24, 1977, from the Committee on Rules and Administration:

With an amendment:

S. 926. A bill to provide for the public financing of primary and general elections for the United States Senate (title amendment) (Rept. No. 95–300).

By Mr. STENNIS, on June 25, 1977, from the Committee on Appropriations:

With amendments:

H.R. 7553. An act making appropriations for public works for water and power development and energy research for the fiscal year ending September 30, 1978, and for other purposes (Rept. No. 95–301).

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INOUYE, from the Select Committee on Intelligence:

S. Res. 207. An original resolution relating to public disclosure of funds for national intelligence activities for the fiscal year 1978.

By Mr. ABOUREZK, from the Select Committee on Indian Affairs:

With an amendment:

S. 660. A bill to authorize the Secretary of the Interior to enter into an agreement with the Cherokee, Choctaw, and Chickasaw Indian Nations for the purchase and/or lease by the United States of each nation's right and interests in the riverbed of the Arkansas River, and for other purposes (Rept. No. 95–302).

Without amendment:

H.R. 4585. An act to authorize appropriations for the Indian Claims Commission for fiscal year 1978; to facilitate the transfer of cases from the Indian Claims Commission to the United States Court of Claims; and for other purposes (Rept. No. 95–303).

H.R. 4992. An act to amend the Indian Financing Act of 1974 by revising the appropriations authorization for the Indian business development program (Rept. No. 95–304).

S. Res. 208. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 660, a bill to authorize the Secretary of the Interior to enter into an agreement with the Cherokee, Choctaw, and Chickasaw Indian Nations for the purchase, and/or lease by the United States of each nation's right and interests in the riverbed of the Arkansas River, and for other purposes. Referred to the Committee on the Budget.

S. Res. 209. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 4992, a bill to amend the Indian Financing Act of 1974 by revising the appropriations authorization for the Indian Business Development Program. Referred to the Committee on the Budget.

S. Res. 210. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 4585, a bill to authorize appropriations for the Indian Claims Commission for fiscal year 1978; to facilitate the transfer of cases from the Indian Claims Commission to the United States Court of Claims; and for other purposes. Referred to the Committee on the Budget.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. ALLEN, from the Committee on the Judiciary:

Jesse Roscoe Brooks, of Alabama, to be U.S. attorney for the northern district of Alabama.

William A. Kimbrough, Jr., of Alabama, to be U.S. attorney for the southern district of Alabama.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. WILLIAMS, from the Committee on Human Resources:

Julius Benjamin Richmond, of Massachusetts, to be an Assistant Secretary of Health, Education, and Welfare, vice Theodore Cooper, resigned.

Julius Benjamin Richmond, of Massachusetts, to be medical director in the regular corps of the Public Health Service, subject to qualifications therefore as provided by law and regulations, and to be Surgeon General of the Public Health Service, for a term of 4 years, vice Dr. Jesse Leonard Steinfeld, resigned.

Xaveir M. Vela, of the District of Columbia, to be Administrator of the Wage and Hour Division, Department of Labor, vice Ronald J. James.

William Whitaker Allison, of Georgia, to be Deputy Director of the Community Services Administration, vice Robert C. Chase, resigned.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

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. ZORINSKY:

S. 1761. A bill for the relief of Dr. Dela Cruz; to the Committee on the Judiciary.

By Mr. CHURCH:

S. 1762. A bill to amend the Social Security Act to permit a grandchild who has been placed in legal custody of his grandparent to qualify for benefits as a child of his grandparent; to the Committee on Finance.

By Mr. McINTYRE (for himself, Mr. ABOUREZK, Mr. ANDERSON, Mr. BAYH, Mr. BROOKE, Mr. CASE, Mr. CRANSTON, Mr. DURKIN, Mr. EAGLETON, Mr. GRAVEL, Mr. HART, Mr. HATFIELD, Mr. HATHAWAY, Mr. HOLLINGS, Mr. HUMPHREY, Mr. LEAHY, Mr. MATSUNAGA, Mr. McGOVERN, Mr. RIBICOFF, and Mr. THURMOND):

S. 1763. A bill entitled "The Civilian Secretaries Information Act"; to the Committee on Armed Services.

By Mr. METCALF:

S. 1764. A bill to amend the Budget and Accounting Act of 1921; to the Committee on Governmental Affairs.

By Mr. RIEGLE (for himself and Mr. GRIFFIN):

S. 1765. A bill for the relief of the Federal Life and Casualty Company of Battle Creek, Michigan; to the Committee on the Judiciary.

By Mr. RIBICOFF (for himself, Mr. PERCY, Mr. JACKSON, Mr. METCALF, Mr. KENNEDY, Mr. THURMOND, Mr. GRIFFIN, Mr. DOMENICI, and Mr. HEINZ):

S. 1766. A bill to amend title 18, United States Code, to make a crime the use, for fraudulent or other illegal purposes, of any computer owned or operated by the United States, certain financial institutions, and entities affecting interstate commerce; to the Committee on the Judiciary.

By Mr. SCOTT (for himself, Mr. ALLEN, Mr. BELLMON, Mr. EASTLAND, Mr. GARN, Mr. GRAVEL, Mr. HELMS, Mr. HANSEN, Mr. HAYAKAWA, Mr. HATCH, Mr. LONG, Mr. LAXALT, and Mr. McCLURE):

S. 1767. A bill entitled "The Federal Officials' Anti-Defamation Act of 1977"; to the Committee on the Judiciary.

By Mr. KENNEDY:

S. 1768. A bill to amend the Age Discrimination in Employment Act of 1967 to protect older workers from involuntary retire-

ment; to the Committee on Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

(Statements in connection with the above introduced bills and joint resolutions are printed at the conclusion of Senate proceedings today.)

ADDITIONAL COSPONSORS

S. 123

At the request of Mr. INOUYE, the Senator from Washington (Mr. MAGNUSON) and the Senator from California (Mr. CRANSTON) were added as cosponsors of S. 123, to amend the Social Security Act.

S. 189

At the request of Mr. THURMOND, the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 189, to amend the Social Security Act.

S. 303

At the request of Mr. MCCLURE, the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 303, relating to the pay of Members of Congress.

S. 434

At the request of Mr. INOUYE, the Senator from Hawaii (Mr. MATSUNAGA) was added as a cosponsor of S. 434, to amend title 38 of the United States Code.

S. 1158

At the request of Mr. THURMOND, the Senator from Mississippi (Mr. EASTLAND) was added as a cosponsor of S. 1158, to amend the Internal Revenue Act.

S. 1305

At the request of Mr. HASKELL, the Senator from Hawaii (Mr. MATSUNAGA) was added as a cosponsor of S. 1305, to amend the Small Business Act.

S. 1426

At the request of Mr. JAVITS, the Senator from Minnesota (Mr. HUMPHREY) was added as a cosponsor of S. 1426, the Urban Trees Act.

S. 1596

At the request of Mr. RANDOLPH, the Senator from Alabama (Mr. SPARKMAN), the Senator from South Carolina (Mr. THURMOND), the Senator from Alaska (Mr. GRAVEL), and the Senator from Pennsylvania (Mr. HEINZ) were added as cosponsors of S. 1596, to establish a National Center for the Handicapped.

SENATE RESOLUTION 207—ORIGINAL RESOLUTION REPORTED RELATING TO PUBLIC DISCLOSURE OF FUNDS FOR NATIONAL INTELLIGENCE ACTIVITIES

(Placed on the calendar.)

Mr. INOUYE, from the Select Committee on Intelligence reported the following resolution:

S. RES. 207

Whereas, section 13(a) of Senate Resolution 400, Ninety-Fourth Congress, directed the Select Committee on Intelligence to make various studies and report the results of such studies to the Senate together with such recommendations for legislation or other actions as the committee deemed appropriate; and

Whereas, one matter the Select Committee on Intelligence was directed to study, report, and make recommendations with respect to was the authorization of funds for intelligence activities and whether disclosure of the amounts of such funds is in the public interest; and

Whereas, the report submitted by the Select Committee on Intelligence pursuant to section 13(a) of such resolution recommends that the amount of funds appropriated for fiscal year 1978 for the national foreign intelligence activities of the United States should be publicly disclosed: Now, therefore, be it

Resolved, That the Senate agrees with the recommendation of the Select Committee on Intelligence, made pursuant to section 13(a) of Senate Resolution 400, Ninety-Fourth Congress, to publicly disclose the aggregate amount of funds appropriated for the national foreign intelligence activities of the United States for the fiscal year 1978, and, accordingly, the Senate hereby authorizes and directs the chairman of such committee to make public such aggregate amount immediately after the legislation appropriating such funds has been enacted into law.

Mr. INOUYE. Mr. President, I send to the desk a resolution directing the chairman of the Select Committee on Intelligence to make public the aggregate amount of funds appropriated for national foreign intelligence activities of the United States for the fiscal year 1978 immediately after the legislation appropriating such funds has been enacted into law. It is my understanding that the leadership will take up the issue of disclosure of an aggregate figure for funds appropriated for the national intelligence activities of the United States shortly after the Senate reconvenes following the July 4 recess.

The Select Committee on Intelligence issued a report on June 16, 1977, entitled "Whether Disclosure of Funds for the Intelligence Activities of the United States Is in the Public Interest," in which the background, basic facts, and issues are fully discussed.

The Senate will recall that the predecessor Church committee had voted 3 to 3 to disclose an aggregate figure but upon a motion by Senator CHARLES MCC. MATHIAS, of Maryland, who is also a member of the present permanent committee, the question was referred to the full Senate by a vote of 6 to 5. Senators Mansfield and SCOTT then decided to refer the matter to the permanent oversight committee for study and recommendations. After a year of extensive study and review, the committee voted 9 to 8 to disclose the aggregate figure.

The committee's report details the arguments pro and con. The main question at issue concerns the constitutional requirement in article I, section 9, clause 7 which reads:

No Money shall be drawn from the Treasury but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

While it is my view that the clause of the Constitution contemplates the action that the majority of the committee has recommended, there are strong arguments to the contrary. Some Members go further and believe that the matter should be referred to the Supreme Court for decision. Whatever the constitutional argument, it is my view that the Senate has the authority, indeed, it has the duty to make a policy decision. I have come to the conclusion that as a matter of national policy that an aggregate figure for intelligence moneys should be made public.

I think it would be sound policy for the following reasons. First, the public of this constitutional democracy should know the scale of all governmental activities and the ordering of priorities for governmental activities. This is the first year that the Senate as a whole has had the opportunity to know in detail what goes into the funding of intelligence activities for the United States. The authorization bill approved by the Senate last week marks the first time that the Senate has voted knowingly on funds authorized for the intelligence activities of the United States.

Arguments have been made that no other country in the world discloses funds for intelligence activities. The United States does many things that no other nation in the world would contemplate. No other nation in the world has such a rigorous system of governmental accountability to its people. It is this kind of difference that makes the United States unique among nations of the world, and contributes to the strength of its freedom. The people have a right to know to the greatest extent possible what their Government is doing with their tax moneys.

The determining factor in my decision that it would be sound policy to reveal an aggregate figure for moneys appropriated for the intelligence activities of the United States was arrived at after a careful study of the national security implications of revealing such a figure. Upon consultation with the Director of Central Intelligence and a study of whether such a figure would be of help to any potential enemies, I have come to the conclusion that there is no national security risk in disclosing an aggregate figure. I am of the view, however, that a detailed breakdown of moneys spent by the United States for intelligence activities could adversely affect the national interest.

For all practical purposes the aggregate figure for national intelligence funds is unclassified. The Director of Central Intelligence was prepared to disclose to the public in open testimony before the select committee the aggregate figure for national intelligence activities. He was prepared to say that he had the authority of the President to disclose such an aggregate figure and that it was in the national interest to do so. This was not done because the select committee asked that it should consider the matter first before such an action was taken.

The report which was issued to the Senate on June 16 details the various reasons for positions taken for and against disclosure. But without question, whatever the constitutional arguments, the disclosure of an aggregate figure

would not affect the national security. On the contrary, the disclosure of an aggregate figure would help to restore confidence that all intelligence activities of the United States are being operated under constitutional control and further would inform the public of the magnitude of effort being made by the United States for this vital national activity.

I would hope that when the issue comes to the floor of the Senate for decision after the recess that Members will join with me in voting to disclose the aggregate figure for the national intelligence activities of the United States.

SENATE RESOLUTION 208, SENATE RESOLUTION 209, AND SENATE RESOLUTION 210—ORIGINAL RESOLUTIONS REPORTED WAIVING SECTIONS 402(a) OF THE CONGRESSIONAL BUDGET ACT

(Referred to the Committee on the Budget.)

Mr. ABOUREZK, from the Select Committee on Indian Affairs, reported the following resolutions:

S. RES. 208

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 660, a bill to authorize the Secretary of the Interior to enter into an agreement with the Cherokee, Choctaw, and Chickasaw Indian Nations for the purchase, and/or lease by the United States of each nation's right and interests in the riverbed of the Arkansas River, and for other purposes. Such waiver is necessary because the Select Committee wished to consider this measure, which authorizes new budget authority for the Bureau of Indian Affairs, in conjunction with other measures affecting the programs of the Bureau of Indian Affairs which did not involve the authorization of new budget authority and therefore were not required to be reported by May 15. Further, the Select Committee was engaged in substantial efforts to organize itself at the beginning of the Ninety-fifth Congress and was prevented from giving timely attention to the subject proposal.

S. RES. 209

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of H.R. 4992, a bill to amend the Indian Financing Act of 1974 by revising the appropriations authorization for the Indian Business Development Program. Such waiver is necessary because the Select Committee wished to consider this measure, which authorizes new budget authority for the Bureau of Indian Affairs, in conjunction with other measures affecting the programs of the Bureau of Indian Affairs which did not involve the authorization of new budget authority and therefore were not required to be reported by May 15. Further, the Select Committee was engaged in substantial efforts to organize itself at the beginning of the Ninety-fifth Congress and was prevented from giving timely attention to the authorization of appropriations for the Indian Business Development Program.

S. RES. 210

Resolved, That, pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of H.R. 4585, a bill to authorize appropriations for the Indian Claims Commission for fiscal year 1978; to facilitate the transfer of cases from the Indian Claims Commission to the United States Court of Claims; and for other purposes. Such waiver is necessary in order to ensure that the Indian Claims Commission will be able to carry out its statutory duties during the fiscal year 1978, on the last day of which its final report is due. The authorization involved is sufficiently small that its consideration will not significantly affect the Congressional budget. The Select Committee was engaged in substantial efforts to organize itself at the beginning of the Ninety-fifth Congress and was prevented from giving timely attention to the authorization of appropriations for the Indian Claims Commission.

AMENDMENTS SUBMITTED FOR PRINTING

LABOR-HEW APPROPRIATIONS, 1978—H.R. 7555

AMENDMENT NO. 467

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

Mr. PROXMIRE submitted an amendment intended to be proposed by him to the bill (H.R. 7555) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending September 30, 1978, and for other purposes.

AMENDMENT NO. 469

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

Mr. HELMS (for himself, Mr. BARTLETT, and Mr. ZORINSKY) submitted an amendment intended to be proposed by them jointly to the bill (H.R. 7555), supra.

AMENDMENTS NOS. 470 AND 471

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

Mr. HELMS submitted two amendments intended to be proposed by him to the bill (H.R. 7555), supra.

AMENDMENT NO. 473

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

Mr. HAYAKAWA (for himself and Mr. HELMS) submitted an amendment intended to be proposed by them jointly to the bill (H.R. 7555), supra.

MILITARY CONSTRUCTION APPROPRIATIONS, 1978—H.R. 7589

AMENDMENT NO. 468

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

Mr. PROXMIRE submitted an amendment intended to be proposed by him to the bill (H.R. 7589) making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1978, and for other purposes.

AGRICULTURE AND RELATED AGENCIES APPROPRIATIONS, 1978—H.R. 7558

AMENDMENT NO. 472

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

Mr. HUDDLESTON. Mr. President, I rise today to introduce an amendment to H.R. 7558, the Agriculture and Related Agencies Appropriation bill. This amendment would increase the appropriation for the extension service $8 million.

Cooperative agricultural extension work was established by the Smith-Lever Act of 1914. The legislation authorizes the Department of Agriculture to give, through the land-grant colleges, instructions and practical demonstrations in agriculture, home economics and related subjects. The extension service encourages the application of such information by means of demonstrations, publications and other means.

The basic job of the Cooperative Extension Service is to help people identify and solve their farm, home, and community problems through use of research findings of the USDA and the State land-grant colleges. State and county extension work is financed from Federal, State, county, and local sources. These funds are used within the States for the employment of county agents, home economics agents, 4-H club agents, and State and area specialists. These agents conduct joint educational programs adapted to local problems and conditions. This work is carried out through State and county extension offices in each State, Puerto Rico, Guam, the Virgin Islands, and the District of Columbia.

For the past few years the Congress has not been appropriating sufficient moneys to sustain a minimum program level. Although the Federal contribution to extension programs has increased as an absolute number, during this time inflation has caused a reduction in "real income" terms.

The State extension services have begun to really feel the pinch. Agents salaries have not nearly kept pace with what persons with equivalent educations are being paid by the private sector or by other agencies of Government. The result has been that an outflux from the State extension services of highly talented personnel has begun. We cannot allow this to continue. Adequate funding must be provided for the Cooperative Extension Service.

This amendment provides an $8 million increase in section 3(b) and 3(c) Smith-Lever funds above the Senate Appropriations Committee reported figure. This increase can be used for salary adjustments and to restaff positions in the State extension services which are vacant because of lack of funds.

Mr. President, I urge my colleagues to join me in this effort to provide increased funding for the Cooperative Extension Service and I ask unanimous consent that the amendment be printed in the RECORD.

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

AMENDMENT NO. 472

On page 12, line 3, strike out "$175,281,000" and insert in lieu thereof "$183,281,000".

NOTICES OF HEARINGS

S. 1393—CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS

Mr. BAYH. Mr. President, the Subcommittee on the Constitution has scheduled

an additional day of hearings of S. 1393, a bill to grant the Justice Department standing to sue on behalf of institutionalized persons, for Friday, July 1, 1977.

This hearing will be held in room 2228 Dirksen, the Judiciary Committee hearing room, on July 1, 1977, beginning at 10 a.m.

Any persons wishing to submit written statements for the hearing record should send them to the Subcommittee on the Constitution, room 102B, Russell Senate Office Building, Washington, D.C. 20510.

IMPACT OF FUEL OIL TAX REBATES

Mr. NELSON. Mr. President, I wish to announce that the Government Regulation and Small Business Advocacy Subcommittee of the Small Business Committee will hold hearings on the Impact of Fuel Oil Tax Rebates on Small Business.

The hearings will be held on June 28, in 424 of the Russell Building, and June 30, in 318 of the Russell Building, beginning at 10 a.m. each day. The Senator from New Hampshire (Mr. McINTYRE) will chair the hearings. Witnesses will be announced at a later date.

Further information can be obtained from the committee offices, room 424, Russell Office Building, telephone 224–5175.

PUBLIC LANDS AND RESOURCES SUBCOMMITTEE

Mr. METCALF. Mr. President, I would like to announce for the information of the Senate and the Public, the scheduling of a public hearing before the Public Lands and Resources Subcommittee on the Senate Energy and Natural Resources Committee.

The hearing is scheduled for July 9, beginning at 10 a.m. in the auditorium of the Central Wyoming College in Riverton, Wyo. Testimony is invited regarding S. 242, a bill to provide for consideration of the comparative productive potential of irrigable lands in determining nonexcess acreages under Federal reclamation laws.

For further information regarding the hearings, you may wish to contact Mr. Russell Brown of the subcommittee staff on extension 224–1076. Those wishing to testify or who wish to submit a written statement for the hearing record, should write to the Public Lands and Resources Subcommittee, room 3106, Dirksen Senate Office Building, Washington, D.C.

ADDITIONAL STATEMENTS

(Additional statements are printed at the conclusion of Senate proceedings today.)

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

PUBLIC OFFICIALS INTEGRITY ACT OF 1977

The PRESIDING OFFICER. Under the previous order the Senate will now proceed to the consideration of S. 555, which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (S. 555) to establish certain Federal agencies, effect certain reorganizations in the Federal Government, to implement certain reforms in the operation of the Federal Government, and to preserve and promote the integrity of public officials and institutions, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with amendments, and from the Committee on Governmental Affairs, with an amendment.

The PRESIDING OFFICER. The time for debate on this bill is limited to 4 hours, to be equally divided and controlled by the Senator from Connecticut (Mr. RIBICOFF) and the Senator from Illinois (Mr. PERCY), with 1 hour on any amendment in the first degree, except an amendment by Mr. JAVITS, on which there shall be no time limitation, and with 30 minutes on any amendment to an amendment, debatable motion, appeal, or point of order.

Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time not be charged against either side.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. PERCY. Mr. President, I ask unanimous consent that the following staff members be given the privilege of access to the Senate floor during consideration of S. 555, the Public Officials Integrity Act: Dick Wegman, Claudia Ingram, Bob Sloan, Jim Graham, John Childers, Robert Harris, and Brian Conboy, of the Governmental Affairs Committee staff; Chris Brewster of Senator DANFORTH'S staff; Gordon Giffin of Senator NUNN'S staff; Chuck Ludlum of Senator ABOUREZK'S staff; and David Schaefer of my staff.

Mr. RIBICOFF. Mr. President, I make the same request in behalf of the following staff members: John Napier of Senator THURMOND'S staff; Caroline Randel of Senator HANSEN'S staff; David Koehler of Senator GRIFFIN'S staff; James Schoener of the Rules Committee; Chris Brewster of Senator DANFORTH'S staff; and Joe DiGenova of Senator MATHIAS' staff.

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

Mr. RIBICOFF. Mr. President, the Senate today begins consideration of S. 555, The Public Officials Integrity Act of 1977. This legislation is similar to that which was considered and passed by the Senate in the 94th Congress as S. 495, The Watergate Reorganization and Reform Act of 1976. It embodies major reform proposals designed to improve the operation of the most basic institutions of the Federal Government and to assure the accountability of public officials.

S. 555 represents the product of more than 2½ years of study, redrafting, and compromise by the Committee on Governmental Affairs. In this period of time, the committee heard oral testimony from 30 witnesses during 10 days of hearings and received written comments from numerous Government agencies and distinguished members of the American legal and academic communities. The important matters which this legislation covers have been thoroughly explored.

Title I of the Public Officials Integrity Act of 1977 creates within the Justice Department an Office of Government Crimes to deal with abuses of office committed by Government officials and to enforce the Federal lobbying, elections, and conflict-of-interest laws. Title I also establishes a mechanism for the appointment of a temporary special prosecutor to deal with the extraordinary case involving criminal misconduct of high-level Government officials. These proposals represent a synthesis of ideas and recommendations from a number of distinguished individuals and organizations who sought to provide the impetus and focus for consideration of a means by which to improve our criminal justice procedures in cases involving Government corruption.

During the hearings on this proposal over the course of the 3 years in which it was developed, almost every witness recognized that sufficient priority must be devoted to cases of Government corruption and that there is a serious question of conflict of interest when the Department of Justice attempts to investigate or prosecute high-level members of the same administration. The final report of the Watergate Special Prosecution Force, the recommendations of the American Bar Association House of Delegates, and the legislative proposals of Senators PERCY and BAKER, which were introduced in the 94th Congress, strongly influenced the committee in its efforts to shape this legislation.

The second title of S. 555 establishes an Office of Congressional Legal Counsel to represent Congress and protect the vital interests of Congress in matters before the courts. It is a fact of life that controversies involving the constitutional powers of Congress are now more often before the courts. Just in the last few years, landmark decisions have been handed down by the courts defining the scope of the speech and debate clause of the Constitution, affecting the ability of Members of Congress to communicate with their constituents, and limiting the exercise of Congress investigatory powers.

The Justice Department has traditionally represented Congress in the courts. However, in more and more cases the Justice Department's interest as lawyer for the executive branch conflicts with the interests of Congress. As an example, this very day, three Members of this body are testifying before a Federal court in Boston. They were forced to retain private counsel because, as a matter of principle, they felt they could not call upon the Justice Department for representation because the Department is a party in the case. Therefore, there is an

urgent need for Congress to have its own legal counsel to handle this representational duty and to advise Congress and committees of Congress on such vital matters involving its powers, as well as subpenas, and grants of immunity. The Justice Department has recognized this need and has given its support to title II.

The proposal for a Congressional Legal Counsel contained in S. 555, as reported, is based upon years of legislative effort by Vice President MONDALE, and Senators JAVITS, HUMPHREY, and ABOUREZK.

Title III of S. 555 is a proposal for public financial disclosure. This provision requires that high-level officials of the executive, legislative, and judicial branches of the Federal Government annually disclose their financial holdings and interests. The disclosure provision itself is substantially the same as that which was adopted earlier this year in the Senate in the Code of Official Conduct—President Carter, in his May 3 message to the Congress, recommended legislation similar to the provisions contained in S. 555.

A simple, understandable, comprehensive public financial disclosure statute covering all high level Federal Government officials is needed. Existing financial disclosure requirements vary throughout the executive branch. Agency officials are currently required to make confidential financial disclosures to their agency head and these statements are to be reviewed for conflicts of interest. However, the General Accounting Office has found that these disclosure reports are not adequately reviewed by the agencies, and when reviewed, the existing conflict of interest regulations are not effectively enforced. With respect to the judicial branch, there is no requirement for financial disclosure. There is only a voluntary standard under which judges may file confidential statements of their financial interests but there is no means by which the Judicial Conference can enforce this standard.

Title IV of S. 555 establishes an Office of Government Ethics within the Civil Service Commission. This Office will have primary responsibility for implementing financial disclosure requirements throughout the executive branch.

GAO has determined that a large number of violations which have occurred are not entirely the fault of the employee but the fault of a system which requires each agency to establish its regulations and inform employees of their responsibilities. A central office, such as the Office of Government Ethics, would have the overall responsibility for informing employees of their obligations with regard to conflict of interest avoidance and coordinate the enforcement of these laws, rules, and regulations throughout the executive branch in cooperation with the Attorney General.

The provisions contained in titles III and IV of S. 555 were developed from legislation introduced by Senators CASE, WEICKER, HASKELL, CHILES, HATHAWAY, and HUMPHREY, as well as proposals submitted by President Carter. In addition, I am grateful to Senators DANFORTH, PERCY, JAVITS, SASSER, HEINZ, and NUNN who, as members of the Committee on Governmental Affairs, took an active and constructive interest in these proposals.

Title V revises the current restrictions on post-service activities by officers and employees of the executive branch. The principal change from existing law is to impose a restriction that, for a period of 1 year following termination of Government service, a former top-level official shall have no contact with his former department or agency on any matter then pending before that department or agency. The President has requested this legislation in order to close the revolving door which has existed in the executive branch. Restrictions of the type proposed in title V are necessary in order to prevent a former agency employee from exercising undue influence upon his former colleagues and to make existing law more enforceable.

Mr. President, I am proud to say that throughout its deliberations on this important legislation, the Committee on Governmental Affairs has operated in a bipartisan spirit, receiving the cooperation of virtually every member of the committee. The Public Officials Integrity Act of 1977 was reported unanimously by the committee.

As chairman, I would like to recognize those members of the committee who contributed their time and effort to this legislation: Senators PERCY, JAVITS, CHILES, NUNN, SASSER, DANFORTH, ROTH, and HEINZ. Throughout the hearings and markup of this legislation these members lent their dedicated support and constructive suggestions to make this a landmark bill.

Due credit should also be paid to those members of the staff who have worked so hard on this bill. I want to recognize the efforts of Dick Wegman, Claudia Ingram, Bob Sloan, John Childers, and Brian Conboy of the Governmental Affairs Committee staff, Chris Brewster of Senator DANFORTH'S staff, Gordon Giffin of Senator NUNN'S staff, and David Schaefer of my staff.

I reserve the remainder of my time.

Mr. PERCY. Mr. President, once again I wish to express my great pleasure at working with the chairman of our Governmental Affairs Committee, the Senator from Connecticut (Mr. RIBICOFF), and once again I am pleased to report that the measure before us, the Public Officials Integrity Act, S. 555, was voted out by a vote of 13 to 0, with no protests whatsoever. We had differences of opinion—not, certainly, along party lines—and under the very distinguished and able leadership of our chairman, we proceeded in markup in a very orderly fashion.

Mr. President, the bill before the Senate today for consideration, S. 555, the Public Officials Integrity Act of 1977, was, as I say, unanimously reported out of the Governmental Affairs Committee. Legislation quite similar to titles I, II, and III of this bill was approved by the Senate last year by a 91-to-5 vote. As was the case during the 94th Congress, S. 555 has been the product of a bipartisan effort as well as significant input from officials at the Department of Justice.

This legislation would basically enable the Federal Government to perform several functions:

First. See that a temporary Special Prosecutor would be appointed in a certain narrow set of cases so that conflicts of interest on the part of the President, the Vice President, the Attorney General, as well as other high senior Government officials were avoided.

Second. Insure that one statutorily created office exists within the Department of Justice to investigate and, if necessary, prosecute all official corruption cases.

Third. Provide for the establishment of a Congressional Legal Counsel to defend Members of Congress and their staffs in civil litigation as well as propound the interest of the legislative branch before the courts in appropriate cases.

Fourth. Insure that the financial disclosure requirements that the Congress has recently enacted for its entire membership would be made to cover all senior officials in the executive and judicial branches as well.

Fifth. Create an Office of Government Ethics within the Civil Service Commission to enforce the financial disclosure rules that have been enacted.

Mr. President, I will not go into great detail about all of the provisions of the various titles of this legislation since the chairman of the Governmental Affairs Committee, Senator RIBICOFF, has already done so in his opening remarks. But I would like to emhpasize that the Department of Justice and the Carter administration wholeheartedly support this piece of legislation and have been working strongly for its enactment. I expect that there will be several major amendments made to the financial disclosure and ethics titles of the legislation, but once the issues raised by those amendments have been resolved, I am confident that S. 555 will be overwhelmingly approved by the Senate. It is my hope, as well as that of Senator RIBICOFF and other members of the Governmental Affairs Committee, as well as the leadership, that this legislation be enacted swiftly so that the House of Representatives will have time to give adequate consideration to the bill. As many Senators will recall, while the Senate overwhelmingly approved legislation similar to S. 555 last year, the House of Representatives had insufficient time to give thorough committee and floor consideration to the bill. Therefore, it died in the House and never reached the President's desk.

I would like to go into a bit more detail on titles III, IV, and V as they are complicated and detailed.

TITLES III, IV, AND V

Titles III, IV, and V of S. 555 deal with financial disclosure of Government employees and restrictions on post-Government employment to prevent conflicts of interest.

Title III of the bill requires full financial disclosure by high-level officials in all three branches of the Federal Government. The President, Vice President,

Members of Congress, Justices, and judges of the United States and the District of Columbia, officers and employees of the executive branch paid at a rate of GS–16 or greater, officers and employees of the legislative and judicial branches compensated at a rate equal to or greater than GS–16 and members of the uniformed military compensated at a rate equal to or greater than the rate of pay for grade O–7 must file such financial disclosure statements.

What must be filed and the form such statements must take is patterned after Senate Resolution 110, the Senate Code of Ethics, which the Senate passed earlier this year. Sources of earned income and assets and liabilities of covered individuals must be reported in ranges. The ranges are clearly spelled out in the bill and the report.

For each branch of Government, supervising offices are set up to be responsible for monitoring compliance with this statute. In the Senate, the designated group would be the Senate Ethics Committee. I would particularly like to point out two most important sections of title III that are of great interest to a number of Members in this body.

For purposes of this title, this bill states that a reporting individual must also report the interests of the spouse or dependents of that individual. The financial interests of a spouse or dependent must be listed with the same degree of detail as that required for the reporting individual. This provision applies to holdings, assets, and liabilities, but not to earned income. For earned income only sources of such income need be reported on the part of the spouse or dependent.

However, with respect to holdings, the report of an individual must include the holdings of a spouse or dependent in the same detail as for the officeholder himself. This is significantly different from Senate Resolution 110, the Senate Code of Ethics. In Senate Resolution 110, the officeholder has to report only those interests of a spouse or dependent under the "constructive control" of the reporting individual. It is my understanding that Senator JAVITS will have an amendment later in the day to restore the original language of Senate Resolution 110 with regard to reporting of the financial interests of spouses and dependents. The new language in S. 555 was adopted at the request of the administration.

Under the terms of Senate Resolution 555, as was the case under Senate Resolution 110, all blind trusts must be dissolved by the creating party by May 15, 1978, and full financial disclosure must be made. Under the terms of Senate Resolution 110, the Governmental Affairs Committee was to study the question of blind trusts and decide whether they should be permitted statutorily. The committee has held 2 days of hearings within the past month on this question and received testimony from a variety of witnesses.

However, the committee was unable to come to a committee position on the question of blind trusts due to the fact that a quorum was not achieved in the markup session called on this issue. However, the staff of the committee has worked up language establishing the minimum requirements that it feels are necessary if blind trusts are to be permitted. That language will be offered as an amendment later today on the floor by Senator DANFORTH and represents the best thinking of the committee staff as to what requirements should be imposed on blind trusts if they are to be permitted to continue.

The guidelines for these requirements were laid out in discussions with Senators and the staff after the hearings. We had very important contributions and input, particularly from such organizations as Common Cause which have paid very close attention to this. It is my understanding that Common Cause would prefer that there be no blind trusts, but if the Senate in its wisdom, and the House, decide that blind trusts shall be provided for, they laid down certain criteria which I think will protect, to the greatest possible extent, the public interest in this regard. I, for one, wish to express appreciation to Common Cause for their leadership and for the guidance they have provided in this particular area to the Congress.

Title IV creates an Office of Government Ethics within the Civil Service Commission. This office is to be headed by a director, appointed by the President, with the advice and consent of the Senate. The Office of Government Ethics will have primary responsibility for implementing the financial disclosure provisions of this legislation for the executive branch. This office is fully supported by the administration. In the Senate, the equivalent office will be the Senate Ethics Committee which will have responsibility for implementing and overseeing financial disclosure requirements on the part of Senators and covered Senate staff.

Title V of the bill places restrictions on post-Government service activities by officials and employees of the executive branch. It has three basic categories of prohibitions: First, it bans former executive branch officials for life from participating in matters before an agency if that official participated personally and substantially on that specific issue while in office; second, there is a 2-year ban on matters where the official had official responsibility for that matter during his last year of Government service; this is similar to current law, except that the prohibition is increased for 1 to 2 years; third, for a period of 1 year after leaving Government service, the former official is prohibited from contacting his former department or agency on any matter pending before that department or agency regardless of the nature of that proceeding or the degree of association the official had with that matter.

This title is also fully supported by the administration.

Mr. President, in this case I commend President Carter who has made it eminently clear that he feels, along with many of us in the Congress, that the revolving door aspects of holding public office should end. Certainly, it would appear to be a conflict when a person on Monday leaves public office and on Tuesday starts practicing law dealing with some of the very same things he dealt with before in the Government. The particular advantage that he gives in selling those legal services to his client many times is at the cost of the public interest.

The President, in focusing on this, together with all of us in the Governmental Affairs Committee, has brought forward a title in this bill which will, I believe, contribute to strengthening the confidence of the public in Government. We cannot forget that the reason for this piece of legislation, S. 555, which is before us today, is an aftermath of Watergate which brought shame and disgrace to the Government and to the American people.

What the Governmental Affairs Committee has tried to do is to respond to that and find a way to restore the basis for confidence in public officials and in the Federal Government. I feel that we have gone a long way in learning from the past and drawing upon it, and not doing so in the immediate, emotional reaction to Watergate but waiting a period of time until it all settles. We can now take into account the longer range view. Many of the titles we have been discussing are the response that we have had to circumstances that we certainly do not look upon as our greatest hours of glory.

In sum, Mr. President, this bill is a most important piece of legislation attempting to remove conflicts of interest and the appearance of conflicts of interest both during the term of office of a government official and after his leaving office.

Mr. President, I have long felt that many of the reforms proposed in S. 555 can go a long way toward restoring complete faith by the American public in the political process. There is no question that the best, and ultimately only way, to insure that the Department of Justice attempts to equally enforce the laws of the Nation is to make certain that only the most highly qualified individuals hold high positions in that agency. However, I do feel that the institutional changes proposed in S. 555, which have been worked out with the cooperation and assistance of the Attorney General and other officials of the Justice Department, can eliminate the existence and appearance of conflicts of interest in a wide range of cases as well as enable the public to have a better idea of the outside financial interests of its most senior civil servants.

I look forward to the debate on this crucial bill and am hopeful that it will be passed as soon as possible.

Once again, I pay tribute to my distinguished colleague (Mr. RIBICOFF) for his leadership in this area.

ADDITIONAL STATEMENT SUBMITTED

Mr. ABOUREZK. Mr. President, I am a strong supporter of S. 555, especially of title II which establishes an Office of Congressional Legal Counsel to defend Congress and congressional interests in court.

As chairman of the Subcommittee on

Separation of Powers last session I chaired hearings on "Representation of Congress and Congressional Interests in Court." These hearings represent the most detailed analysis yet undertaken of the problems Congress has in obtaining adequate legal representation. The hearings run over 750 pages and include 120 exhibits, many of them never before made public.

In conjunction with the subcommittee hearings, I introduced S. 2731 on December 2, 1975, a bill to establish an Office of Congressional Legal Counsel to represent Congress in court. A copy of that bill is printed in the subcommittee hearings at pages 92–112. This bill was considered by the Senate Committee on Government Operations at its December 1975 hearings on S. 495 at which time I testified on title II. See Watergate Reorganization and Reform Act, at 119–123, 460–554. On the basis of the hearings of the Subcommittee on Separation of Powers and a statement submitted to the subcommittee by the Justice Department on the constitutionality of S. 2731 (hearings, at pages 87–91), I submitted an amendment in the nature of a substitute for S. 2731 on March 31, 1976. When S. 495 was reported to the floor by the Committee on Government Operations on May 12, 1976, the bulk of S. 2731 was substituted for its title II. See Senate Report 94–823, May 12, 1976.

When S. 495 was reported, I arranged for it to be re-referred to the Judiciary Committee—see 122 CONGRESSIONAL RECORD, p. 13693, May 12, 1976. The Judiciary Committee was automatically discharged from its consideration of S. 495 when, due to a filibuster in committee, it failed to take action within the time period of the referral. In a June 22 letter to Senator RIBICOFF and Senator PERCY of the Government Operations Committee, a majority of the members of the Judiciary Committee announced that they would have voted to report S. 495 had they had the opportunity to do so—122 CONGRESSIONAL RECORD, pp. 19959–19960, June 23, 1976.

When S. 495 came up for debate in the Senate on July 1, I made a long and detailed statement on the need for an Office of Congressional Legal Counsel. See 122 CONGRESSIONAL RECORD, pp. 22792–22797, July 20, 1976.

S. 495, with title II intact except for a few clarifying amendments, was adopted by the Senate on July 21, 1976, by the resounding vote of 91 to 5. See 122 CONGRESSIONAL RECORD, p. 23075 (July 21, 1976). The House was unable to take action in the short period of time left in the 94th Congress.

When the bill was reintroduced as S. 555 on February 1, 1977, I made a long detailed statement on title II, including a description of certain changes I had made during the winter. See 123 CONGRESSIONAL RECORD, pp. 2961–2982, February 1, 1977. I testified on title II at the Governmental Affairs, May 4, 1977, hearing. I ask unanimous consent that a copy of my May 4, 1977, statement be printed in the RECORD following my statement.

The Governmental affairs Committee has again reported title II unanimously. With a few minor exceptions title II is the same as I proposed on March 31, 1976, and as the Senate overwhelmingly adopted last June.

As I have been arguing for several years now, it is absolutely clear that Congress must take control of litigation which affects its interests. There has been a reluctance on the part of some Members to establish this office because they do not believe Congress should seek to effectuate its will by becoming involved in litigation. This sentiment completely misconstrues the problem. What we are talking about here is Congress defending itself in litigation. It's very simple. If Congress is sued, Congress should defend itself. By not defending itself vigorously in the courts, Congress actually encourages the bringing of such suits against Congress. By defending itself Congress is not resorting to the courts to effectuate its will. It is making sure that the courts do not further restrict congressional power. As the report of the Governmental Affairs Committee states:

> In each of these types of cases, the vital interests of Congress will be affected whether or not Congress chooses to advocate its position to the court. Because our judicial system relies on adverse parties to sharpen the issues in order for the court to make the best decision, it is essential that the courts have the opportunity to evaluate congressional interests based upon the vigorous and effective presentation of those interests to the court by an attorney representing the Congress. Report at 8–9.

If Congress intends to reassert its power as a coequal branch of Government, it must defend itself in court just as vigorously as it defends itself in the political arena.

I also hear arguments that there is not enough litigation to justify establishing an in-house office in Congress. Let me quote the committee report on this point:

> In the last six years alone the Justice Department alone has defended members, officers, and committees of Congress in at least 70 cases. This total does not even include the 60 legal matters before the courts in which the Senate Watergate Committee became involved (Senate Report 93–981), Final Report of the Senate Select Committee at 1079) nor at least ten other recent cases in which private counsel has been retained, nor numerous other legal proceedings in which subpenas for Congressional documents have been issued. All told, Congress has been involved in no less than 200 legal proceedings in recent years. Report at 10–11.

The counsel can also bring civil subpena enforcement actions under a new jurisdictional statute. The counsel will be called upon to do this at least a half dozen times a year. These litigation responsibilities only begin to explain how busy the counsel will be. The counsel must also advise Congress and committees on investigative procedures, drafting of subpenas, witnesses rights, and other matters which involve considerations of potential litigation. I believe the most vivid explanation of the type of litigation which the counsel must handle is contained in a statement which the committee invited the House Clerk to submit to the committee during consideration of this bill. I ask unanimous consent that a copy of the Clerk's statement also be printed in the RECORD following this statement.

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

(See exhibit 1.)

Mr. ABOUREZK. I want to emphasize that the committee estimates that the cost of setting up and running this office should be no greater than that which the Justice Department expends in representing Congress and which the Congress spends in hiring private counsel.

As I have mentioned, at present the Congress is represented by the Justice Department in most of the litigation brought against the Congress. The Justice Department supports both the constitutionality and the desirability of Congress establishing a Congressional Counsel Office. I believe the judgment of the Department—which is intimately familiar with the problem created by its representation of Congress—should be given great weight in any consideration of title II. Congress should heed the advice of its present lawyer when that lawyer advises Congress to retain new counsel.

Finally, I want to address the crucial remaining issue about the Counsel Office. That question is whether the House will agree to establishing one joint House-Senate office or insist on establishing its own separate office. I am well aware as one who has served in the House that many in the House are wary of establishing joint House-Senate offices. In view of this attitude, title II is drafted to assure that the Counsel and the office are under the firm and continuous control of Congress and its leadership. The Counsel has no power to conduct studies or make recommendations. The Counsel cannot defend any member or committee unless at least one House adopts a resolution authorizing the Counsel to do so. This requirement is typical of the bill. The Counsel cannot be directed to bring a subpena enforcement action unless at least one House adopts a resolution authorizing the Counsel to do so. The Counsel cannot be directed to intervene or file an amicus brief on behalf of Congress unless at least one House adopts a resolution authorizing the Counsel to do so.

The Counsel cannot represent a Member of Congress in any type of legal proceeding simply on the request of that Member. This bill does not establish a free legal defense fund for Members in trouble with the law. The Counsel can never be authorized to defend a Member indicted for a crime even if one House adopts a resolution authorizing the Counsel to do so. The Counsel can only be directed to defend a Member if the requirements of section 204(a)(1) of the bill are satisfied. Section 204(a)(1) only applies to "civil" actions involving a Member's "official or representative capacity." Because the Counsel office is established by law, this limitation cannot be waived by adoption of a simple resolution in a particular case.

Finally, the bill specifically makes the Counsel accountable to a bipartisan joint leadership group. That group will exercise day to day supervision. I can guarantee every Member that the joint

leadership will have no hesitancy to exercise firm control. Not only will the Counsel be subject to firm and continuous control, but neither House can dominate the Counsel. Each House has equal access to the Counsel's services. Neither House can interfere if the other House directs the Counsel to enter a given court proceeding. The joint leadership group is made up of an equal number of Members of each House. Both Houses must approve selection of the Counsel and both may remove the Counsel.

If there is any conflict between the demands being made by both Houses on the Counsel, the bill provides that the joint leadership group must resolve the conflict before the Counsel can represent either House. If only one House wishes to intervene in a court proceeding, it can intervene only in its own name—never in the name of the "Congress."

Given these multiple protections against either body dominating the office, the House should agree to establishing a joint office with the Senate on grounds of economy alone. It will be very expensive and wasteful for two offices each to establish a set of research files, to develop expertise on a wide range of issues, and to pay top salary for two Counsels and two deputies.

Establishing two offices is not only wasteful economically, however. An even more serious waste is the loss in coordinating House and Senate litigations strategies on common issues like protection of the vital constitutional protection of Congress under the speech and debate clause.

There is no disagreement between the House and Senate on the need for Congress to prevent encroachments of Congressional powers and prerogatives.

Let me take a recent example, which illustrates the common agreement between the House and Senate on the need for Congress to defend its powers in court. As a general proposition, the Senate is less enthusiastic about the congressional veto than the House. However, when the constitutionality of the congressional veto was recently challenged in the Atkins and Ramsey Clark cases, the Senate was just as vigorous in defending the constitutionality of the congressional veto as the House. Recently, the Court of Claims upheld the constitutionality of the congressional veto in the Atkins case. This example demonstrates the common belief in the House and Senate that the Congress should never stand by and let courts infringe on the constitutional powers of Congress.

If the House establishes a separate counsel office, the advantage of Congress presenting a united front to those who challenge congressional powers will be lost. When one case involving a congressional power such as speech and debate clause immunity is pending against an officer of one House, arguments made in that case may have great significance to the defense of an employee of the other House pending at the same time. Whenever litigation challenges arise, Congress must formulate a long-range as well as a short-term litigation strategy. It is only possible to anticipate legal developments by following a coherent and unified strategy.

My conclusion from these facts is that for each House to have its own litigation office will be little better than relying on the executive branch to defend Congress. I have confidence that the House will understand the desirability of a joint office.

I would like to discuss a number of matters which will help in interpreting exactly how this bill will operate in practice. To do this I would like to ask the chairman of the Governmental Affairs Committee how title II relates to a number of types of legal proceedings which are not specifically referred to in sections 204, 205, 206, and 207. These four sections describe the basic functions that the counsel may be directed to perform on behalf of Congress. Section 203 sets forth the procedures which must be followed before the counsel may be directed to perform these functions. For example, the procedure for authorizing the counsel to bring a civil action to enforce a subpena is to introduce a resolution or concurrent resolution. In contrast to authorize the counsel to defend Congress one must introduce a resolution or concurrent resolution or secure a two-thirds vote of the joint leadership group. Because the procedures differ, one must determine first which of the four basic sections of title II describes the type of legal representation which one desires. Normally, this is simple, but sometimes it may not be.

The first of these types of proceedings which raise this issue involves the filing of a petition by Congress or a committee with a court to secure a writ of habeas corpus ad testificandum. The purpose of such a writ is to make a person incarcerated in a State or Federal prison available to a committee as a witness. Petitions for such writs are routine for subcommittees like the Permanent Investigations Subcommittee of the Governmental Affairs Committee, which often investigates criminal conduct. Petitions for such writs have become extremely common. The Watergate Committee secured 20 such writs in 1973. See "Appendix to the Hearings of the Select Committee on Presidential Campaign Activities, Legal Documents, Relating To The Select Committee Hearings," 93d Congress, first and second sessions, 1974 at 2156–2157. The form that such petitions and writs take is shown in "Leading Cases on Congressional Investigatory Power," Joint Committee on Congressional Operations, 94th Congress, 1976, at 87–88. Courts almost invariably grant such petitions without any need for briefs, argument, or a hearing.

A full-fledged judicial proceeding could arise, however, if the imprisoned party moved to quash a petition for a writ of habeas corpus ad testificandum as occurred in 1956 with a petition for a writ by the Senate Banking Committee. In that case a writ was issued and the prisoner did appear before the committee on October 8, 1956. Nonetheless the prisoner continued to press his motion to quash the writ in hopes to prove that his testimony had been unlawfully obtained and that no criminal contempt of Congress proceeding could result. The motion to quash the writ was eventually dismissed by the Court of Appeals as moot. However, that decision was reached only after two courts had heard the case. The motion to quash the writ was initially dismissed by the District Court on October 19, 1956. That decision was not affirmed by the Court of Appeals for the Seventh Circuit until June 28, 1957. See "In the Matter of Hearings by the Committee on Banking and Currency of the United States Senate," 245 F.2d 667 (7th Cir. 1957). The legal papers filed by the committee before the district court appear in "Illinois Banking Situation," hearings before the Committee on Banking and Currency of the U.S. Senate, 84th Congress, second session, part II, October 1956, at 1128–1148.

(It may well be that a motion to quash such a writ would now be subject to a summary judgment motion on grounds of speech and debate clause immunity under the recent precedent set in Eastland against U.S. Servicemen's Fund.)

The question which this unusual case raises here is whether the Counsel would be directed to appear to contest such a motion to quash under section 204 or under section 205 of the bill. Section 204 concerns defense of Congress while section 205 concerns subpena enforcement. The answer to this question makes some difference because the Joint Leadership Group could be a two-thirds vote authorize defense of Congress under section 204 but not authorize enforcement of a subpena under section 205. The question is the following: Would appearance by the Counsel to contest a motion to quash a writ of habeas corpus ad testificandum be equivalent to defending Congress or to enforcing a subpena?

In my opinion it is equivalent to defense of Congress under section 204. I reach this conclusion because by defeating a motion to quash a writ all one does is maintain the status quo—that is maintain the existing force and effect of the writ. By maintaining the existing force and effect of the writ, no steps toward enforcement are taken. The proceeding is essentially the same as where a subpenaed party brings a civil action to enjoin enforcement of a subpena, such as was attempted in the Servicemen's Fund case. By dismissing that injunction action the Supreme Court took no position on whether or not the subpena could later be enforced. With a writ of habeas corpus, whether or not the prisoner ultimately has any right to refuse to comply with the committee's requests or questions once the prisoner is brought before a committee would have to be decided in a subsequent civil or criminal contempt proceeding. The purpose of maintaining the writ is solely to secure the prisoner's attendance so that questions can be asked of him.

I would like to ask the chairman of the Governmental Affairs Committee whether he agrees with this analysis.

Mr. RIBICOFF. Yes, I agree. May I say this is just the commonsense approach I hope will be taken in interpreting sections 204, 205, 206, and 207. One must look to the essential purpose of a legal proceeding to determine which of

the sections of title II applies. One is bound to come across unusual cases like the Banking Committee case which do not fit neatly into sections 204–207 and one should take a commonsense approach to determine what procedures should be followed to authorize the Counsel's involvement.

Mr. ABOUREZK. I would like to emphasize that title II says nothing with respect to whether or not Congress or a House of Congress must approve the filing of a petition for a writ of habeas corpus ad testificandum. It is my understanding that neither House presently requires that it be consulted before such a petition is filed. The Counsel could certainly advise committees how to draft and file such petitions when requested to do so without any need for approval by the Joint Leadership Group or the body.

Second, I want to clarify how the bill relates to directing the Counsel to represent a committee in negotiating with a subpenaed part to secure compliance with a subpena. Section 205 applies only to bringing an action to enforce a subpena, not to negotiating short of actually bringing an enforcement action.

My understanding is that such representational activity would fall within the catch-all provision of section 208(c). That provision states:

> The counsel shall perform such other duties consistent with the purposes and limitations of this title as the Congress or a House of Congress may direct.

In most cases negotiations over compliance with a subpena will be undertaken by committee staff. Under section 208(a)(6) the counsel may give advice and consent and cooperate with such committee staff but not represent the committee. If enforcement probably will be required after such negotiations, however, a committee may well want the counsel to represent it in the negotiations as well as in any subsequent enforcement action.

Again, I ask the chairman of the Government Affairs Committee whether this is the type of activity which section 208(c) is designed to cover.

Mr. RIBICOFF. Section 208(c) is designed to accommodate precisely the type of activity which you describe. It is not possible to cover all of the types of legal services in which it may be desirable for the congressional counsel to engage. Section 208(c) provides the needed flexibility to accommodate situations such as you describe. Of course, Congress cannot authorize representational activity under section 208(c) which is inconsistent with the limitations in sections 204–217.

Mr. ABOUREZK. In a similar vein, would section 208(c) also apply to a situation where the counsel appears in court to move that the court direct a U.S. attorney to release documents in the custody of a grand jury? Let me explain what I mean before you answer.

As I understand it, the problem I am referring to often arises when Congress needs access to documents from a person who has already given up the documents, including the originals and all copies, in response to a grand jury subpena. There is no reason why Congress should not be able to obtain the same documents to fulfill its legislative purposes just because both originals and copies were subpened. If Congress subpened the materials first, I have no doubt that it would normally release them to a grand jury upon request.

Congress would normally simply appear before a court and request the documents rather than attempt to enforce a subpena. In fact, the Senate Banking Committee did this in 1956 in connection with the same investigation which led to the writ of habeas corpus ad testificandum. Counsel for the committee, Matthew Hale, moved that the U.S. attorney be directed by the court to permit inspection and copying of certain documents in the custody of the U.S. attorney. See "In re Hearings Before the Committee on Banking and Currency of the United States Senate," 19 F.R.D. 410 (N.D. Ill. 1056). The legal documents of the committee are printed in "Illinois Banking Situation," Hearings Before the Committee on Banking and Currency Committee, 84th Congress, second session, part II, October 1956, at 1148–1178. A copy of the court's opinion is attached as exhibit — to my statement.

The court granted the committee's motion on the grounds that the committee desired access to the document "for itself, independently, rather than because it was stated before or displayed to the grand jury . . ." Id. at 412. The committee was "not asking whether the document was used in any other facet of the grand jury proceedings." Id. at 413. This same rationale has been applied in similar cases where third parties desired access to grand jury documents. See for example *United States* v. *Interstate Dress Carriers*, 280 F.2d 52 (2d Cir. 1960). (ICC request); *Davis* v. *Romney*, 55 F.R.D. 337 (E.D. Pa. 1972) (request of plaintiffs in a civil proceeding); and *Mallinckrodt Chemical Works* v. *Sachs*, 58 F.R.D. 348 (S.D. NY 1973) (request of plaintiffs in a civil proceeding). See also "The Federal Grand Jury," 22 F.R.D. 457–460.

My question earlier was whether section 208(c) would apply where a committee desired the counsel appear in court to move that the court disclose grand jury documents?

Mr. RIBICOFF. Again, I agree with your analysis. Section 208(c) was included in the bill to provide precisely this type of flexibility.

Mr. ABOUREZK. I would like to conclude this discussion by thanking the distinguished chairman of the Governmental Affairs Committee for his support and assistance with title II. I believe he has shown real leadership on this bill by bringing it out of his committee again this Congress so that the House will have a chance to take early action. I would also like to commend Senator RIBICOFF for the performance of the Counsel to the Governmental Affairs Committee who is in charge of this legislation, Dave Schaefer. Mr. Schaefer has performed in a highly professional manner in coordinating the inputs of all of the persons interested in this legislation.

Mr. President, I ask unanimous consent to have printed in the RECORD my statement before the Senate Committee on Governmental Affairs.

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

STATEMENT OF SENATOR JAMES ABOUREZK BEFORE GOVERNMENTAL AFFAIRS ON S. 555 ON MAY 4, 1977

It is a pleasure to testify again this year on legislation to establish an Office of Congressional Legal Counsel. I testified before this Committee on December 8, 1975, on the Congressional Counsel Title of S. 495, the Watergate Reorganization and Reform Act. See Watergate Reorganization and Reform Act of 1975, Hearings before the Committee on Government Operations on S. 495, at 119–123, 460–554 At the same time the Subcommittee on Separation of Powers, of which I was then chairman, held extensive hearings on the need for Congressional Counsel. See Representation of Congress and Congressional Interests in Court, Hearings Before the Subcommittee on Separation of Powers, 1976.

Rather than repeat my statement on the need for establishing this office, let me give the highlights of what has happened in congressional litigation since December 1975.

These eighteen months have been exceedingly busy.

Several important cases were pending at the time of my testimony. Among these were *Ashland Oil* v. *FTC*, *McSurely* v. *McClellan*, *Common Cause* v. *Bailar*, *Calley* v. *Callaway*, and *Davis* v. *Passman*. These cases involved, respectively, enforcement of a House subcommittee subpena, a damage action against a Senate subcommittee for certain events occurring during an investigation, a constitutional attack on the franking privilege, an appeal of a court martial on grounds of refusal of a House subcommittee to release a transcript of an executive session, and a case alleging sex discrimination by a House Member.

Significant events occurred in each of these cases since my testimony. On December 18, 1975, the House authorized the House Commerce Committee to intervene in *Ashland*. On September 20, 1976, the Court of Appeals for the District of Columbia upheld the position of the Commerce Committee.

On February 10, 1976, the same court ordered a rehearing en banc in the *McSurely* case. On December 21, 1976, the court reversed an earlier ruling of a three judge panel holding that the plaintiff's case should be dismissed. Appeals are now pending from that decision.

In *Bailar*, the House intervened on July 1, 1976. The case is still pending.

Lieutenant Calley lost his appeal in the Supreme Court on April 6, 1976.

Finally on January 3, 1977, the Fifth Circuit reversed a District Court's dismissal of the *Davis* case.

A number of new court challenges have been brought against Congress during this same period. Included among these are *Clark* v. *Valeo*, *United States* v. *ATT*, *Hutchison* v. *Proxmire*, *Pressler* v. *Simon*, *Thompson* v. *Pendergast*, *Mack* v. *Henshaw*, and *United States*. v. *Helstoski*. These cases involve, respectively, a challenge to the constitutionality of the legislative veto, an attempt to raise executive privilege as a bar to enforcement of a House Subcommittee subpena, a libel action against a Senate Member for comments made on the floor and in a press release regarding public expenditures, a challenge to the constitutionality of the Pay Act, a case under the False Claims Act, a similar case brought by a defeated congressional candidate, and a criminal bribery case brought against a House Member raising Speech and Debate Clause issues.

The *Clark* case was brought on July 1, 1976, and finally dismissed as unripe by

the D.C. Court of Appeals on January 21, 1977. The case is now on appeal.

The *ATT* case was brought on July 22, 1976, and remanded for settlement negotiations on December 30, 1976. The House authorized one of its subcommittees to intervene in the case on August 26, 1976. The negotiations are still continuing.

The *Hutchinson* case was brought in August, 1976, and dismissed in the District Court on December 23, 1976. The Senate authorized payment of Senator Proxmire's expenses on August 9, 1976.

In the *Pressler* case, the House was forced to hire private counsel on September 2, 1976, when the Justice Department withdrew as counsel for the House Sergeant-at-Arms. The case is still pending.

The General Counsel to the House Clerk is representing the House in both the *Thompson* and *Mack* cases, brought on October 28, 1976, and January 4, 1977, respectively. Both cases are still pending.

Finally, the *Helstoski* case is being monitored after a February 18, 1977 District Court opinion dismissing certain Speech and Debate defenses.

This brief summary of congressional litigation in the last eighteen months suffices to emphasize that the need for establishment of an Office of Congressional Legal Counsel remains as strong or stronger than when I last testified.

I would like to focus on the most important remaining issues about the counsels office: (1) whether the House and Senate will establish a joint office or whether each will establish its own office and (2) whether the office will be non-partisan and under the control of the leadership or placed under the control of a committee.

Let me be clear on the first of these issues; I believe establishing separate House and Senate offices will cancel out much of the advantage of having in-house litigation counsel. Only by establishing a joint House-Senate office will the Congress be able effectively and consistently to defend its constitutional powers in court.

This issue of the basic structure of the counsel office will be the single most important issue when the House takes up the counsel proposal. The Senate is clearly on record as favoring a joint office. Title II of S. 495 last session proposed creation of a joint office. No opposition to a joint office was ever raised and several of us spoke strongly in favor of a joint office.

The House may have some reservations about establishing a joint office on the fear that the Senate might dominate the office. This fear is utterly without foundation. The structure of the office guarantees that neither House can dominate the office.

Section 201(a)(2) provides that the counsel and deputy counsel shall be appointed by the President pro tempore and the Speaker from among recommendations submitted by the majority and minority leaders of both Houses. Section 201(a)(3)(A) provides that both Houses must approve the appointment and both Houses may remove the counsel or the deputy.

Section 202 makes the office directly responsible to a bipartisan Joint Leadership Group with an equal number of Members from both Houses. Section 203 provides that only the House involved in a particular legal proceeding can direct the counsel to participate in that proceeding. Under sections 204 and 205 either House may direct the counsel to defend a Member, officer, or committee of that House or to enforce a subpoena of a committee of that House. Under section 206 either House may direct the counsel to intervene or appear as amicus in its name or in the name of one of its committees or committee chairman. Under section 207 the counsel may represent a committee of one House in an immunity proceeding at the request of that committee. Under section 208 the counsel may perform certain advisory functions for either House.

Concurrence of the two Houses is not required for the performance of these duties because in none of them will one House have any reason to object to the decisions of the other House. Both Houses agree on the need to represent Members, officers and committees when they are involved in lawsuits arising out of the performance of official duties. Both will defer to the factual determinations of the other as to whether or not a particular lawsuit involves official duties. Similarly, neither House would have any inclination to interefere in the other House's determination to enforce a subpoena or grant immunity to a witness. The concurrence of both Houses is not necessary in making these determinations.

In contrast when both Houses agree to intervene or appear as amicus in the name of the Congress, the concurrence of both Houses is required. Neither House acting alone can assert the prerogative of representing the Congress.

Finally, section 210 provides a mechanism for the Joint Leadership Group resolving any conflict which arises, including a conflict between the two Houses.

These provisions make it impossible for either House to dominate the counsel office.

There are many advantages to having a joint counsel to appear in court. One of the principal problems for the counsel is that the Congress—unlike the executive branch—does not consistently and vigorously defend its interests in court.

When the executive branch is confronted by a series of court challenges to its power, it is able to develop a consistent position, anticipate legal developments, and coordinate the cases as they progress. The advantage which the executive branch has by virtue of its centralization of its litigation in the Justice Department is in stark contrast to the ad hoc and scattered provisions for counsel in the Congress. Even with only two legal offices in the Congress, most of the advantages of consistency, anticipation and coordination will be lost to Congress as an institution. The manner in which the speech and debate clause of the constitution is raised as a defense in a case involving a Senate Committee, for example, may often have direct consequences for the applicability of that defense to a case involving a House officer. Only with a joint office can these consequences be anticipated and resolved.

When a Congressional Counsel appears in court to defend a Member of one House, the counsel brings to bear the full prestige of the Congress as an institution. By analogy there is a great advantage for an executive branch attorney who can say "the United States government" believes in a certain position. When a Congressional Legal Counsel represents a Member—after a vote of at least one House to authorize such representation—courts are more likely to defer to the arguments of the counsel. Such prestige will be particularly important when Congress as an institution intervenes or appears as amicus—which is unlikely ever to occur if there are separate House and Senate counsels cases where both Houses can agree to intervene or appear are bound to be extremely important cases. When it is represented in these cases by a Congressional Legal Counsel, the Congress as an institution can have a tremendous impact. Indeed, in those cases "the Congress" should be represented by a Congressional Legal Counsel.

The second issue is who will oversee the office. This bill places this responsibility with the Joint Leadership Group—a bipartisan body composed of the Speaker, President protempore, the majority and minority leaders of both Houses, the chairman and ranking members of the two Judiciary Committees, and the chairman and ranking members of Senate Rules and House Administration.

This bipartisan group cannot vote to authorize the counsel to become involved in any legal proceeding except to defend a House, a committee, officer, Member, or employee in cases involving the performance of official duties. Such authorization must be agreed to by a ⅔ vote, guaranteeing that the members of the Group from the majority party cannot acting alone authorize representation. In all other cases, at least one House of Congress controls access to the services of the counsel.

Resolutions to direct the counsel to represent Congress are not referred to committee where a committee or a committee chairman could exercise its or his influence.

This structure is designed to insure that the office will represent the interests of Congress as an institution and not be used for partisan purposes. This will enable Congress to recruit and retain first rate professionals for the office. I would seriously oppose any attempt to place the counsel's office under the authority of any committee or Member. The bipartisan nature of the office could then be lost and access to the counsel's services controlled for partisan advantage.

To supplement my statement I would like to submit the following materials for the record:

(a) my February 1, 1977, statement upon the introduction of S. 555;

(b) a list of subpenas for documents and testimony directed to House and Senate Members;

(c) a recent law review article on congressional immunity from judicial subpenas for documents and testimony; and

(d) a number of Library of Congress memoranda bearing on the subpena enforcement mechanism in the bill.

EXHIBIT 1

Subject Legal Representation of the House, Its Members, Officers and Employees in Connection With Actions Concerning Them.

From Edmund L. Henshaw, Jr., Clerk U.S. House of Representatives.

To The Senate Committee on Governmental Affairs.

The purpose of this memorandum is to provide the Senate Committee on Governmental Affairs with background information on the problems encountered in representing the legal interests of the House, its Members, officers and employees in connection with litigation concerning them.

Before addressing the subject directly, I would like first, by way of introduction, to briefly outline the scope of responsibilities delegated to the Clerk by parliamentary law, statute and the Rules of the House of Representatives. I believe this will provide the necessary background for a discussion of the Clerk's involvement in the judicial process.

DUTIES OF THE CLERK OF THE HOUSE

Article I, section 2, clause 5 of the Constitution of the United States provides that the House ". . . shall choose their Speaker and other Officers" and Rule II of the Rules of the House of Representatives, the earliest form of which was adopted in 1789, provides for the election of the Clerk by the House at the commencement of each Congress.

Section 60–1(b) of Title 2 of the United States Code designates the Clerk as one of the "officers of the Congress". Rule III of the Rules of the House of Representatives prescribes the administrative and judicial duties and responsibilities of the Clerk which include, among other things, preparing the role of the Representatives-Elect, presiding before the election of the Speaker, keeping the Journal of the proceedings of the House, attesting all writs, warrants and subpoenas issued by the House, certifying all bills and resolutions passed by the House, making all contracts for services and supplies, and pay-

ing the salaries of all the officers and employees of the House. In addition, the Clerk is charged with keeping accurate accounts of disbursements out of the contingent fund of the House, as well as keeping the stationery accounts of Members.[1] Of particular relevance to the subject before your Committee, the Clerk is the custodian of all House documents, papers, and records.[2] In addition, the Clerk has other administrative duties under the Federal Contested Election Act, 2 U.S.C. § 381–396, and serves as an ex officio member of the Federal Election Commission pursuant to 2 U.S.C. § 437c(a)(1).

As I have indicated in the body of my statement, I feel strongly that Congress should be represented by its own litigative office. I realize that the foregoing recommendation is neither revolutionary nor novel. Various congressional committees have been studying the necessity for and feasibility of such an office for some time and numerous proposals to establish a congressional counsel have been introduced in the past.[3] Although it may be a foregone conclusion in other quarters that Congress lacks adequate legal representation and that the need for a congressional counsel has been amply and convincingly demonstrated, I am not aware that the available evidence in support of these propositions has ever been developed by the Office of the Clerk of the House of Representatives. Therefore, I will proceed on that assumption with the hope that my statement will supply what may be a missing chapter in the documentation of the need for a congressional litigative office. In doing so, my comments will bear primarily on the question of the problems in assuring adequate representation of institutional interests and the problems encountered in obtaining such representation under present circumstances.

THE CLERK'S INVOLVEMENT IN JUDICIAL PROCESS

Generally, the Clerk, in his official capacity, becomes involved in the judicial process through one of two procedures: first, through presentation of subpoenas, orders or requests for the withdrawal of papers or documents within his possession as custodian for the House of Representatives; secondly, where a civil action is brought against the Clerk by parties or groups seeking various forms of legal or equitable relief. In the first instance, where a question is raised concerning the privileges of the House of Representatives, it is necessary that the consent of the House be obtained before the Clerk can comply with any such subpoena, request or order.[4] The receipt of such subpoenas or orders have become frequent and over 100 subpoenas or orders have been reported to the House of Representatives during the last five years.[5]

With respect to the commencement of civil actions against the Clerk, Section 118 of Title 2 of the United States Code provides that upon request the Department of Justice shall defend an "officer" of either House of Congress for acts performed in the "discharge of his official duty". The Clerk has generally exercised his right to be represented by the Department under these circumstances. In fact, in the last five years alone the Justice Department has defended Members, officers and committees of Congress in at least 55 cases.[6]

This increased dependence on the Department of Justice, which is detailed in the Senate hearings, raises serious questions concerning the adequacy of representation which is available to the House and its officers and Members. While I would emphasize that the Department has, in my experience, made a good faith and conscientious effort to defend the interests of the Clerk and the House, the highly specialized procedures and concerns of the House, and its status as a co-equal branch of government, render its reliance on the chief advocate for the executive branch inappropriate and, I believe, unwise. I think a case in point will illustrate the problem.

There was an action brought in the United States District Court for the Central District of California against the Speaker, the House of Representatives, the Clerk, as well as the Chairman of the Committee on Standards of Official Conduct.[7] The suit arises out of the conviction of a sitting Member of Congress and his decision, subsequent to that conviction, to comply with the guidelines established by Section 10 of Rule XLIII(43) of the House Rules. During the course of the litigation, the other defendants involved, including the House of Representatives, were dismissed from the action, although the Clerk remained a defendant for some time thereafter.[8] My statement with respect to this action is offered solely for informational purposes and should not be construed to mean that we concede, endorse or otherwise agree with or accept any of the plaintiff's contentions in the suit, which we believe are without merit.

The gravamen of the action is that section 10 of House Rule XLIII(43)[9] is unconstitutional and that its operation imposes a taxation without representation upon plaintiff and other citizens of the district since they are paying for services which they are not receiving.

Although it appears likely that the judgment of dismissal will be sustained, the action raises numerous substantive issues relating to the House Rules. We have been working closely with the Department of Justice and the United States Attorney for the central district of California on the Clerk's defense and both the Department and the U.S. Attorney in California have been extremely diligent in keeping our office informed at the suit's progress and in seeking our advice and counsel. I believe, however, that our interests would be better served by the direct involvement of the House of Representatives in the litigation. The conduct of the action, and the ultimate grounds upon which it is decided, could have significant impact on the validity and application of the House Rules and procedures and as a result the Clerk and the House should be in a position to frame the issues and shape the action in a manner most favorable to the House—in short, to act as its own advocate.

Moreover, as this particular action illustrates, it is often difficult for those in the Department whose task is to represent the Clerk in such actions to grasp or appreciate fully the intricacies, singularities and, in some instances, the apparent anomolies of House practice, notwithstanding their skill or experience as litigating attorneys. Yet without a working familiarity with or ready access to House rules, precedent or procedures, no truly adequate defense can be prepared. In fact, without such familiarity it is possible that an attorney may inadvertently concede a point or make an argument which may have an adverse precedential impact in another case involving the Congress.[10]

As the repository of expertise on its own procedure and workings, the House should, from the standpoint of logic and sound policy, control and direct litigation, including the fine points of pleading and response, which may affect it as an institution.

There is a further point to be made on this subject. In cases where the Clerk, another officer, Member, employee, a Committee or the House, has an interest, but is not a party, it is my understanding that the Department of Justice can neither intervene nor file an amicus brief on behalf of Congress. The outcome of such cases may nevertheless affect critical House powers or procedures. One case in point is currently pending in the United States Court of Claims, *C. Clyde Atkins, et al.* v. *United States of America*, No. 41–76, (Ct. Cl., filed Feb. 11, 1976). One of the issues in that lawsuit is the constitutionality of 2 U.S.C. § 359(1)(B) which provides that salary adjustments submitted by the President under the Federal Salary Act of 1967 (2 U.S.C. § 351 et seq.) shall become effective at the beginning of the first pay period which begins after the thirtieth day following their transmittal, but only to the extent that *neither* House of Congress has disapproved the recommended adjustments. To my knowledge, no Member, committee or officer of the House has been named as a party in this suit. Nevertheless, it would seem that its outcome could have far ranging implications for the Congress and the legislative process. Despite the fact that the issue of the so-called Congressional disapproval procedure is being contested in another suit in which the Clerk and the Secretary of the Senate are parties (*Clark* v. *Valeo, et al.*, Civil No. 76–1227 [D.D.C., filed July 1, 1976],[12] it is my feeling that the House should possess a mechanism through which it can directly intervene in all actions related to its powers and not be placed in a position of having to live with precedents, as a *fait accompli*, established in litigation in which it is not represented.[11]

Of course, the Clerk has retained private counsel to defend or represent House interests in the past. More specifically, the Clerk is authorized to appoint such special counsel as he may deem necessary to represent the Clerk or the interests of the House in any suit arising out of his actions while performing duties or obligations imposed on him by the Federal Corrupt Practices Act or the Federal Election Campaign Act of 1971.[13] In addition, the employment of private counsel has on occasion been necessitated where the Department of Justice, were it to defend either the Clerk or the interests of the House, would be placed in a conflict of interest by defending a Congressional power or practice which may in the future be used against the executive or which the executive is contending to be invalid.[14]

Recently, the Clerk was presented with an interesting example of a conflict of interest which prevented the Department of Justice from representing the Clerk and other House officers.[15]

The plaintiffs initiated a civil action pursuant to a provision of law enabling private citizens to sue on behalf of the United States, provided certain jurisdictional and procedural requirements are first met.[16] In addition, the law provides that the United States shall have sixty days after the prescribed service is made upon the United States Attorney and the Attorney General to enter an appearance in the suit. If the United States does so, the suit must be carried solely by the United States.[17] Since the United States is authorized to carry on the suit as its own, the Department of Justice was unable to provide representation to the Clerk pursuant to 2 U.S.C. § 118. Nevertheless, the Clerk and the other officers were sued in their official capacities and counsel had to be obtained to represent the defendants. Accordingly, it was determined that it would be appropriate for the General Counsel to the Clerk to defend the Clerk and the other House officers in the action.[18]

In the above instance, the defendants were not unduly prejudiced by the inability of the Department to represent them because the conflict arose from clear statutory mandate and they were on notice of its existence from the beginning of the suit. In many instances, however, the Department may commence representation only later to repudiate its ability to act as counsel.[19]

There is another point to be noted with respect to Department representation. While I believe that the Department makes every effort to furnish competent counsel, I would venture to say that the character of its rep-

Footnotes at end of article.

resentation differs significantly from that which would be furnished by an internal litigating entity. In my experience, the Department is often reluctant to make the vigorous substantive arguments which might best serve the interests of the House.

Perhaps because of its extremely heavy caseload, or the tremendous range of cases in which it participates, the Department may seek the most expedient way in which to obtain a favorable judgment for its House clients. As a general rule of thumb, there is nothing wrong with such an approach. With respect to the House, however, it may result in judgments predicated on grounds that are adequate only for purposes of obtaining the disposition of a single case and which fail to adequately recognize the unique aspects of House powers and prerogatives and their application to future cases. I am aware that the "legal" strategy for each case must be decided on the basis of the facts and circumstances of that case. I am concerned, however, that the Department does not have time and energy or the perspective to take into account the long range interests of the House in mapping legal strategies and that as a result, the unique defenses and positions available to the House are not utilized in all cases, which over time diminishes their vitality.

In addition, the House is a place of great tradition and custom, the origins of and rationale for which are often obscure or difficult to trace. The legal principles and relevant statutes affecting the House are generally not ascertainable through conventional research methods, yet they are important in disposing of the legal issues arising in litigation. As the Table of Cases and Authorities in Exhibit I indicates, such sources consist of House Rules and precedents, as well as legislative appropriations acts, with which the general legal practitioner, whether he is a Department of Justice or private attorney, may not be familiar. A working knowledge of these sources is crucial to effective litigation and I submit that no person from outside the House has sufficient access or sensitivity to these sources to adequately represent the House.

There are other serious limitations in the representation which the Department may provide. As I discussed earlier, 2 U.S.C. § 118 directs the Department of Justice to defend an officer of either House of Congress for acts done in the "discharge of his official duty". The language of that section is mandatory. However, the Department regularly exercises discretion in making a threshold determination whether actions taken by officers of Congress are "official". Moreover, the statute does not specifically include within the class of persons covered Members, employees, and committees of Congress, and although the Department has on past occasions represented such persons, it is not required to do so even in the instances where it is the exercise of their official duties which has resulted in their being sued. The Department has also stated that the mandatory provisions of the statute can be superceded in certain circumstances where representing the Congress or a Member or Committee would place the individual Department attorney in the position of violating the cannons of professional responsibility to which all attorneys are subject.[20]

In still other instances, the Department has exercised unfair leverage by imposing certain conditions upon the party requesting representation. For example, several years ago, an action was filed against the Clerk and certain government officials alleging, among other things, failure to enforce the Federal Corrupt Practices Act, *Ralph Nader et al.* v. *John N. Mitchell et al.*, Civil No. 243-72 (D.D.C. filed Feb. 8, 1972). The Clerk requested representation in the action pursuant to 2 U.S.C. § 118. The Department agreed to undertake representation, however, with the express condition that "if during the course of the litigation it might appear in our judgment that a possible divergence of interest is present and that your interests might be better served by obtaining other counsel, we shall, of course, so advise you."[21]

On May 1, 1972, the Department exercised its right under the condition and advised the Clerk to obtain outside counsel due to disputes between the Clerk's office and the Department which had arisen over enforcement of the Federal Corrupt Practices Act. The Department contended that since the Court would have to be advised of the differences of opinion, the Department might be required to take a position with regard to the propriety of the actions taken. The Department concluded that since the performance of their respective duties under the Act might become an issue under those circumstances, it would be best to obtain counsel who could defend the Clerk without jeopardizing the interests of other clients. The Clerk concurred and obtained other counsel.

I do not believe that the defense of Congressional powers should be subjected to such conditions or that officers, Members or Committees of the House should be forced to compromise their litigating positions in such a manner, regardless of the merits of the particular issues involved. The ability of the Department of Justice to qualify and fetter the representation which it provides to the legislative branch permits the Department to extract concessions which may weaken the position of the Congress and which may be used at a later time against the Congress in a direct confrontation with the Executive Branch.

As the Department of Justice has repeatedly suggested, there is an alternative to representation by the Department—private counsel. While the employment of private counsel has afforded excellent legal representation in the past in some cases, it has two principal drawbacks. First, it can be expensive. Secondly, ". . . the retention of different private counsel to handle different cases provides for little if any consistency among the legal positions . . . taken in different cases."[22]

In addition, I would like also to mention briefly what I believe to be certain practical and logistical problems inherent in utilizing either private counsel, or Department of Justice attorneys, to defend House interests. Again, I refer to the case presently pending against the Clerk in California[23] to illustrate the point.

Originally, that suit named as party defendants the Speaker, the House of Representatives, the Chairman of the Committee on Standards of Official Conduct and the Clerk. After all the other parties except the Clerk were dismissed by prior motion, we continued to work with the United States Attorneys Office in working to obtain a favorable disposition of the action. The Committee on Standards of Official Conduct had been dismissed as a party in the suit, despite the fact that Rule XLIII, which that Committee reported and the applicability of which it continues to interpret, remains an issue in the suit.[24] Accordingly, it would seem that the Committee continued to have, even after its dismissal, a genuine and compelling interest in the outcome of the action, with respect not only to the interpretation of Rule XLIII, but also in relation to any future action the Committee may take in this matter, despite its dismissal as a party. Unfortunately, the lines of communication between the Committee and the U.S. Attorney on this issue were closed when the Committee was no longer a party defendant. While we continued to convey to the U.S. Attorney our views on the Rule for their guidance, and there was nothing to prevent the U.S. Attorney from contacting the Committee to seek their assistance, as a practical matter that did not happen to any appreciable extent because the Committee was formally dismissed and those actually litigating the case were not cognizant of the Committee's continuing interest. Furthermore, as the primary scource of expertise on the Rule, the Committee should be provided the opportunity to express its view on any point raised in the litigation either affirmatively or defensively concerning its validity, application or effect. An internal litigating organization would be uniquely able to achieve these purposes despite the formal dismissal of parties from the action and would not labor under the disabilities of distance which the Department of Justice must confront in conducting litigation in scores of different locations around the country. The mere location of such an office within the House would help to overcome the present obstacles of distance, and could provide uniformly competent legal services, which emanate from a single source, in the place of the present varying quality of services available from the Department of Justice through the local U.S. Attorneys offices. Finally, the collective wisdom of all the offices and departments of the House could be brought to bear on the legal process through the litigating counsel, including those not named in an action who may nevertheless have an interest, or who may be able to assist in preparing a competent defense.

Similarly, while I have spoken repeatedly of House interests, it is necessary to remark that where a variety of House officers, or Members or Committees are involved the interests of the House may not be entirely homogenous. The concerns of one officer may differ slightly in character or quality from that of another officer, or between an officer and a committee, owing to the varying responsibilities prescribed by House rules or statute to the constituent parts of the House. In these instances, a paramount objective is to arrive at a reconciliation of any conflicting interests, to the extent that can be accomplished, prior to crucial stages in the litigation. However, without a central coordinating office to perform this function, the position of House parties in litigation is often expressed on an ad hoc or isolated basis. In fairness, this is inevitable given the press of court headlines and the necessity to respond to a complaint in a timely manner.

Doe v. *McMillian*, 412 U.S. 306 (1973), concerning a suit for damages, declaratory judgment and injunction for alleged invasion of privacy resulting from dissemination of a Congressional report on the District of Columbia school system that included the identification of students in derogatory contexts, is a case in point. Apparently, there was a divergence of views on the dissemination of the report among the Committee members themselves and at one stage, three separate counsel represented these parties in the action. Again, I believe that an inhouse litigating office would be uniquely able to establish procedures to minimize the risks of conflicts among various elements of the institution and at the same time could develop the close personal liaison with responsible House offices needed to alleviate these problems. The office would permit the sound policy of resolving any conflicts internally in a conciliatory and expeditious manner and not in the context of an adversary process which may permanently damage the House and its offices or Committees.

There is one other subject before your committee which I would like to briefly address—problems which are confronted when Members or employees are parties to litigation. It is my view that these individuals face special problems in responding to suits which do not confront the House, its officers or committees.

Footnotes at end of article.

I am not concerned here with what are clearly personal legal matters of Members or employees, which are beyond the responsibility of the House to defend. Rather, I am referring to cases which are civil in nature and in which there is placed in issue the validity of an official action taken by an individual or which was in the normal course of his employment.

The Clerk's office, perhaps because it is charged with the payment of appropriations for clerk-hire for Members and the administration of certain employee benefits as well, may be thought of in one sense as the personnel office of the House of Representatives. In this role, the Clerk has received numerous inquiries from both Members and their employees seeking advice on how to respond to suits in which they are named as parties. Consequently, I have been made aware of the concerns which Members and employees have, and the obstacles they face, in defending themselves in lawsuits.

For the most part, at least in the initial stages of litigation, the Member or employee is on his own. While he may request representation from the Department of Justice, they can decline to do so for a number of reasons which I discussed earlier. Assuming the individual cannot or chooses not to obtain representation from the Department of Justice, he can obtain private counsel and attempt to have the House defray the costs. While the Congress has authorized the payment of the legal fees of Members or employees in suits against them which present significant institutional issues,[25] there is often a substantial burden in demonstrating an institutional interest. Often, the presence of a House interest in the suit involving an individual member may not be immediately or as easily recognizable as when the defendant in a suit is a House officer or committee. Morever, there may be what might be called "submerged" or potential issues of institutional importance which may not emerge until later stages of the litigation. Unfortunately, despite the potential impact which such a suit may have on the House, there is a tendency to regard the matter as the individual concern of the Member and the burden then shifts to the Member or employee to demonstrate a compelling or overriding House interest.

In the current litigous climate, more and more suits are being brought against individual Members and employees.[26] If the House determines not to pay outside counsel, the Member or employee may be required nevertheless to incur the expense of obtaining counsel. Unlike the committee of the House and Senate who generally employ several or more attorneys who might under unusual circumstances or in an emergency, represent the Committee or its members, individual Members may not have even one lawyer on their staff who could prepare a defense.

Obviously, the employee is in even a more precarious position since he is unlikely to be able to exert the kind of influence on the Department to which they will respond. Should the Department in its discretion accept the handling of the case, it may do so to retain favorable relations with Congress but may not have the manpower necessary to assign it any priority.

Based on the risks to which Members and individuals are subjected, I want to indicate my support for the concept of including them within the class of persons who could be defended by a litigation office, should one be created. It is my belief that neither Members nor their staff should be inhibited or circumscribed in the performance of their duties by apprehension or threat of retaliatory legal action. If this is allowed to happen the ability of the Congress to serve the people will be seriously impaired.

FOOTNOTES

[1] Rules of the House of Representatives §§ 637–647 (1975).

[2] Rule XXXVI of the Rules of the House of Representatives, entitled "Withdrawal of Papers", provides that "No . . . paper of the House shall be withdrawn from its files without its leave . . ." See, also, Jefferson's Manual, § 352.

[3] Freeman W. Sharp, *A Proposed Congressional Counsel*, Cong. Research Serv., AP–197, p. 6–15 (1971).

[4] H.R. Res. 10, 95th Cong., 1st Sess., (1977) states that ". . . by the privileges of this House no evidence of a documentary character under the control and possession of the House of Representatives can, by the mandate of the process of the ordinary courts of justice, be taken from such control or possession except by its permission: . . ." This resolution is firmly grounded in precedent. See 3 Hinds' *Precedents of the House of Representatives* § 2663 (1907).

[5] S. Rep. No. 823, 94th Cong., 2d Sess. 69 (1976).

[6] Hearings on Representation of Congress and Congressional Interests in Court before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary, 94th Cong., 2d Sess., at 20 (1976) (hereinafter the "Senate hearings").

[7] *Michael Patrick Clancey* v. *Carl Albert, et al.*, Civil No. 76–982 (C.D. Calif., filed July 19, 1976).

[8] On April 6, 1977, based on a motion to dismiss brought by the United States Attorney, the court entered a judgment of dismissal because of mootness. However, on April 11, 1977 the plaintiff filed a notice of appeal to the Court of Appeals.

[9] Section 10 of House Rule XLIII(43) states, in pertinent part, that a Member who has been convicted of a crime for which a sentence of two or more years may be imposed should refrain from voting on any question at a meeting of the House or of the Committee of the Whole House unless or until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is reelected. *Rules of the House of Representatives* § 939. The section was added to the Code of Official Conduct of the Rules of the House of Representatives by H. Res. 46, 94th Cong., 1st Sess. (1975).

[10] There is a case presently pending which illustrates this problem. In *Ray Elbert Packer* v. *Barbara A. Ringer, et al.*, Civil Action No. 77–0278 (D.D.C. Filed March 7, 1977), plaintiff, an employee of the Library of Congress brought an action against the Librarian of Congress, and certain of its officers seeking damages, declaratory and injunctive relief for alleged discriminatory employment practices. Plaintiff joined the Joint Committee on the Library of Congress as a party defendant. The Department of Justice, in preliminary discussions with the Committee staff on the conduct of the defense, indicated it intended to move for summary judgment on behalf of all defendants. When asked by the staff what consideration was being given to asserting special and preliminary defenses available to the Committee as a creature of Congress, the Department attorneys admitted they had not entertained the notion of attempting to raise such defenses. The Committee staff impressed on the Department the risk of pursuing a summary judgment on behalf of the Committee since in the event of denial the case would proceed to trial and the special defenses available to the Committee might be lost. On April 29, 1977 the Department filed a partial motion to dismiss on behalf of the defendants. The motion, by footnote, contends that the Equal Employment Opportunity Act is inapplicable to Congress, but does not raise any constitutional or other defenses or immunities available to Congress.

[11] Although that case was dismissed by the Court of Appeals without reaching the question of the legislative veto, the plaintiff has applied for certiorari to the Supreme Court.

[12] By letter dated October 14, 1976, the Clerk of the U.S. Court of Claims informed the House and Senate, through the Speaker and the President, respectively, that during oral argument before the court the Assistant Attorney General conceded the unconstitutionality of 2 U.S.C. § 359(1)(B), although he argued plaintiffs were not entitled to recover on other grounds. In the same letter the court invited the House and Senate to file a brief amicus curiae in the cases. It is only through such fortuitous circumstances that the Congress has been asked to express its view. Such events further indicate the need for a procedure whereby direct involvement can be initiated by the Congress without waiting for the Executive to first make such prejudicial and sweeping concessions in the midst of litigation.

[13] H.R. Res. 92, 93d Cong., 2d Sess. (1973).

[14] In at least two instances, *Doe* v. *MacMillan*, 412 U.S. 306 and *Eastland* v. *United States Serviceman's Fund*, 43 U.S.L.W. 4635 (May 27, 1975), the Department provided representation in the district and circuit courts, but declined to provide representation in the Supreme Court. Apparently, the Department felt constrained, in light of its position in other litigation, not to continue its representation to higher levels. Such a decision can have obvious negative affects on the litigant, including the time and inconvenience incurred in attempting to obtain substitute counsel and the problems of the substitute counsel in assuming representation at such an advanced stage.

[15] *United States ex rel. W. Edward Thompson* v. *Paul Pendergast et al.*, Civil Action No. 76–2006 (D.D.C. filed Oct. 28, 1976).

[16] 31 U.S.C. § 232(C).

[17] *Id.*

[18] At the present time, defendants are awaiting a ruling on a motion to dismiss filed on their behalf (a copy attached as Exhibit I).

[19] See p. 13, *infra*.

[20] Senate hearings, *supra*, at 39.

[21] Letter from Assistant Attorney General L. Patrick Gray to Clerk of the House of Representatives, W. Pat Jennings, March 6, 1972, in 119 *Cong. Rec.* 7957 (March 15, 1972).

[22] S. Rep. No. 823, 94th Cong., 2d Sess. 11 (1976).

[23] See footnote 1, p. 5, *supra*.

[24] That issue concerns whether the rule has, standing alone, any force or effect or is merely a guideline for individual Members couched in precatory terms, but nevertheless expressing the sense of the House. If it is merely a guideline, obedience to which falls entirely on the individual Member, the argument could be made that the Clerk has no responsibility for enforcing the rule, is not preventing the Member from exercising his responsibilities and should, therefore be dismissed as a party. For legislative history of the Rule see 121 *Cong. Rec.* H 2806–2810 (daily ed. Apr. 16, 1975).

[25] The Senate agreed to pay the expenses of outside counsel in *Gravel* v. *United States*, 408 U.S. 606 (1972); see S. Res. 280, 92nd Cong., 2d Sess., (1972).

[26] For example, one recent suit brought against a House employee involves allegations that the employee caused to be disclosed confidential information concerning plaintiff without obtaining permission and in violation of the law. *Glen Jones* v. *Palmer Media, Inc. et al.*, Civil Action No. 76–53 (Ed.D. Texas, filed Dec. 1, 1976).

Mr. HUMPHREY. Mr. President, as a cosponsor of the Public Officials Integrity Act of 1977 I would like to express briefly my satisfaction at the legislation that has emerged from several years of study and hearings, and to urge that we move promptly to pass it.

This legislation is very similar to the Watergate Reorganization and Reform Act of 1976 (S. 495) passed by the Senate in the 94th Congress. Its purpose is identical. That purpose is to correct the omissions that contributed to the abuse of Government power in the Watergate era.

Because "the Watergate" is closed, it should not fade from our memories, nor should we dismiss or ignore its lessons until we are faced with another crisis. The potential for new abuses will remain until remedial legislation is enacted.

I am gratified that several of the provisions of this bill are similar to those of the Modern Congress Act which I introduced in both the 94th Congress and this year.

Since then, the Senate has enacted a stringent Code of Conduct, and S. 555 will extend throughout the Government uniform requirements for disclosure, and protection against conflict of interest.

We have debated at length and agreed upon the need for clear, consistent, commanding standards of conduct for all three branches of Government to restore public faith in the integrity of Government officials, and in the conduct of the public business.

The Senate is firmly on record, through its self-imposed Code of Conduct, in favor of the requirements codified in this bill. To insure, that the requirements are properly enforced for executive branch, a new office of Government Ethics is created within the Civil Service Commission.

A second feature of my original proposal which I am gratified to see embodied in today's bill is the overdue creation of an Office of Legal Counsel.

I believe it is clearly established, and widely recognized, that Congress needs independent legal counsel to represent it in court proceedings. In addition to a growing volume of litigation involving Congress and its Members, there is frequent need for expert counsel and advice based on its own particular institutional and political needs.

Congressional litigation must be responsive to the priorities of this body and provide expertise on the legal issues that are unique to the legislative branch.

Earlier this year, I joined with other sponsors of this legislation in signing a letter to the Attorney General in which we pointed out the increasing litigation involving Congress. In many cases, the Department of Justice could not represent Congress because of the conflict of interest with its duty to represent the executive branch. In other cases, Congress felt its interests were better served by private counsel.

The Justice Department has recognized the validity of our arguments, and endorses the concept of a congressional legal counsel.

Because the House of Representatives had previously failed to agree to this concept, I proposed in the Modern Congress Act that the Senate create its own counsel to be redesignated as Congressional Counsel at such time as the House might pass comparable legislation.

Let me emphasize that I consider it far more efficient and desirable to establish a counsel to serve both Houses. In most cases, the basic issues at stake are similar, and the interests of both Houses are similar.

The Senate has supported this concept in the past. I am confident it will vote for S. 555 today. Should the House not concur in this action, I remind my colleagues that we will still have the option, and should act on it, to proceed to establish a counsel for the Senate alone as an interim measure.

The Public Officials Integrity Act of 1977 is a sound bill. It has been strengthened by revisions that have been made to reflect and accommodate differing views.

The time and the climate are right for the passage of this important reform legislation. It is a major step toward a stronger, more accountable Government which can better command and justify public trust and confidence. It will help Congress perform its vital role as a coequal branch of Government in a healthy system of checks and balances.

In short, passage of this legislation is a vote for an independent and vigorous Congress, and for ethical and accountable Government.

Mr. RIBICOFF. Mr. President, the Committee on the Judiciary has reported a series of amendments to S. 555, as reported by the Committee on Governmental Affairs. The Judiciary Committee amendments deal with two distinctly separate subject matters. Therefore, I ask unanimous consent that the amendments of the Committee on the Judiciary be considered in the following manner by the Senate: The amendments on page 53, lines 1, 2, 22, and 23, will be considered as one amendment, and all other Judiciary amendments will be considered as a second, separate amendment. Under the procedure proposed, there would be one amendment dealing with whether or not there should be an Office of Government Crimes in the Department of Justice. The second amendment would deal with the question of whether or not a court-appointed temporary special prosecutor shall be subject to confirmation by the Senate. I think the distinguished Senator from Utah is interested in the second amendment.

Mr. President, could there be a response from the Chair to my request?

The PRESIDING OFFICER. Is there objection to the request of the Senator from Connecticut?

Mr. ALLEN. Reserving the right to object, Mr. President.

Is this a customary procedure? As I recall, when we had the Public Law 480 bill up, that amendment was adopted as original text, with leave to amend. Would that be an appropriate way to handle this matter? The reason I ask is that it is a question of on whom the laboring oar is put on the amendment.

Mr. RIBICOFF. If I may respond, the Governmental Affairs Committee bill is being considered as original text, but the Judiciary Committee's proposals are being taken up seriatim, because they come right at the beginning of the bill. Therefore, after talking to the Parliamentarian, he believes that they have precedence over the rest of the bill. Therefore, I would not want to proceed until the Judiciary Committee amendments are considered.

Mr. ALLEN. Unquestionably, they have precedence, but I was wondering if the Senator would object to adopting the Senate Judiciary Committee amendment as original text, with leave to amend?

Mr. RIBICOFF. I do not know what there is to be gained in either event. They will be discussed. My understanding is that one of these amendments has been compromised and there is only one amendment that is controversial.

Mr. ALLEN. Which one is that?

Mr. RIBICOFF. The one that is controversial is to have the Special Prosecutor appointed by the court, subject to confirmation by the Senate.

Mr. ALLEN. What is the compromise with respect to the Office of Government Crimes?

Mr. RIBICOFF. The Attorney General has worked out with the staff of our committee and Senator PERCY some proposals that I understand are satisfactory. My understanding was that the Committee on the Judiciary had acted in response to the request of the Justice Department. The Justice Department has worked out a proposal. Since this was originally Senator PERCY's proposal, I shall have him explain the compromise—which, of course, we are going to bring up and discuss. We are not going to put anything through without discussion.

Mr. ALLEN. I understand.

The Senator need not explain if there has been a compromise. I shall certainly be glad to consider that at the appropriate time.

I have no objection.

The PRESIDING OFFICER. Is there objection? The Chair hears none.

It is so ordered.

Mr. RIBICOFF. Mr. President, I suggest the absence of a quorum until we have an opportunity to send for the Senator from Utah.

The PRESIDING OFFICER. On whose time?

Mr. SCHMITT. Will the Senator withhold that request briefly?

Mr. RIBICOFF. I am pleased to withhold.

Mr. SCHMITT. Mr. President, I ask unanimous consent that Diana Griffin of my staff may have the privilege of the floor during debate on S. 555.

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

Mr. STONE. Will the manager of the bill yield for a question?

Mr. RIBICOFF. I yield.

Mr. STONE. The Senator from New Hampshire (Mr. MCINTYRE) and I have been discussing the problem of reports of the valuations of real and personal property, which, now, are to be done either by going back and picking up the costs, or doing a periodic market valuation. In the case of a farm or a home,

there are frequently—if not usually—situations where the owners do not want to sell. They do not have occasion to make a market valuation and it would cost them money every year to do that. In some circumstances, also, if a person owns a house or an improved piece of property, the question of cost becomes very esoteric, very difficult to collate. Sometimes they either do not pick it all up or they exaggerate.

I am not saying that is the case always, and I think that the two alternatives which the committee has reported are viable in many cases.

The Senator from New Hampshire and I are asking the committee staff to assist us to draft, and we shall offer after a while, a third alternative, which we think is fair, reasonable, and full disclosure at no extra expense to the owners of real and personal property. That is to disclose the tax-assessed valuation.

In some communities or States, assessors value at 90 percent. In some, they assess or value at 100 percent, some at 30 percent. It varies all the time. But there is always available to the public and to the press what the assessors use as their practice for evaluating the property.

The reason I bring this up even before the amendment is drafted is so that the managers of the bill can consider this additional approach. I would not make this as a substitute because, in some cases, cost is available and that would be the very best disclosure. With market value, unless it is up for sale and there is a firm offer, we really do not have anything, or unless it is a listed stock and there is a listed market value every day, we do not have everything. Assessed valuation does give a third-party consideration.

You have no control over it, as the person who is reporting. You have an elected or appointed official, with some expertise. And it would give us and give the press and the public a chance to multiply or extrapolate out what they think the market value really is, based on what an assessor does.

In my State, we had a reassessment process that took about 3 years, in which our real estate appraisers—who used to be called tax assessors; now they are called property appraisers—had to go from something like 30 or 40 percent all the way up to 100 percent, which is where we are now on real property.

The same is true of our tangible property tax and personal property tax.

A person could put the real valuation for those purposes or the appraised valuation as accepted by the State or tax authorities. If we disclose all that as the third alternative, it seems to the Senator from New Hampshire and the Senator from Florida that we have given our people a chance to stay out of the appraisal business, not to have to hire MAIs, or brokers, or other third parties, which are usually, or most of the time, going to give a self-serving appraisal. A person is going to go to friends. Rather, to have this done by somebody who does it for the whole State, the whole county, or the whole city seems to me to give the press, the public, and our colleagues, or anybody who has an interest, a viable alternative.

Mr. RIBICOFF. I am sympathetic to the comments made by the Senator from Florida, who is joined by the Senator from New Hampshire.

In the first place, we wanted to make sure that we are not placing a burden of expensive annual appraisals on property, so we are placing the element of actual cost as the alternative.

Is the point the Senator is making that, sometimes, property might be given as a gift, or might have been acquired through distribution of an estate or inheritance?

Mr. STONE. There is that, and then there is my case. I built a house in Tallahassee. The costs of that house, of real and personal property, I would say are very hard for me to ascertain. Very hard. But there is something called a property appraiser. He comes in for taxes and he looks inside and out once a year.

I am perfectly willing to disclose that, and able. That is the point I am making.

Mr. RIBICOFF. I am sympathetic. I will discuss it with the distinguished comanager of the bill.

I would suggest in drafting the amendment for this, as another alternative, that the Senator makes sure he requires revealing the formula for calculating the tax assessment for that city, town, or State as the formula.

Mr. STONE. Right.

Mr. RIBICOFF. Whether it is 90-percent valuation, 30 percent or 50 percent.

Mr. STONE. Right.

Mr. RIBICOFF. Otherwise it would not be fair, because every community, every State, has a different formula.

Mr. STONE. I quite agree.

Mr. PERCY. If the Senator will yield for a comment on this particular point, our whole purpose in going through this exercise, S. 555, and previously the Senate resolution on this subject, was to finally say, "Look, let's tell the public the price of holding public office."

Now we are applying it to the executive and judicial branches. We are eliminating a degree of privacy when it comes to financial holdings because of the possibility of conflicts, et cetera.

Mr. STONE. Right.

Mr. PERCY. And one way, probably, of guarding against someone enriching himself at public expense is periodic financial disclosure, so that if we are tucking it away someplace we, at least, are liable, and criminally liable.

If we go to the fact that we are trying to tell the public what we are doing, I cannot imagine anything more misleading, and then everyone would know it, than to take assessed values. Everyone knows they vary. Having lived for many, many years in Cook County—and the importance of knowing the assessor and the basis on which he assesses for business and commercial practice—we simply know the practice varies so much.

I cannot really imagine a person owning a piece of property that, they cannot determine what the approximate value is.

Is the person not even curious as to what he owns and how much its value is? Is it not possible on a piece of property to get a broker in and get a best estimate?

I think the bill provides that we simply use the best available technique we have for ascertaining what the reasonable value of that is. Is that not a lot simpler?

Mr. RIBICOFF. If the Senator will yield, I understand the point raised by the distinguished Senator.

We do not require an individual to get somebody in to give an estimate. There either has to be an actual appraisal or a listing of the acquisition cost.

If someone builds a home over a period of time and if he is his own contractor and he has all his various costs as he goes along, and add-ons, that it is very hard to do this.

I am sympathetic, but, of course, I could not accept such a proposal unless my colleague was willing to do so.

Why does the Senator not try to work this out with the staff of the distinguished Senator?

Mr. STONE. Right. We will do that.

In reply to what the distinguished Senator from Illinois was getting at, the Senator from Connecticut, in responding to this suggestion, said that the formula publicly expressed by the assessing authority as to how it assesses should be included in the report, if it is a 30-percent approach, or a 90-percent approach, and it should be there every time we do it.

Mr. PERCY. But the Senator from Illinois asks this question. Would the Senator from Florida presume that everyone who does all his own work at his house, adds a recreation room, adds a bar, adds a lot of interior work, is he likely to call up the assessor and say, "Hey, Mr. Assessor, I've done some work here, it has a value, the public ought to be compensated for this through increasing my tax base, therefore, come over, please, have a drink with me and look at what I've done, and the value of it, and increase my assessment"?

Oh no, not on our life. There is not one out of a thousand that would ever do that.

The very purpose of people is not to be increasing their taxes.

Mr. STONE. But the answer to that is that the assessor comes, Mr. President, whether we ask him or not, because they want those real estate taxes, and in Florida they come every year.

Mr. PERCY. They look at the house inside and out?

Mr. STONE. Inside and out.

Mr. PERCY. Walk all through the house?

Mr. STONE. Yes.

Mr. McINTYRE. If the Senator will yield, I want Senators to know that in New Hampshire, if they will not let him in, the assessors will then assume maximum full value. Assessed value, at least, is an alternative figure fixed by the local government. The criteria, whether 75 or 100 percent of market value, should be stated.

But at least, it puts us beyond the pale of having been criticized.

Again, in the politics of New Hampshire, somebody says, "McIntyre says he

owns blank acres, it is worth $5,000, he put his own figure on; he wouldn't sell that piece of land if you gave him $100,000."

I can say to my opponent or to my critics, this is what the assessed value is in my hometown, I did not go out and hire three auditors or three realtors to come up with a price I liked.

I think the assessed value, at least in New Hampshire, is fine. It sounds to me as if in Illinois they get away with murder. But in New Hampshire, we have our property tax. We do not have any sales tax or income tax, but we have a property tax.

So I hope Senator STONE and I can put together an amendment we can somehow get the distinguished Senator from Illinois to agree to, at least in the alternative.

Mr. PERCY. Possibly we can do this. All I say is, let us not make it difficult for someone who wants to know what the value is. Let us take a specific case. Let us say in New Hampshire it is 30 percent of fair market value.

Mr. McINTYRE. One hundred percent.

Mr. PERCY. Can we not take the figure we have, the assessed valuation, add to it then the increment that actually would be the value and put that down?

Mr. STONE. Surely, if we are permitted——

Mr. PERCY. The estimated value?

Mr. STONE. That ingredient, we can make the computation in the disclosure and show the formula.

Mr. PERCY. The Senator from Illinois is perfectly agreeable so long as the officeholder would make that computation, so that someone who wanted to know what it was would not have to go back and make all that computation himself.

Mr. RIBICOFF. There is a requirement that a copy of these reports and these statements be filed with the Secretary of State in our respective States. I can assure the Senator that the people who will be interested will be the newspapers in his State and his prospective opponent. They will have a very good idea if that assessment is a fixed assessment, a phony assessment, or a real assessment.

I believe that in Connecticut you could not put an addition on a home or add to it unless you received a building permit, and those buildings permits are filed with the assessors, and the assessor takes that into account in establishing the assessment for the following year.

Mr. STONE. I thank the distinguished floor managers. We will later come up with an amendment which does just that.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENSON. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. RIBICOFF. I yield to the distinguished Senator from Illinois.

Mr. STEVENSON. I thank the Senator from Connecticut.

Mr. President, I ask unanimous consent that the following staff members be granted the privilege of the floor through out the debate on S. 555: Kenneth E. Gray, Susan Macguire Smith, Sherry Towell, C. Braxton Valentine. and Antoinette Friedman.

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

Mr. HATCH. Mr. President, I make the same request for Eric Hultman and J. C. Argetsinger of the Judiciary Committee, during the consideration of and votes on S. 555.

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

UP AMENDMENT NO. 547

Mr. PERCY. Mr. President, I send to the desk an amendment. This is offered as a substitute for section 529, on page 66.

The PRESIDING OFFICER. Until the amendments of the Judiciary Committee are disposed of, it will take unanimous consent to proceed to another amendment.

Mr. PERCY. Mr. President, I ask unanimous consent.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordeerd.

The amendment will be stated.

The legislative clerk read as follows:

The Senator from Illinois (Mr. PERCY) proposes an unprinted amendment numbered 547.

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

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

The amendment is as follows:

On page 66, strike line 8, through page 69, line 12 and insert the following:

"§ 529. Office of Government Crimes

"(a)(1) There is established within the Department of Justice an Office of Government Crimes, which shall be headed by a director. The Attorney General shall determine the organizational placement of the office within the Department and shall be kept periodically informed of its activities.

"(2) A person shall not be appointed director of the Office of Government Crimes if he has at any time during the five years preceding such appointment held a high-level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of, a candidate for any elective Federal office.

"(b)(1) The Attorney General shall, except as provided in paragraph (2) and except as to matters referred to a special prosecutor pursuant to chapter 39 of this title, delegate to the Office of Government Crimes jurisdiction of (1) criminal violations of Federal law by any individual who holds or who at the time of such possible violation held a position, whether or not elective, as a Federal Government officer, employee, or special employee, which alleged violation related directly or indirectly to such individual's Government position, employment, or compensation; (2) criminal violations of Federal laws relating to lobbying, conflicts of interest, campaigns, and election to public office committed by any person except insofar as such violations relate to matters involving discrimination or intimidation on the grounds of race, color, religion or national origin; (3) the supervision of investigations and prosecutions of criminal violations of Federal law by any individual who holds or who at the time of such possible violation held a position, whether or not elective, as a State or local government officer or employee, which alleged violation related directly or indirectly to his government position, employment or compensation; and (4) such other matters as the Attorney General may deem appropriate.

"(2) A matter described in paragraph (1) of this subsection may be delegated by the Attorney General exclusively or concurrently to the United States Attorneys or other units of the Department of Justice. The Director shall be kept apprised of the progress of any investigation or prosecution so delegated. This section shall not limit any authority conferred upon the Attorney General, the Federal Bureau of Investigation, or any other department or agency of government to investigate any matter.

"(c)(1) At the beginning of each regular session of the Congress, the Attorney General shall report to the Congress on the activities and operation of the Office of Government Crimes for the preceding fiscal year.

"(2) Such report shall specify the number and type of investigations and prosecutions subject to the jurisdiction of such unit and the disposition thereof, but shall not include any information which would impair an ongoing investigation, prosecution, or proceeding, or which the Attorney General determines would constitute an improper invasion of personal privacy.".

(b) The table of sections for chapter 31 of title 28 of the United States Code is amended by adding at the end the following:

"528. Disqualification of officers and employees of the Department of Justice.
"529. Office of Government Crimes.".

(c) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(114) Director, Office of Government Crimes, Department of Justice."

SEPARABILITY

SEC. 104. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance, is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

Mr. PERCY. Mr. President, I am very pleased to indicate that the objections of the Department of Justice to section 529 have been resolved in meetings that members of the staff of the Governmental Affairs Committee—minority and majority—have held with officials of the Department of Justice. We have word from the Attorney General that the compromise has been worked out to their full and complete satisfaction.

I think this will satisfy the objections raised by the Judiciary Committee, inasmuch as those objections were raised by members of that committee at the request of the Department of Justice.

The amendment provides that there shall be established within the Department of Justice an Office of Government Crimes, to be headed by a director. The important thing is that the Attorney General shall determine the organizational placement of the office within the Department and that he shall be kept informed periodically of its activities.

Some feeling was expressed by the Department of Justice that the establishment of an Office of Government Crimes would somewhat detract from the power of the Criminal Division. But the Attorney General is given the authority, in this particular section, to place the office, if he so wishes, right within the Criminal Division. So there can be no jurisdictional problem.

We make provision for background requirements of the Director of the Office

of Government Crimes and indicate that he shall be excluded and not be appointed if he has held high level positions of trust and responsibility on the personal campaign staff of a candidate for elective Federal office in the preceding 5 years.

The remainder of this section deals with the particulars as to how this office shall be set up. It indicates that at the beginning of each regular session of Congress, the Attorney General shall report to Congress on the activities and operations of the Office of Government Crimes. It specifies that the report shall include the number and type of investigations and prosecutions, so that Congress is fully informed as to what has been transpiring.

I believe, Mr. President, that with this agreement on the part of the Department of Justice and the Governmental Affairs Committee, this amendment will be accepted.

The one area in which members of the Governmental Affairs Committee receded was that we do not require Senate confirmation of the nomination of the Director of the Office of Government Crimes. However, jurisdictionally, it is the understanding of the Senator from Illinois that it will be the intention of the Attorney General to abolish the office that was set up by regulation, the Office of Public Integrity; that the Office of Government Crimes would replace that particular office; and that the Director would report directly to the Assistant Attorney General of the Justice Department, who is subject to confirmation.

We feel that adequate oversight can be and is provided in this amendment, and I therefore offer the amendment, trusting that it will be satisfactory and acceptable to the Senate.

Mr. RIBICOFF. The amendment is acceptable to the manager of the bill.

Mr. HATCH. Mr. President, I think that the bill, as it is presently constituted, is unconstitutional. One reason is that we are delegating to the particular appointing source the right to set up a separate department or separate position and the right to legislate, in essence, the actual duties and responsibilities of the appropriate special position.

That is the reason why, in the Judiciary Committee, we put into the bill the provision that any appointment should be made by and with the advice and consent of the Senate. I still think it would be unconstitutional, but it may clear up the constitutionality of this bill.

Mr. PERCY. The particular amendment we are dealing with now deals with the Office of Government Crimes. It has nothing to do with the special prosecutor.

Mr. HATCH. I understand that, but we have taken that out as to the Office of Government Crimes. Or is the Senator leaving it in as to the Office of Special Prosecutor?

Mr. PERCY. The Office of Special Prosecutor is not affected at all by this amendment. We will deal with that as a separate issue. The comments of the distinguished Senator do pertain to the special prosecutor, but they do not pertain to the Office of Government Crimes.

Mr. HATCH. I will withdraw the comments with regard to that.

However, does not the Senator from Illinois think that we should add the advice and consent of the Senate even with regard to this particular section, as a possible way of overcoming the unconstitutionality of the bill?

Mr. PERCY. The Senator from Illinois would much prefer to have Senate confirmation.

Mr. HATCH. So would I.

Mr. PERCY. But in the process of working this out harmoniously with the Department of Justice, the Senator from Illinois receded on that point. No Senate confirmation is provided. The Attorney General requested that we remove that. The nomination of the Assistant Attorney General is confirmed, and it is the intention of the Justice Department to put the Office of Government Crimes in the Criminal Division; so the director would report to an Assistant Attorney General whose nomination is confirmed by the Senate and who ultimately, therefore, can be held responsible by the Senate for the operations of an office that reports directly to him.

Mr. HATCH. Does the Senator from Illinois indicate that there was indeed a dispute with the Attorney General and that he would prefer not to have the advice and consent in this matter?

Mr. PERCY. That is right. The Attorney General, as of this morning, agreed to the compromise, provided there was no Senate confirmation of the director of the Office of Government Crimes.

Mr. HATCH. Did the Senator from Illinois receive any remarks from the Attorney General with regard to the appointment of a special prosecutor in requiring the advice and consent of the Senate? Is there the same objection?

Mr. RIBICOFF. Yes, and when the time comes for the distinguished Senator to bring up his amendment, I will read the communication. If the Senator does not have a copy, I will give him a copy of it later.

Mr. HATCH. The Senator has a copy? I do not have a copy of the Attorney General's letter.

Mr. YOUNG. Mr. President, will the distinguished chairman yield for a question or two?

Mr. HATCH. I reiterate that I think again it will be found to be unconstitutional if we do not have the advice and consent of the Senate the way this bill is written because we are delegating legislative powers to these organizations and to the judiciary which do not have legislative powers. But with that comment, you have indicated to me you did not get this disagreed to by the Attorney General without delimiting that position. I would have to vote against the bill for that very reason.

Mr. SCOTT. Mr. President, will the managers of the bill—I just came in a moment ago, and I wonder if they could explain to me very briefly what the thrust of the present amendment is. I might say I am on the Judiciary Committee and am aware of the action of the Judiciary Committee, but I just do not know what the amendment is. Is it the amendment of the Senator from Illinois?

Could I have the attention of the Senator from Illinois? Mr. President, if I might have the attention of the Senator from Illinois, I wonder if the distinguished Senator from Illinois would tell me what his amendment is. I just came to the floor a moment ago, and I do not know what his amendment provides.

Mr. PERCY. The amendment offers a complete substititute for section 529. It has been worked out with the Attorney General. The Attorney General has authorized me to state he now supports this fully.

What we did was keep the Office of Government Crimes. We have it headed by a director, but the director is not subject to Senate confirmation. Organizationally, he is appointed by the Attorney General, and organizationally the Attorney General is authorized to have the office structurally placed in the Department of Justice any place he wants it. The Attorney General has indicated that what he will do is eliminate probably the Office of Public Integrity and replace it with the Office of Government Crimes, and have it located in the Criminal Division.

Mr. SCOTT. In other words, the Assistant Attorney General in charge of the Criminal Division would be in charge of this new office you would create?

Mr. PERCY. That is right. This office is subject to Senate confirmation. The Senate can hold Justice responsible for it, and there is adequate provision in the amendment for reporting periodically to Congress so that Congress knows what is happening. But the Attorney General and the Assistant Attorney General have complete jurisdictional control within the guidelines as worked out.

Mr. SCOTT. I say to the distinguished Senator I believe that is an improvement over the provision. It seems unreasonable to have two officials handling criminal work responsible to the Attorney General.

What the Senator is saying is the head of this new office would be responsible to an Assistant Attorney General, and if the Attorney General saw fit it would be the Assistant Attorney General in charge of the Criminal Division who, in turn, is responsible to the Attorney General; is that accurate?

Mr. PERCY. That is absolutely correct.

I would like to say to Senator RIBICOFF, the floor manager of the bill, that I read very carefully over the weekend the Judiciary Committee report, at the suggestion of the Senator from Virginia (Mr. SCOTT), and in reading that report it seemed that there was a possibility of a dual responsibility here. You cannot have two people heading something, and you cannot have them coequal in a sense. They are both, in a sense, reporting to the Attorney General.

There is also provision in this amendment that if the Attorney General determines that rather than having a crime or an alleged crime handled by the Office of Government Crimes, let us just say, in Cook County involving a high official of DOT or HUD, he can have and has the jurisdiction and has the authority to transfer the investigation and prosecu-

tion of that case to the U.S. Attorney's Office in the District of Northern Illinois.

Mr. SCOTT. The only reservation I would have is it would appear this would make the Director of this office somewhat comparable to the head of a section within a division of the Department of Justice. Now, to the best of my knowledge, no section chief is confirmed by the Senate. The Assistant Attorneys General are confirmed. So I would not see a need to confirm the holder of this office.

Is the Senator from Illinois saying he would have to be confirmed by the Senate?

Mr. PERCY. No, he would not have to be confirmed. This is the point the Senator from Illinois receded from with respect to the Attorney General in order to work out this compromise.

Mr. SCOTT. Well, not having read the amendment, and time not now permitting the opportunity to read it, I do not want to make an unequivocal statement but it does appear the Senator from Illinois has a much better amendment than we had in the original bill or in the one that was reported from the Judiciary Committee.

I do have a reservation about chapter 39, the special prosecutor chapter, in its entirety. It seems to me we are on unconstitutional grounds because we have a panel appointed by the chief justice of the Circuit Court of Appeals for the District of Columbia appointing a prosecutor, who would later appear before courts in that circuit.

As the distinguished Senator and Members of the Senate know, within our coequal branches of Government trials are held in the judicial branch, and one of the functions of the courts is to hear these cases, to make decisions with regard to the cases.

It seems incompatible to have the courts appoint the prosecutors who will appear before them. To me it does an injustice to our system of checks and balances. I do not see the courts appointing a prosecutor. More properly this is a function of the executive branch and the appointment should be made by the President.

I make this statement as a Republican at a time when we have a Democratic President, but it does not make any difference to me who the President is or what party he belongs to. He is the Chief Executive, and I believe under the Constitution—and I would direct the Senator's attention to article II which states:

> * * * he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States * * *.

I believe the President has the power to appoint all other officers of the United States. I do not believe the courts have such power. I think it is an unconstitutional act when Congress attempts to give such power to the Judiciary. I feel we should have an amendment, and I will be glad to draw one up if time will permit whereby, instead of the judges, the President will appoint the special prosecutor. We must not let the shadow of Watergate cause us to make bad laws, laws that the courts may hold to be contrary to the Constitution.

I direct an inquiry to both the floor manager of the bill and to the ranking Republican member.

Mr. PERCY. I shall make one brief comment, and then I will yield to the distinguished lawyer, the floor manager.

But the Senator from Illinois understands that right now the district courts can appoint a U.S. attorney if a vacancy occurs.

Mr. SCOTT. No, not permanently.

Mr. PERCY This has been upheld by the courts.

Further, the President and the Attorney General strongly support this particular section on special prosecutors.

Mr. SCOTT. Quite frankly, I have been a lawyer as long as the Attorney General. He is a few years younger than I am. I do not want to pit myself against him, but I can read the Constitution. I believe every Member of the Senate can read the Constitution, and it gives the power of appointment to the President, and it is reasonable that that power that appoints the prosecutor should not have that prosecutor appearing before him to decide an issue or controversy.

There is a contradiction here. It is an obvious contradiction to me, and it just seems that we should follow the constitutional provision and have the President make the appointment.

I am glad to hear from the distinguished floor manager.

Mr. RIBICOFF. The distinguished Senator from Virginia does raise a very serious problem that bothered the committee as well. So, may I say his doubts are not frivolous doubts.

Consequently, we did seek the advice of constitutional experts. The Attorney General, the American Bar Association, Prof. Archibald Cox, and Prof. Paul Mishken, of the University of California Law School, all responded.

They indicated that it was constitutional.

So we went on the basis of independent review of this problem.

May I point out that the Constitution does say:

> . . . Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

So we are proceeding with article II, section 2, clause 2, but we also received the independent opinion of what we considered good legal authority.

There may be other legal opinions, but these are the legal authorities who approved the methods that we have taken.

Mr. SCOTT. Mr. President, I appreciate the thoughts of the distinguished Senator in seeking the advice of some of our leading lawyers. It does not appear that this is such an inferior post as is contemplated by the provision of the Constitution to which he refers.

We know, of course, that lawyers stay in business because there are differences of opinion, and perhaps this will help add to the workload of the legal profession.

However, the ultimate decision as to what is and what is not constitutional, rests with the courts and not with any of the distinguished lawyers to whom the Senator has referred.

I offered an amendment in committee to strike the entire chapter 39. I did that because it seems to me that we are letting a bad factual situation, the remnants of Watergate, cause us to make bad law. Hard cases do make bad law.

My motion, as I recall, was defeated 8 to 7, a one-vote margin in the Committee on the Judiciary.

I still believe that the entire section should be stricken but, if the managers of the bill on both sides of the aisle have a contrary point of view, I am not going to take the time of the Senate to offer a futile amendment. I believe we are doing the wrong thing, and time will tell whether or not this is accurate.

Mr. PERCY. Mr. President, will the Senator yield for one final question because the Senator did not respond?

Mr. SCOTT. I yield.

Mr. PERCY. The Senator from Illinois is not a lawyer.

Does the Senator from Virginia, who is a distinguished lawyer, dispute in any way the power of the courts to appoint a U.S. attorney if the vacancy occurs?

Mr. SCOTT. Yes, I do.

Mr. PERCY. Has that authority been upheld by the courts?

Mr. SCOTT. It is my understanding that the courts do not have authority to appoint a U.S. attorney, but in practice they do appoint an acting U.S. attorney, and it is generally the chief assistant U.S. attorney, during the interim between the time that an individual U.S. attorney resigns and the President exercises his authority to make an appointment to replace him. Of necessity, someone has to be in office to represent the United States, and it is just a practical matter for the chief judge of a judicial district to fill the interim vacancy. It is not a regular appointment. It is a makeshift affair and nothing more.

Mr. PERCY. I express my deep appreciation to the Senator for his explanation and also for indicating he does not intend to offer an amendment.

Mr. SCOTT. I merely do not intend to offer it because I do not believe it would be accepted or would pass the Senate over the objection of the managers of the bill.

Mr. HATCH. Mr. President, will the Senator from Illinois yield?

Mr. PERCY. I am happy to yield.

Mr. HATCH. Mr. President, I was the person who put in the special prosecutor section, during the Judiciary Committee arguments about this debate, the advice and consent of the Senate.

The reason I put that in there was because I feel the bill is unconstitutional as presently constituted.

I felt as that might make it constitutional because we would again be approving the person coming in.

As I read the opinion of Harold R. Tyler, Jr., Deputy Attorney General, before the Committee on the Judiciary, U.S. Senate, dated May 26, 1976, he goes on and says on page 4:

> The second proposal, title I, would provide a statutory mechanism for creation of an independent special prosecutor in certain statutorily defined instances. As set

forth in S. 495, as amended, the proposal is less objectionable from a constitutional point of view than its precursors, but it remains, I believe, constitutionally inappropriate, administratively unworkable, and unnecessary.

In addition to arguing that aspect that it may make the bill more constitutionally so, or at least has that tendency, I have read the letter from the Justice Department from Patricia Wald to Senator RIBICOFF requesting that it be stricken.

Secondly—

She says—

. . . we believe that a provision requiring Senate confirmation of the Special Prosecutor is unwise as a matter of policy. Both the successes of the criminal investigation and prosecution and considerations of fairness to the individual involved require that the appointment process be kept confidential and Senate confirmation of a Special Prosecutor will obviously frustrate this goal.

Mr. RIBICOFF. Mr. President, will the Senator yield?

Mr. HATCH. I am certainly delighted to yield.

Mr. RIBICOFF. I think the Senator addresses himself properly to the next amendment which would be his.

Mr. HATCH. I am.

Mr. RIBICOFF. I wonder if we could dispose of the Percy amendment first and then go on to the amendment of the Senator from Utah.

Mr. HATCH. The reason I bring it up now is I may not bring my amendment forth if the Senate agrees to this.

Mr. RIBICOFF. I see.

Mr. HATCH. In the context of Senator SCOTT's comments and the comments concerning both sections I bring out that, I think, it is unwise for us not to agree to put in "the advice and consent of the Senate" because I think constitutionally we have a right to do that as a legislative body rather than abdicate our responsibility, allow the courts to appoint a person who would then make rules determining his office, or the courts would make the rules determining his office.

I am saying that if we want to have a good workable approach here in having the special prosecutor or even the office what we need to do is we need to make sure that the Senate does approve so that it is not merely a one-person choice and possibly a political choice at that.

By having the Senate approve and confirm, then I think that we can solve possibly this lack of constitutionality which I believe exists, which Mr. Tyler believes exists, and which I believe other constitutional law experts believe exists, and I think still not abdicate the rights of the Senate to confirm people in these extraordinary positions.

I think we are making a mistake—I say this to both distinguished managers of the bill because I have deep regard and respect for both of them—and I think this is a major mistake. I do not think we should go to the Justice Department and give in to their suggestions in this matter.

Mr. PERCY. I think the Senator's point of view is well taken. The personal preference of the Senator from Illinois would be to have Senate confirmation.

But it is highly desirable, when you are imposing upon a department a responsibility for creating an office or maintaining it and carrying it out, to be able to work out an accommodation whereby they suport it rather than oppose it. Because of the opposition when the question was raised in the Judiciary Committee, that was one point the Senator from Illinois receded on, feeling that the assurances provided were sufficient to enable us to go ahead with confidence that this office would be carried out with full support and enthusiasm and the backing of the Attorney General. Feeling that this point should be compromised, that was the basis on which I agreed to compromise.

Mr. HATCH. I accept the explanation of the Senator from Illinois, but could I ask the distinguished Senator from Connecticut, would he agree with the Senator from Illinois that he would just as soon have this provision in, even though the Justice Department would just as soon have it out?

Mr. RIBICOFF. The Senator asks me frankly, and I will state frankly that was my preference, and I supported the distinguished Senator from Illinois. That was his concept.

But the Senator from Illinois, in conference with the Attorney General, worked out this compromise. I would prefer what was in the bill originally. It was my understanding that the Judiciary Committee went along with the Attorney General and struck that section. Then the distinguished Senator from Illinois and the Attorney General worked out the compromise now in the amendment. I frankly preferred the original Governmental Affairs Committee posture, in which the Director in charge of the Office of Government Crime would have been subject to the advice and consent of the Senate.

Mr. HATCH. I am suggesting that, as the mangers of the bill, you put it back in, irrespective of whether the Attorney General likes it or not, for the reason that I believe it is not going to hurt him one bit, and may not be constitutional otherwise.

Mr. RIBICOFF. Far be it from me to ask the distinguished Senator from Illinois to break an understanding he has come to with the Attorney General. Since it is not my understanding but that of the Senator from Illinois, I will follow the lead of the distinguished Senator from Illinois. I liked the original Percy proposal, to tell you the truth.

Mr. PERCY. Mr. President, the problem the Senator from Illinois had was that, from the guidance we got from the votes cast in the Judiciary Committee, it was the understanding of the Senator from Illinois that the Senator from Utah voted to strike this particular section. It was my understanding that one reason for it was that we provided for Senate confirmation. Would the Senator from Utah care to explain what his position was in the Judiciary Committee, when this question was up for a vote and the Senator voted to strike this particular section?

Mr. HATCH. I was the one who raised the point of putting the advice and consent in the remaining part of the bill, and that was unanimously accepted by the full Judiciary Committee; and I think we had a full attendance at that time, with no absences.

Everyone agreed that we should have that in the bill. I did vote to strike the other portion of the bill, believing that that was not constitutional. I think if we put advise and consent back in, there will still be a question, but we may save ourselves a lot of bother in the long run on the issue of constitutionality.

The argument of Miss Wald on the second page of her letter, I think, is not to be regarded. It does not interfere with the special prosecutor at all to require our consent at this point, and I think it is a dereliction of our duty if we do not do it.

Mr. ALLEN. Mr. President, will the distinguished Senator from Illinois yield for a question?

The PRESIDING OFFICER (Mr. NUNN). Does the Senator from Illinois yield?

Mr. PERCY. In just a moment. I would like to say to our distinguished colleague from Utah, however, that the Senator from Illinois has agreed with the Attorney General; I think we have worked this out over a period of Friday, Saturday, and Sunday. We reached agreement on Monday morning, and the Senator from Illinois would be very reluctant indeed to, and in fact would not, go back on an agreement that has been made.

Therefore, taking fully into account the Senator's position—I think the precautionary notes raised by the Senator from Utah are very wise indeed, but I think I will have to stay with the agreement reached with the Attorney General, with his full understanding.

I think the Attorney General knows of our deep interest and concern with the background and quality of the person selected for the position we call the director in charge of the Office of Government Crime, and that the Committee on the Judiciary would have a strong influence in selecting a man of integrity, I do not think they would think of appointing any other type of a person to that office, and that the Judiciary Committee would be accorded a degree of responsibility to pass on it as if it were subject to confirmation. If I were the Attorney General, wanting to maintain a good relationship with the Judiciary Committee and the Senate of the United States, I would certainly pick someone who would, without any question, be overwhelmingly approved and confirmed if confirmation of the officer had been provided.

Mr. HATCH. Mr. President, if the distinguished Senator from Illinois will yield for a minute or two, I did not realize that that matter had had formal consideration. However, in asking for the Senators to reconsider this matter, the point I am trying to make is this: In the case of the special prosecutor, I do not believe the Attorney General appoints him. Is he not appointed by the D.C. Appeals Court?

Mr. RIBICOFF. A special panel designated by the U.S. Court of Appeals for

the District of Columbia, to be made up generally of retired circuit court judges or Supreme Court Justices, will appoint the Special Prosecutor.

Mr. HATCH. So here we have retired judges appointing a Special Prosecutor without any advice and consent, and then the courts determining a legislative matter of how he is to act under the rules and the law and pursuant to his mandate?

Mr. RIBICOFF. No, that is not true. They just make the appointment; but the bill provides that he will continue under the same authority that the Attorney General would proceed under in a prosecution. He would have full authority to proceed, and the panel would not give the charter to the Special Prosecutor. The Special Prosecutor would be vested with the full authority that the Attorney General has under the circumstances.

Mr. HATCH. In other words, he would act as a second Attorney General on a specific matter?

Mr. RIBICOFF. On the matter involved.

Mr. HATCH. Yet we would have to give our advice and consent to the appointment of an Attorney General.

Mr. RIBICOFF. Yes; the reason for that is based on the question of constitutionality, that we have no right to give advice and consent on this particular type of appointment. Again, we are back to the Hatch proposal as against the Percy proposal.

Mr. HATCH. I see. I think within the framework of the broad reading of the Constitution, we could do so.

I would like to vote for this bill, but with this provision in it, I think it would be unconstitutional and would be found to be so,; and we would be performing an exercise in futility. I do not see how anyone can complain about the advice and consent of the Senate in something as important as the appointment of someone equal to the Attorney General, with special functions or with a special obligation. That is the reason why it was put in, in the first place.

Mr. PERCY. The Senator from Illinois is happy to yield to the Senator from Alabama for a question on the pending amendment.

Mr. ALLEN. I am wondering as to the advisability of providing for the Senate confirmation of the Director.

I wonder if the Senator could tell the Senate, within a tolerance of five, the number of people in the Justice Department who have to have Senate confirmation.

Mr. RIBICOFF. The staff tells me it is in the range of between 10 and 12.

Mr. ALLEN. Does the Senator not feel that the duties and responsibilities which are placed upon the Director of the Office of Government Crimes are so immense and so important to the well-being of the country and our Government that he, too, should have Senate confirmation in order that we might be assured that the proper type person is named to that position?

Mr. PERCY. A very interesting point comes up, that this is all done because of the actions of the Judiciary Committee and the strong objections raised by the Justice Department and the Judiciary Committee. The Government Affairs Committee, on which our distinguished colleague has served so ably for so many years, reported this bill unanimously. It was our feeling that we should have Senate confirmation. The Senator from Illinois and the Senator from Connecticut both prefer Senate confirmation for this particular position. But in order to reach an accord and an agreement from the Judiciary Committee and the Attorney General we receded on that particular point. It appears now as though we should not have done so, as we may have misinterpreted the position of the Judiciary Committee.

The Senator from Illinois would like to point out what he believes is true, that the Senator from Alabama voted to strike this particular section in the Judiciary Committee vote.

Mr. ALLEN. Yes, and I am still willing to vote that way. But if we do establish one, I feel he should be confirmed by the Senate, giving the Senate some little protection on who might be chosen. Under the Senator's amendment, this could be handled as an inhouse proposition in the Justice Department. A political hack or a political nonentity could be named to this position requiring no Senate confirmation. It would allow the Justice Department to sweep under the rug anything they did not want investigated.

If the Senate had some voice in the matter, this matter of great importance, the Senate could insist that a man or woman of great statute could be named. It could turn down any person who was really not qualified by ability, expertise, honor, and character to serve in this position.

When the time has expired for the consideration of the Senator's amendment, I plan to offer an amendment requiring Senate confirmtion of this office that, if not hindered by the Justice Department, could be a position of utmost importance. I plan to offer that amendment as soon as time has been yielded back.

Mr. HATCH. Will the Senator yield for a question?

Mr. ALLEN. I do not have the floor.

Mr. RIBICOFF. I will be pleased to yield. May I first suggest the absence of a quorum, Mr. President?

The PRESIDING OFFICER. On whose time?

Mr. HATCH. May I ask a question of the distinguished Senator from Alabama?

Mr. RIBICOFF. Mr. President, I suggest the absence of a quorum. I would like the privilege of conferring with the distinguished Senator from Utah and the distinguished Senator from Alabama.

The PRESIDING OFFICER. Will the distinguished Senator from Connecticut tell the Chair who the time should be charged to?

Mr. RIBICOFF. With the time to be charged to me, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. RIBICOFF. Mr. President, I yield back the remainder of my time on the Percy amendment.

Mr. PERCY. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Is all time yielded back on the amendment?

Mr. RIBICOFF. All time is yield back.

The PRESIDING OFFICER. All time being yielded back, the question is on agreeing to the amendment.

UP AMENDMENT NO. 548

Mr. ALLEN. Mr. President, I offer an amendment on behalf of myself and the distinguished Senator from Utah (Mr. HATCH).

The PRESIDENT OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN) for himself and Mr. HATCH, proposes unprinted amendment No. 548, to Mr. PERCY'S unprinted amendment No. 547.

At the end of the first sentence of Sec. 529 (a) (1) add the following:

The Director of the Office of Government Crimes shall be appointed by the President with the advice and consent of the Senate.

Mr. PERCY. Mr. President, I ask for the yeas and nays on the pending Allen amendment.

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

The yeas and nays were ordered.

Mr. ALLEN. Mr. President, I yield myself such time as I may use.

Mr. President, we are creating a new Department of Government Crimes under this bill. If operated properly and if the full use of the jurisdiction given to this office is implemented, we shall have a most important office operating within the Department of Justice. This man or this women, who is appointed as the officer or the Director of the Office of Government Crimes, should be an outstanding individual because of the tremendous jurisdiction that this department has and the immense discretion and power that is given to this Director. The appointment should not be made by the Attorney General only, because Congress should assure that the Senate could turn down any appointee which it found to be unqualified for the position.

Further, the Director should be appointed by the President, rather than by the Attorney General, because the responsibility is directly with the President and not the Attorney General.

I feel that we would be assured of a higher level of operation of the Office of Government Crimes if we do require the President to make the appointment and give him the benefit of having the advice and consent of the Senate. All other sections of this amendment would remain the same, with this one exception.

I believe it gives us a better bill, a higher type bill, a bill that will guarantee that the department will be operated at a high level; that it will not serve merely at the complete whim of the Attorney General, but that it will have more independence in this fashion.

I reserve the remainder of my time.

Mr. PERCY. Mr. President, I think that the Senator from Illinois has already made clear his position, but I should like to reiterate it at this point.

The Senator from Illinois voted along with the full Committee on Governmental Affairs when this section was proposed and fully supported this section, which provided for Senate confirmation of the Director of the Office of Government Crimes.

The Senator from Illinois felt it extraordinarily important to work out with the Attorney General this section, which would be an important section and an important office in the Justice Department, in such a way as to have the full backing and the support of the Attorney General.

There were many points of give and take, as there are in any disagreement over any particular controversial issue.

The Senator from Illinois, through his staff, worked out with the majority staff and Senator RIBICOFF's what we considered to be, on balance, a reasonable compromise.

For that reason, the Senator from Illinois will oppose and will vote against this particular amendment.

I feel that the Attorney General, without any question, is on notice as to how strongly the Senate feels about this particular issue without the necessity of this amendment.

It is inconceivable to the Senator from Illinois that the Attorney General would appoint someone to head the office if that person were not of such a caliber and quality, from the standpoint of integrity, experience, and background, as to have Senate confirmation readily available—even if the appointment is not subject to Senate confirmation.

But the Senator from Alabama feels strongly about this matter. The Senator from Utah feels strongly about this matter.

The Senator from Illinois and the majority-minority staff in working out this compromise this morning with the Justice Department felt they were acting on behalf of the Judiciary Committee and the majority vote of that committee. But, certainly, in order to honor the agreement, the Senator from Illinois will vote against this amendment, I understand the floor manager (Mr. RIBICOFF) will vote against the amendment. We feel enough has been accomplished in our discussions with the Justice Department that the caliber and type of person that would be appointed by the Attorney General, in whom we have every confidence, would meet all the requirements of the Senate in this regard.

There are plenty of recourses the Senate would have in its ability to call back the Assistant Attorney General in charge of the Criminal Division, who would be directly responsible for the Director's activities, or the Attorney General himself, in case that office were not carried out fully in the spirit and intent of Congress in this regard.

So for that reason, the Senator from Illinois opposes the amendment.

Mr. President, because there are some of our colleagues who are away on official business at this time and though we had a unanimous consent that there would be no roll calls until 3 o'clock, the Senator from Illinois asks unanimous consent that the rollcall vote on this amendment occur at the hour of 4 o'clock, if that is acceptable to the Senator from Alabama. It would honor the requests made of the distinguished majority leader, so that he can protect Senators away on official business at this time.

Mr. ALLEN. I have no objection, but will the Senator yield for a question?

Mr. PERCY. Yes, but may we have—

Mr. ALLEN We have plenty of time, it is not a question of time. Would the Senator yield for a question?

The PRESIDING OFFICER (Mr. HASKELL). Is there objection to the request to have a rollcall vote at 4 o'clock?

Mr. ALLEN. I have no objection. I merely ask the Senator yield for a question on another matter.

Mr. STEVENS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENS. That is not before 4 p.m.?

Mr. PERCY. At the hour of 4 p.m. is the request.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ALLEN. Will the Senator yield for a question?

Mr. PERCY. I am happy to yield to the Senator.

Mr. ALLEN. The distinguished Senator has stated on several occasions that it was in yielding to the wishes of the Judiciary Committee that the so-called compromise left out a provision calling for Senate confirmation of the director of the Office of Government Crimes.

I fail to see the logic of the Senator's statement.

What the Senate did was to knock out the entire provision having to do with the creation of this office.

It is a far cry from knocking out the entire provision to say that the compromise does not require Senate confirmation of the director. Therefore, the compromise carries out the spirit of the action of the Judiciary Committee. That does not follow just because the Judiciary Committee did not see any reason for setting up the office, that if such an office was set up that confirmation by the Senate would not be required. There is no logical connection between the two statements of fact.

So I was against setting up the office. I felt I would rather leave it with the Attorney General where he is charged directly with this responsibility, but then when we allow him to farm out the work to somebody he appoints that does not require Senate confirmation, that is a horse of a different color, so to speak.

I feel that if we are going to farm out this work inside the Department, we have already confirmed the Attorney General, he does not need confirmation again if we do not set up a department, but if we set up a department, we need some control by the Senate on who is named to this department.

So I would like to clarify the position of the Judiciary Committee as I understood it to be.

Mr. PERCY. I appreciate the comments of the Senator from Alabama.

The Senator from Illinois this weekend read the report put out by the Judiciary Committee on S. 555. On page 2, under the section entitled "Committee Action" I read as follows:

> The committee also voted to delete the provisions relating to the Office of Government Crimes in light of the fact that there is presently a Section of Public Integrity which has been successfully functioning for the past year within the Criminal Division of the Department of Justice.

The Senator from Alabama could refer to the report put out by the Government Affairs Committee. It is a fairly voluminous report on this bill. The Senator would find in essence that what the Committee on Government Affairs objected to was that the section of public integrity was created by the Attorney General by regulation. It could be put in by this Attorney General and taken out by any other Attorney General. There was no statutory provision for it whatsoever.

So that Government Affairs Committee upgraded it to an office that was provided by statute, that could not be removed by the Attorney General unless the law was changed. We also provided for Senate confirmation of the Director.

All we had to go on was the Judiciary Committee vote of 7 to 6, which voted to strike and delete the entire section and just leave it with an office with a section of public integrity headed by someone, certainly, not subject to Senate confirmation.

Therefore, we are presented with the fact that the Judiciary Committee downgraded the office that had been established by the Governmental Affairs Committee.

In order to have harmonious feeling and support of the members of the Judiciary Committee, and take into account their vote and their report and also have support of the Department of Justice, we worked out a compromise which created the office and created it by statute, which put it into law and then could not be disregarded by any future Attorney General or even deleted from the Department. But we did recede on the one point of Senate confirmation which we felt was a less than important point because, certainly, the Attorney General was on full notice as to the caliber, character, and quality of the kind of person we felt should occupy that office.

That, I think, will add further to the explanation that my distinguished colleague has already given as to what motivated the Judiciary Committee.

Mr. ALLEN. I thank the Senator.

The fact remains that, under the present condition, the Attorney General has direct responsibility for this work, even though he might have some division in-

side his Department handling it but which has not risen to the point of being a specific Office of Government Crimes, with a director thereof. Simply because the Judiciary Committee knocked out the whole provision does not indicate in any way how it might stand on confirmation of the nomination of the director if such a department is developed.

So I do not believe that the Judiciary Committee has taken action on this question, either express or implied.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, will the Senator from Illinois yield?

Mr. RIBICOFF. Mr. President, I yield back the remainder of my time.

Mr. PERCY. Mr. President, I am prepared to yield back the remainder of my time, if the Senator from Alabama is; then we can proceed to the other business, taking into account that we will have a rollcall vote on this amendment later.

Mr. HATCH. Mr. President, I support the Senator from Alabama. I think the amendment is reasonable, and it may correct some difficulties that would otherwise be in the bill. It is an amendment that keeps the Senate power in operation, which I consider very important. In that regard, I associate myself with the remarks of the distinguished Senator from Alabama.

Mr. ALLEN. Mr. President, I ask unanimous consent that the amendment may be set aside temporarily, in order that I might yield 5 minutes to the distinguished Senator from Texas to bring up another matter.

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

UP AMENDMENT NO. 549

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Texas (Mr. BENTSEN) proposes an unprinted amendment numbered 549.

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

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

The amendment is as follows:

On page 133, line 8, insert the following:

SEC. 502. An individual who has played a leading partisan role in the election of a President shall not be appointed Attorney General or Deputy Attorney General. Individuals holding the position of national campaign manager, national chairman of the finance committee, chairman of the national political party, or other comparable high level campaign role involved in electing the President should be those considered to have played a leading partisan role.

The PRESIDING OFFICER. Is there objection to the amendment being in order at this time? Without objection, the amendment is in order.

Mr. BENTSEN. Mr. President, this is an amendment that was agreed to by the Senate in the previous Congress. It failed to be agreed to in the House because the bill was not considered in the closing days of the session.

First, I congratulate and thank the distinguished Senator from Connecticut for the contribution he has made over the years to openness in government and integrity in government. I congratulate and thank the distinguished minority manager of the bill, Senator PERCY, for what he has done in this regard, and his career exemplifies it. In the same context, I refer to the openness brought to the administration of President Carter and President Ford, preceding him. It is in that spirit that I offer again this amendment which was previously agreed to by the Senate.

This amendment would preclude someone who had held a major political office in the campaign of a President from being appointed as Attorney General or Deputy Attorney General. It is really time that we depoliticize the Justice Department. It is simply time to end what seems to have become the nearly standard practice of Presidents appointing as Attorney General the principal leaders of the political campaign in which they were elected. This has been done time after time and has become ingrained in the political system. We save had some obvious examples of men who have managed a successful Presidential campaign and were immediately appointed to head the Justice Department. I am pleased to see that President Carter and President Ford departed from that practice.

Let me recapitulate briefly, John Mitchell, Robert Kennedy, and J. Howard McGrath, Attorney General under Truman, are the most obvious examples of men who managed the successful Presidential campaigns and who immediately after were appointed to head the Justice Department. Unfortunately the practice has been working its way into our political system for much longer than these relatively recent appointments; it is a practice going at least as far back as Woodrow Wilson.

Historically and by tradition, but with certain exceptions, the top Presidential appointees in the Department of Justice have been highly respected representatives of the legal profession. But where they have also been major campaign officials of the President their appointment only contributes to a growing perception of the Department of Justice as a political instrument. With all of the highly competent members of the legal profession that can be drawn from, it is simply not necessary to look just to the ranks of the President's campaign staff for top Justice Department personnel.

The conduct of some of the recent officials of the Department is too fresh in the minds of the public and too deeply etched on the members of the bar to be passed with a bromide that "the next President will not let it happen."

It is time to assure the American people that law enforcement decisions will not be determined by partisan politics, either Democratic or Republican.

I believe my amendment will be a major step to deal effectively with the problem of politicization of legal posts within the Justice Department. It will insure the Department's capacity to administer justice evenly. It will help restore the people's perception of the impartiality of the justice that is administered.

The partisan orientation in recent years of those responsible for supervising the Nation's legal affairs seems extreme. If justice is to be impartial it must, in the beginning, be nonpartisan. It should not be run or even given the appearance of being run, by people who march to a drum beat emanating from the political advisors of any President or his party.

Decisions as to whether cases are prosecuted or dismissed, whether appeals are taken or settled, must not depend on political influence.

Mr. President, this amendment will further restore public faith in the administration of justice. I believe it is worthy of the Senate's continuing support. I would hope the distinguished floor manager of the bill would agree and that we can further remove politics from our judicial system.

I have discussed this matter with the majority manager of the bill, the distinguished Senator from Connecticut, and with the minority manager of the bill, the distinguished Senator from Illinois, and it is my understanding that they are ready to accept the amendment.

With that, I will withhold the remainder of my time, subject to their comments.

Mr. RIBICOFF. Mr. President, I believe that the amendment offered by the distinguished Senator from Texas is a good amendment, and I accept it, as manager of the bill. I believe it is acceptable to the ranking minority member.

Mr. PERCY. Mr. President, I commend our distinguished colleague for bringing forth this amendment. I think it is a valuable addition to the bill, and I accepted it with enthusiasm.

Mr. RIBICOFF. I yield back the remainder of my time.

Mr. BENTSEN. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 550

Mr. THURMOND. Mr. President, I call up my unprinted amendment.

The PRESIDING OFFICER. Without objection, the amendment will be in order.

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from South Carolina (Mr. THURMOND) proposes an unprinted amendment numbered 550:

On page 85, line 2 and 3, strike the words "the Comptroller General of the United States;", and insert in lieu thereof the words "the aforementioned;"

Mr. THURMOND. Mr. President, I note with interest in section 208(a)(3) of the bill that the Congressional Legal Counsel is mandated to advise, consult, and cooperate with—

• • • the Comptroller General, the General Accounting Office, the Office of Legislative Counsel of the Senate, the Office of Legislative Counsel of the House of Representatives, and the Congressional Research Service, except that none of the responsibilities and authority granted by this title to the Congressional Legal Counsel shall be construed to affect or infringe upon any functions, powers, or duties of the Comptroller General of the United States.

The Congressional Research Service, and in particular the American Law Division, has served as a valuable source of legal research and is available to provide such services as tracking litigation of interest to Congress, advice to investigating committees with respect to legality and issuance of subpenas, and background research for official acts. These activities should not be subordinated to the new Office of Legal Counsel. The work of the Office of Congressional Legal Counsel should not be duplicative of the work of the American Law Division.

Mr. President, I ask the distinguished managers of the bill whether they have considered the relationship and how they envision the institutional interface between the Office of Legal Counsel and the American Law Division of the Library of Congress.

Mr. RIBICOFF. Mr. President, I respond in this way to the distinguished Senator from South Carolina:

In general, the Office of Congressional Legal Counsel will give advice on questions related to litigation or possible litigation.

The Congressional Research Service will give advice on congressional powers generally, committee procedure, and will conduct background research.

The Counsel undoubtedly will consult with CRS on many of the questions which it faces. There should be a close working relationship between the two. None will be required to consult only the counsel. Nothing in the bill affects the excellent service and advice CRS gives to Congress.

Mr. THURMOND. Mr. President, I presume the manager has no objection to the amendment?

Mr. RIBICOFF. No objection to the amendment.

The PRESIDING OFFICER. Do the Senators yield back their time?

Mr. THURMOND. I yield back my time.

Mr. RIBICOFF. I yield back my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment of the Senator from South Carolina.

The amendment was agreed to.

UP AMENDMENT NO. 551

Mr. THURMOND. Mr. President, I have another amendment I wish to take up now. Mr. President, I shall send to the desk another amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina (Mr. THURMOND) proposes unprinted amendment No. 551.

The amendment is as follows:

On page 70, line 3, strike out "(2) The" and insert in lieu thereof "(2) (A) The".

On page 70, line 10, strike out "position" and insert in lieu thereof "position and shall be subject to the provisions of subparagraph (B)".

On page 70, between lines 14 and 15, insert the following:

(B) No person shall be appointed under subparagraph (A) if, within the 5 year period immediately preceding the appointment, such person—

(i) was a Member of Congress (as defined in section 308(10) of this Act) or a candidate (as defined in section 308(2) of this Act) seeking nomination for election, or election to, the office of Member of Congress,

(ii) actively participated in the management or conduct of any campaign of any individual, including a Member of Congress, for nomination for election, or election to, the office of Member of Congress, or

(iii) was an officer or employee of the Senate or the House of Representatives (as defined in section 308(12) of this Act).

On page 71, line 17, strike out "(b)(1) The" and insert in lieu thereof "(b)(1)(A) The".

On page 72, line 2, after "paragraph" insert "shall be subject to the provisions of subparagraph (B) and".

On page 72, between lines 9 and 10, insert the following new subparagraph:

(B) No person shall be appointed under subparagraph (A) if, within the 5 year period immediately preceding the appointment, such person—

(i) was a Member of Congress (as defined in section 308(10) of this Act) or a candidate (as defined in section 308(2) of this Act) seeking nomination for election, or election to, the office of Member of Congress,

(ii) actively participated in the management or conduct of any campaign of any individual, including a Member of Congress, for nomination for election, or election to, the office of Member of Congress, or

(iii) was an officer or employee of the Senate or the House of Representatives (as defined in section 308(12) of this Act).

Mr. THURMOND. Mr. President, my amendment is designed as an additional safeguard to assure the professionalism of the Office of Congressional Legal Counsel.

It simply provides that no person shall be eligible to serve as Counsel, Deputy Counsel, or Assistant Legal Counsel, if within the preceding 3 years, such person has been a Member of or candidate for election to the House or Senate, has been an employee of the House or Senate, or has served in the campaign organization of any Member of, or candidate for election to, the House or Senate.

Mr. President, the Governmental Affairs Committee wrote a similar prohibition into the bill in regard to the Special Prosecutor provision in title I. Section 593(d) of the bill provides:

The division of the court may not appoint as a special prosecutor any person who holds or recently held any office of profit or trust under the United States.

On page 65 of the committee report, the rationale for this section is stated as follows:

Subsection (d) of section 593 states that the division of the court may not appoint as a special prosecutor any person who holds or recently held any office of profit or trust under the United States. The entire purpose of appointing a temporary special prosecutor is to get someone who is independent, both in reality and in appearance, from the President and the Attorney General. Obviously, an employee of the Justice Department, including a United States attorney, could not satisfy that goal. Such an employee would have been appointed by the President or the Attorney General, could be removed by the President or the Attorney General, and would be under the day-to-day supervision of the Attorney General and, less directly, the President. Similar problems would be presented if the individual were an employee of the legislative or judicial branches. Therefore, the Committee feels that subsection (d) is essential so that a person is appointed special prosecutor who, in both appearance and reality, is not connected with the United States government. For that very reason, subsection (d) also covers people who recently held a position with the United States government. No time period was specified in this section; however, the Committee felt that it would defeat the purposes of this title if, for example, someone could resign their position as United States attorney or a member of the Justice Department one day, and be appointed a special prosecutor the next. A person appointed special prosecutor who formerly was an employee of the United States government should have left the government a long enough period of time prior to being appointed special prosecutor so that there is the reality and the appearance that such individual is totally independent from that government.

Mr. President, I feel the Office of Congressional Legal Counsel is a position which has a degree of sensitivity similar to the Special Prosecutor. On a day-to-day basis, the Office of Congressional Legal Counsel will have greater policy input. Its legal advice should be not necessarily what Congress would like to hear in a political sense, but should be professional, nonpartisan, and nonpolitical. The political judgments should be made by Congressmen and Senators, and no one else. Mr. President, if the concept of disqualification of a former governmental employee is good enough for the Special Prosecutor, it is equally good for the Office of Congressional Legal Counsel.

My amendment is very narrow. It disqualifies former Members, candidates, and employees for a period of 3 years. I would point out that the amendment does not disqualify all governmental employees. It does not disqualify all employees of the legislative branch, such as the General Accounting office or the Congressional Research Service. I am seeking to reach only those employees of the legislative branch who may have an inherent conflict of interest because of the desire to advance pet projects on which they have worked or to please former employers for whom they have worked. This, of course, would apply to former Committee staff, personal staff, political staff, and administrative staff whose salary is disbursed by the Clerk of the House or the Secretary of the Senate I would not contemplate that employees of the Library of Congress, the Congressional Budget Office, the Office of Technology Assessment, or the General Accounting Office would be disqualified.

Mr. President, even with the built-in safeguard of the Joint Leadership Group, of which I would be a member as long as I am ranking minority member on the Judiciary Committee, I have serious questions as to how Congressional Legal Counsel may represent the Congress as a body if an intervention amicus curiae is authorized. Congress is an institution of great diversity and its actions are usually the result of compromise. Where there is uniformity of congressional interest or wide support for a particular course of action, it differs markedly from the situation where there is significant division on a partisan or on an issue basis. In such situations, in particular, it is necessary to have professional advice, absolutely untainted by political considerations and absolutely insulated from charges of cronyism.

I have chosen to disqualify former Members, candidates, and employees only for 3 years, as I believe 3 years is a sufficient period of time for one to gain his independence or to allow for the disposition of an issue on which one may have worked or may have had a political interest.

Mr. President, I reiterate my feeling that for the Office of Congressional Legal Counsel to work, it must be absolutely professional. No political decisions can be made in that office; only the membership of the House and Senate can constitutionally make those decisions.

I commend the Governmental Affairs Committee and its able chairman for recognizing the need for absolute professionalism in the office of Special Prosecutor, and hope they will agree with me that the same professionalism is necessary in the Office of Congressional Legal Counsel. Mr. President, I hope the managers may be able to accept my amendment.

Mr. RIBICOFF. Mr. President, I have discussed this amendment with the distinguished Senator from South Carolina. I think his point is sound. I am willing to accept the amendment. I yield back the remainder of my time.

Mr. THURMOND. I wish to thank the able Senator from Connecticut, the chairman of the Committee on Governmental Affairs, and I yield back my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment of the Senator from South Carolina.

The amendment was agreed to.

Mr. STEVENSON. Mr. President, will the distinguished managers of the bill yield for some questions?

Mr. RIBICOFF. I would be pleased to yield.

Mr. STEVENSON. Mr. President, as the managers well know, the provisions of this bill in some respects track, they are either identical or substantially identical to, provisions in the rules of the Senate, and the provisions in the rules I have in mind track the provisions of title III of S. 555. Those provisions in the rules of the Senate were approved by the Senate when it adopted recently Senate Resolution 110.

During the debate on Senate Resolution 110 the Senate gave meaning to those rules, and since then the Ethics Committee has, through a number of interpretative rulings, given similar meaning to the provisions of these rules. In other words, a legislative history gives life to the provisions of the rules that goes back to the debate over Senate Resolution 110. It also now includes the decisions of the Ethics Committee.

By adopting S. 555 is it the intention of the managers to repeal or in any way affect legislative history that interprets, although different provisions, provisions which are substantially the same in S. 555?

I would hope that that would not be the case.

Mr. RIBICOFF. No.

Mr. STEVENSON. A great deal of history need not be repeated if we can rely on the history that was written in connection with Senate Resolution 110.

Mr. RIBICOFF. If I may respond to the distinguished Senator from Illinois, the chairman of the Ethics Committee, I see nothing here inconsistent with the Senate rules. The Senate rules are in existence and effective as they cover the Members of the Senate. Of course, S. 555 covers all branches of the Government—executive, judicial, and legislative—and imposes penalties which the Senate rules do not.

I do not know what the ultimate result of this bill will be. First, after the Senate passes it, if it does pass it, it goes to the House of Representatives. Then undoubtedly there will be a conference. Then it goes to the President for signature. If it is signed by the President it becomes law. Then the Senate would have to reexamine its rules to see if there are any inconsistencies between the ultimate bill that becomes law and the Senate rules.

I would assume that if that were the case, the Senate would proceed to alter its rules to conform with the statute. Until that happens, the rules would stay in effect and would cover the Members of the Senate and their staffs.

Mr. STEVENSON. Mr. President, let me try to make myself a little clearer.

Mr. RIBICOFF. May I add, there is a potential change. The Senator from Missouri (Mr. DANFORTH) and the Senator from Georgia (Mr. NUNN) will be offering a provision permitting blind trusts. If that were adopted and then became law, then there would be a change in the Senate rules which do not provide for blind trusts. So to that extent, again, there would have to be a reconciliation between the rules and the statutory language, but until that takes place, the rules of the Senate prevail.

Mr. STEVENSON. Mr. President, there are conflicts between S. 555 and the Senate rules. There may be more when we finally act upon the conference report and at that point, as the Senator indicates—or thereafter—hopefully at that point we can make whatever changes are necessary in order to conform the rules to the statute.

My question has to do with provisions in the rules that are identical, for example, provisions of rule XLII and rule XLIII, to provisions in S. 555. Those provisions in the rules have been given meaning by legislative history that includes the debate over Senate Resolution 110 and also now the interpretations of those rules by the Ethics Committee.

What I am getting at is does all that legislative history go by the boards, or can we continue to rely on that legislative history when interpreting the identical provisions in S. 555?

Mr. RIBICOFF. May I respond that, as it concerns Senators, the legislative history developed in adopting the Code still is current and will prevail.

Having been a member of the Nelson committee, and chairman of the committee having responsibility for S. 555, and also being a member of Senator STEVENSON'S Ethics Committee, I recognize the problems and the work of the Ethics Committee and of the Nelson committee; and the colloquies, debates and the legislative histories in adoption of the rules are still in effect.

Mr. STEVENSON. I appreciate that, Mr. President. The distinguished Senator is not only the chairman of the Government Affairs Committee, but was a member of the Nelson committee also served on the Ethics Committee, and is well aware of the difficulties we have had both in formulating these rules and then in implementing them, interpreting them, and enforcing them.

What he has said is reassuring to me and indicates all the work that has preceded this moment will not be abandoned. It still can be relied upon as a means of giving meaning to the identical provisions which are in this bill.

Let me, if I may, raise a few additional questions, and some of them will illustrate the point.

On page 119, the definition of "gift" in section 308, paragraph (8), the term "gift" it says:

> . . . means a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, including food, lodging, transportation, or entertainment and reimbursement for other necessary expenses."

In the debate on Senate Resolution 110, that provision was interpreted to qualify not only reimbursement but also transportation. In other words, if on business it was necessary to accept a reimbursement for reasonable, necessary expenses, or the actual transportation, that need not be reported. That was a qualification to the definition of "gift."

It has been upon that assumption that the Ethics Committee and members have acted, and I assume on the basis of what the Senator has said that that assumption would remain.

Mr. RIBICOFF. May I respond that that assumption would remain and it would still be in effect.

Mr. STEVENSON. In earlier discussions, we have also considered the acceptable ways in which to value real property and personal property in order to comply with the reporting requirements of the rules.

The reporting requirements will now be in a statute.

On page 104, section 303, it is required that the value of interests in real estate be reported and must be reported within certain categories.

Section 303(b) recognizes that the

current value of an interest in real property is not always easy to ascertain. It may not be ascertained without an appraisal. Appraisals are expensive.

It goes on to say that if value is not ascertainable without an appraisal, then the purchase price can be used for reporting purchases, but the purchase price or cost is not always available either. It may have been acquired by inheritance or by gift. In such cases as that, and I could raise others with respect to personal property, what is required? I believe that in the earlier debates on this matter when it came up in connection with the rules, it was indicated that a Member need not go to what could be the large expense of obtaining an appraisal. He could give his own informed opinion as to what the value was.

Is that still the case or how, if an appraisal is not readily available, should these valuations be determined for both real estate and personal property?

The assessed valuation usually gives very little indication of what the market value is. The purchase price might not be available, or there might not be a purchase price. How are the members expected to determine, in such instances, the value of property that must be reported within these categories?

Mr. RIBICOFF. May I respond? We have taken the language word for word from the Senate rule. Therefore, the legislative history that would apply to the Senate rule would be applicable. But for the additional information of the distinguished Senator from Illinois, earlier in the day the Senator from Florida (Mr. STONE) and the Senator from New Hampshire (Mr. MCINTYRE), in a colloquy, stated that because of a problem that could arise if a home were acquired through inheritance, or if a person built a home in segments from time to time, so that there was not a fixed purchase price, they would like a third alternative, and that is an assessor's valuation, with complete information of the basis of the assessment, as to whether it is 30 percent of value, 60 percent, 90 percent, or 100 percent.

I indicated complete sympathy with that situation, because we had not considered it. The distinguished Senator from Illinois, the comanager, wanted to see the language; so the Senator from New Hampshire and the Senator from Florida are drafting an amendment to provide a third alternative, which they will submit for approval of the Senator from Illinois and myself.

Outside the possibility of accepting that third alternative, the interpretation in the legislative history of the Senate rule would still be applicable.

Mr. STEVENSON. Mr. President, if the Senator will yield further, I would hope that the history was not changed to indicate that there are only three alternatives, namely, an assessed valuation which gave little evidence of market value, an appraisal, which might be very expensive, or the purchase price, which might not be available.

Does not the Senator mean to indicate that the assessed valuation or the purchase price, which may go back a long time, are indicia of value, but that the Member is not confined to one of those three alternatives? Based on the assessed valuation, he is in a position to make an informed judgment as to what the value is; but there might be more means on which to base such an informed opinion.

Mr. RIBICOFF. No, I would say he does not have to make an informed estimate. He could use as an alternative, if the Senate adopted the assessed valuation, an actual appraisal or the actual purchase price, with the description of the purchase and the date of purchase. As a matter of fact, we required that a copy of this information and these vital values be filed with the secretary of state in the State from which the Member comes; and there is ample opportunity for members of the public and the press to look at those values and come to their own conclusions. After all, people living in your own State realize that if, 20 years ago, you bought a home for $50,000, they know what inflationary pressures mean in that area. That home today may be worth $100,000. Such an approach would permit one to get an interpretation of what the value is every year without requiring you, every year, to get an individual appraisal at a high cost.

Mr. STEVENSON. That is one of the difficulties with using assessed valuation, which, in most cases, is just a fraction of market value.

Mr. RIBICOFF. It would be required to state on what basis that assessor evaluates that property. It has to be uniform, and in every locality it is stated whether it is taken at 30 percent of value, 60 percent, 70 percent—whatever their valuation is must be stated right on the form.

This is the language that has been given to us to look at. We have not accepted the amendment.

Mr. STEVENSON. Is the Senator aware that in some States, real estate is not assessed for a percentage of its fair market value, but, for example, at its value as farm property; it may be assessed at its value for farming purposes, even though its market value may be much higher because it could have other uses, for industrial development, for example?

I wonder if the Senator really means to confine Members to a choice of an appraisal, which may be expensive, an assessed valuation, which may provide very little real indication of the market today, or a purchase price, which may be unavailable. Those are three acceptable means, but they are not really exhaustive, are they?

Mr. RIBICOFF. The Senator is correct. We will not confine him, and he can give his estimate of what the actual value is, but we do provide those two or possible three alternatives which he may use, so that it may not be said that he put a false value on it.

The Senator is correct, and I think we do understand one another.

Mr. STEVENSON. I thank the Senator. That is a most helpful clarification. Once again in this instance, the past legislative history will help to give meaning to that provision of S. 555.

Let me ask the Senator another question, if I may. Items of personal property in a trade or business worth more than $1,000 must be reported.

On the face of it, that requirement would appear to pick up most of the equipment on a farm. If a Senator or an employee of the Senate subject to these disclosure requirements owns a farm, and has on that farm plows, rakes, harrows, and the like, each of which has a value in excess of $1,000, or might have, are they required to be itemized and reported?

Mr. RIBICOFF. No, they are not. If we go back to the legislative history on the adoption of the rule, there is a discussion which indicates that you can lump all the farm equipment together and say, "Farm equipment of an overall value," without listing each item of farming equipment.

So if you had 10 items of equipment, you would not have to list the value of each of the 10; you could just say, "farm equipment of a value of $10,000."

Mr. STEVENSON. And the same would apply to livestock?

Mr. RIBICOFF. Livestock also.

Mr. STEVENSON. I thank the Senator for the additional clarification. If the farm is burdened by a mortgage, would the mortgage reduce the value, or is the value recorded separately without regard to the mortgage, and then the mortgage reported separately as a debt?

Mr. RIBICOFF. The latter is correct. You do not deduct the mortgage from the value; you put the value on the property, and then your liability on the mortgage is listed separately. I would assume, if you have no obligation on the mortgage, if there is no personal responsibility, then it is not a liability to you, and you do not list it.

Mr. STEVENSON. Yes.

Mr. RIBICOFF. But you do list the gross value of that property, subject to the mortgage, I would think.

Mr. STEVENSON. The gross value be listed, and the mortgage listed separately as a liability?

Mr. RIBICOFF. Subject to the mortgage, I would say. I would imagine you would put "property of the value of $100,000, subject to a mortgage of $30,000, net $70,000." In all fairness, I think that is how it should be reported. You would only be required to show the gross, but I would say in all fairness that would be misleading. In all fairness to the reporting individual and to the public, the net would be a fairer reflection of the situation as to the value of your interest.

Mr. STEVENSON. Liabilities must, of course, be reported, too. It would be possible to list the assets unencumbered on one part of the form and the liabilities, which have to be listed anyway, separately. I assume that interpretation would be available.

Mr. RIBICOFF. I think one could do it either way. I can see the acquisition of an interest in a piece of property which is subject to a mortgage. If one had a 5-percent interest in a piece of property worth $100,000, that would mean the 5 percent would be worth $5,000. But if the property were mortgaged for $50,000, the value is only $2,500, really. It becomes easy when the interest is owned outright, but when one

owns that small portion of an undivided interest, it is not worth $5,000, but it is only worth $2,500.

UP AMENDMENT NO. 552

Mr. STEVENSON. Mr. President, I have an amendment which I send to the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to the amendment being offered at this time? Hearing none, the amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an unprinted amendment No. 552.

Mr. STEVENSON. Mr. President, I ask uanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 121, between lines 14 and 15, insert the following new section:

APPLICABILITY TO PER DIEM EMPLOYEES

SEC. 309. Notwithstanding any other provision of this title, in exceptional circumstances, the supervising ethics office of an individual who is an employee hired on a per diem basis or a consultant retained on a contractual basis, may waive the applicability of the provisions of this title to such individual, except section 307.

On page 121, line 16, strike out "Sec. 309." and insert in lieu thereof "Sec. 310.".

On page 121, line 23, strike out "Sec. 310." and insert in lieu thereof "Sec. 311.".

On page 122, line 2, strike out "Sec. 311." and insert in lieu thereof "Sec. 312.".

Mr. STEVENSON. This is a matter which has been discussed before, and certainly one with which the distinguished manager of the bill is acquainted.

As the bill now stands, persons who are hired on a per diem basis or as consultants, lawyers, or accountants, for example, retained by the Senate, for more than 60 days would be subject to all of the provisions of the code. Such a requirement could be onerous to the individuals involved. It could deprive the Senate of the services of some of the most experienced, successful, and accomplished professionals in the country.

At present, the rules have a provision which is similar to this amendment, which, in exceptional circumstances, enables the Ethics Committee of the Senate to grant exceptions from the rules where, for example, a lawyer is acting temporarily as counsel to a committee, and they do not have to comply with all these disclosure provisions.

This amendment would do that. It would provide that the supervising ethics office of the Senate, the House, and the executive branch could, in exceptional circumstances, waive the provisions of title III with respect to disclosure. Those are the only provisions which could be waived under the authority of this amendment, in order not, in those exceptional circumstances, to prevent committees of the Congress and agencies of the executive branch from obtaining the services of highly qualified individuals for whom full disclosure might be extremely onerous and not necessitated by the public interest in any way.

Would the Senator have objection to this amendment?

Mr. RIBICOFF. I believe the Senator's amendment makes common sense. We would be depriving ourselves of much valuable service to the Government. I would accept the Senator's amendment.

Mr. STEVENSON. I am grateful to the Senator.

Mr. DANFORTH. The amendment is satisfactory to the minority.

Mr. RIBICOFF. Mr. President, I yield back the remainder of my time.

Mr. STEVENSON. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 465, AS MODIFIED

Mr. DANFORTH. Mr. President, I call up my amendment No. 465 and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to considering the amendment at this time? If not, the amendment will be stated.

The legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH), for himself, Mr. NUNN, and Mr. CRANSTON, proposes an amendment No. 465.

Mr. DANFORTH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DANFORTH. It is my understanding that under a previous order there will be a rollcall vote at 4 o'clock. Do I understand after the rollcall has been completed I will be recognized to further discuss this amendment?

The PRESIDING OFFICER. The Chair is informed that after the vote at 4 o'clock the Senate would automatically return to the amendment proposed by the Senator from Illinois (Mr. PERCY), as amended.

Mr. DANFORTH. Mr. President, I ask unanimous consent that after the rollcall vote is completed I be recognized for further consideration of my amendment No. 465.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. DANFORTH. Mr. President, I offer the following modifications of my amendment:

On page 3, line 7, strike the words "it is unlikely that." Also on page 3, line 7, strike the word "can" and insert in lieu thereof the word "cannot."

On page 3, line 9, strike everything after the word "party," except the comma after the word "party" through line 10.

On page 3, line 11, strike the words "employed by" and insert in lieu thereof the words "an employee of."

On page 6, line 3, strike the words "agree to."

The PRESIDING OFFICER. The amendment will be so modified.

The amendment, as modified is as follows:

On page 105, beginning with line 14, strike out all through page 106, line 25, and insert in lieu thereof the following:

(d)(1) Except as provided in paragraph (2), each reporting individual shall report, in accordance with the provisions of section 302, the identity of the holdings of and the identity of the source of income from a trust or other financial arrangement from which income is received by, or with respect to which an equity interest is held by, such individual, his spouse, or any of his dependents.

(2) A reporting individual other than a judge or justice of the United States need not report the holdings of or the source of income from any of the holdings of—

(A) any qualified blind trust, (as defined in paragraph (3)); or

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any of his dependents,

(ii) with respect to which such individual, his spouse, and any of his dependents have no knowledge of the holdings or sources of income of the trust, and

(iii) with respect to which such individual has requested the trust to provide information with respect to the holdings and sources of income of the trust and the trustee refuses to disclose the information but such individual shall report the category of the amount of income received by him, his spouse, or his dependents from the trust under section 302(a)(3).

(3) For purposes of this subsection, the term "qualified blind trust" includes any trust, in which a reporting individual, his spouse, or any of his dependents has a beneficial interest in the principal or income, and which meets the following requirements:

(A) The trustee of the trust is a financial institution, an attorney, a certified public accountant, or a broker, who (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust who)—

(i) is independent of any interested party such that the trustee cannot be controlled or influenced in the administration of the trust by any interested party,

(ii) is not an employee of any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and

(iii) is not a relative (as defined in section 308(14)) of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in clause (B), the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by section 302(a)(3) of this title, but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset and which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instument and the proposed trustee shall be approved by the reporting individual's supervising ethics office. For purposes of this paragraph, "interested parties" means a reporting individual, his spouse, and dependents if the reporting individual, his spouse, or dependent has a beneficial interest in the principal or income of a qualified blind trust. The term "broker" is used as defined in section 78 of title 15, United States Code.

(4) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of section 208 of title 28, United States Code, and any other conflict of interest statutes or regulations of the Federal Government, until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

(5) (A) The reporting individual shall file within 30 days after a qualified blind trust is approved by his supervising ethics office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under section 303(a),

with each office, agency, committee, or individual with whom such reporting individual is required to file a report under section 304.

(B) The reporting individual shall, within 30 days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under section 303(a).

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such disolution, and

(ii) file a copy of a list of the assets of the trust at the time of such dissolution and the category of value under section 303(a) of each such asset with each office, agency, committee, or individual with whom such individual is required to file a report under section 304.

(D) Documents filed under clauses (A), (B), and (C) of this paragraph shall be made available to the public in the same manner as a report is made available under section 305 and the provisions of section 305, as appropriate, shall apply.

(E) A copy of each written communication with respect to the trust under paragraph (4)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6) (A) A trustee of a qualified blind trust shall not knowingly or negligently (i) disclose any information to an interested party with respect to such trust that may not be disclosed under this subsection; (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by this subsection or the trust agreement; or (vi) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly or negligently (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under this subsection, or (ii) fail to file any document required by this subsection.

(C) Each violation of the provisions of subparagraph (A) or (B) shall be punishable by a fine in any amount not exceeding $5,000.

(7) Any trust which is in existence prior to the date of the enactment of this Act shall be considered a qualified blind trust if—

(A) the supervising ethics office determines that the trust was a good faith effort to establish a blind trust;

(B) the previous trust instrument is amended or, if such trust instrument does not by its terms permit amendment, all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered in accordance with the requirements of paragraph (3)(c) and a trustee is (or has been) appointed who meets the requirements of paragraph (3); and

(C) a copy of the trust instrument (except testamentary provisions), a list of the assets previously transferred to the trust by an interested party, and the category of value of each such asset at the time it was placed in the trust is filed and made available to the public as provided under paragraph 5.

Mr. DANFORTH. Mr. President, I suggest the absence of a quarum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. EAGLETON. 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. EAGLETON. Mr. Preident, I ask unanimous consent that Ira Shapiro be granted the privileges of the floor during the pendency of this bill.

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

Mr. ALLEN. Mr. President, I yield myself one minute with respect to the pending amendment.

This amendment merely provides that the Director of the Office of Government Crimes shall be appointed by the President subject to Senate confirmation, rather than by the Attorney General with no Senate confirmation.

I yield back the remainder of my time.

UP AMENDMENT NO. 548

The PRESIDING OFFICER. The hour of 4 p.m. having arrived, the Senate will proceed to a vote on unprinted amendment No. 548. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Nevada (Mr. CANNON), the Senator from California (Mr. CRANSTON), the Senator from Arizona (Mr. DECONCINI), the Senator from Alaska (Mr. GRAVEL), the Senator from Maine (Mr. HATHAWAY), the Senator from Louisiana (Mr. LONG), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Montana (Mr. MELCHER) are necessarily absent.

I further announce that the Senator from Iowa (Mr. CULVER) is absent on official business.

Mr. STEVENS. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Utah (Mr. GARN), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I also announce that the Senator from Oklahoma (Mr. BARTLETT) is absent due to illness.

The result was announced—yeas 65, nays 18, as follows:

[Rollcall Vote No. 243 Leg.]

YEAS—65

Allen	Haskell	Muskie
Anderson	Hatch	Nelson
Baker	Hatfield	Nunn
Bayh	Hayakawa	Packwood
Bellmon	Heinz	Pearson
Bentsen	Helms	Randolph
Bumpers	Hollings	Riegle
Byrd, Harry F., Jr.	Huddleston	Roth
	Humphrey	Sarbanes
Case	Jackson	Schmitt
Church	Johnston	Schweiker
Clark	Kennedy	Sparkman
Curtis	Laxalt	Stafford
Dole	Leahy	Stennis
Domenici	Lugar	Stevens
Durkin	Mathias	Stevenson
Eagleton	McClure	Talmadge
Eastland	McGovern	Thurmond
Ford	McIntyre	Weicker
Goldwater	Metcalf	Williams
Griffin	Metzenbaum	Young
Hansen	Morgan	Zorinsky

NAYS—18

Abourezk	Hart	Percy
Burdick	Inouye	Proxmire
Byrd, Robert C.	Javits	Ribicoff
Chiles	Magnuson	Sasser
Danforth	Moynihan	Scott
Glenn	Pell	Stone

NOT VOTING—17

Bartlett	Culver	Matsunaga
Biden	DeConcini	McClellan
Brooke	Garn	Melcher
Cannon	Gravel	Tower
Chafee	Hathaway	Wallop
Cranston	Long	

So Mr. ALLEN's amendment was agreed to.

Mr. ALLEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HELMS. I move to lay that motion on the table.

The motion to lay on the table was agree to.

The PRESIDING OFFICER (Mr. MOYNIHAN). Under the previous order, the Senator from Missouri is recognized.

Mr. ALLEN addressed the Chair.

Mr. DANFORTH. Mr. President, I yield to the Senator from Alabama with the understanding that I do not yield

the right to call up my amendment No. 465.

The PRESIDING OFFICER. The amendment is pending. The Senator may yield to the Senator from Alabama.

Mr. ALLEN. Mr. President, I ask unanimous consent that Senator RANDOLPH and Senator HELMS be added as cosponsors of the amendment that was just agreed to by the Senate.

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

Mr. STEVENS. Mr. President, I ask unanimous consent that my staff assistant, Kim Wilmoth, be granted privilege of the floor during consideration of the bill.

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

Mr. HASKELL. Mr. President, I ask unanimous consent that Everett Engstrom of my staff be granted privilege of the floor during the pendency of this measure.

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

Mr. THURMOND. Mr. President, I ask unanimous consent that John Napier of the Judiciary Committee staff be granted privilege of the floor during consideration of this measure.

Mr. PERCY. That has already been done.

The PRESIDING OFFICER. It has been agreed to.

Mr. HAYAKAWA. Mr. President, I ask unanimous consent that John Backer be granted privilege of the floor during consideration of this matter.

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

Mr. LEAHY. Mr. President, I ask unanimous consent that Judy Heffner of my staff be granted privilege of the floor for the rest of the day.

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

UP AMENDMENT NO. 547, AS AMENDED

Mr. PERCY. Mr. President, will the Senator from Missouri yield?

Mr. DANFORTH. I yield to the Senator from Illinois.

Mr. PERCY. Mr. President, I ask the distinguished Senator if he would set aside his amendment for just a moment so we might have a voice vote on the pending Percy amendment, as amended by the Allen amendment.

Mr. DANFORTH. Mr. President, I am happy to accommodate the Senator from Illinois on his amendment, but it is my understanding that after that amendment is disposed of, I will then be recognized for the purpose of bringing up my amendment.

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

The question is on agreeing to the amendment of the Senator from Illinois, as amended.

The amendment, as amended, was agreed to.

Mr. HEINZ. Mr. President, I ask unanimous consent that Mr. Geoff Garin be granted privilege of the floor during the consideration of this measure.

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

AMENDMENT NO. 465

Mr. DANFORTH. Mr. President, the purpose of amendment No. 465 is to permit the use of blind trusts by persons subject to the financial disclosure provisions of the Public Officials Integrity Act.

Pursuant to the directive of the Senate, the Governmental Affairs Committee held hearings on the blind trust question on June 7 and June 9. I believe that there was a clear consensus at those hearings that blind trusts could serve a useful purpose in eliminating conflicts of interest, or the appearance of conflict, for high level executive department officials and Members of Congress.

The amendment I am proposing today was drafted by members of my staff, in conjunction with the staff of the Governmental Affairs Committee, Common Cause, and the administration. It has the approval of the administration.

The chief objection to permitting the use of blind trusts has been the fact that there are no rules to govern their use and no sanctions to punish any breach of the trust agreement by the trustee. The rules which we would establish through this amendment speak to both of these objections.

This amendment, Mr. President, is offered on behalf of myself, Senator NUNN, and Senator CRANSTON.

The amendment provides that an individual required to file a report under section 201 of S. 555 need not report the holdings of a qualified blind trust. In order for a trust to be a qualified trust, the trustee must be a financial institution, an attorney, a certified public accountant, or a broker who is independent of any interested party.

In addition to the requirement that the trustee be independent of any interested party, this amendment also provides that the assets in the trust must be free of restrictions with respect to transfer or sale. Furthermore, the trustee must manage the trust assets without consultation with or notification to any interested party.

A common objection to the use of blind trusts has been the claim that such trusts are never truly blind; that, for one reason or another, the assets placed in the trust remain in the trust during the public official's tenure in office, making the trust blind in name only. Therefore, it was decided to adopt the proposal suggested by Common Cause—namely, that any asset placed in a blind trust be considered a financial interest of the reporting individual for the purpose of conflict-of-interest laws until such time as the trustee has certified that the asset is no longer held by the trust or held in an amount less than $1,000. In this way, no trust can be said to be blind unless it is in fact blind.

Finally, any trustee who discloses information regarding trust assets to an interested party and any interested party who solicits such information shall be subject to a $5,000 fine.

Mr. President, I believe that this proposal represents a well-reasoned response to a very difficult problem. I am hopeful that it will be accepted.

UP AMENDMENT NO. 553

Mr. EAGLETON. Mr. President, I have a perfecting amendment to the Danforth amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Missouri (Mr. EAGLETON) proposed an unprinted amendment, numbered 553, to the amendment by Mr. DANFORTH.

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

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

Is there objection to the amendment being in order at this time? The Chair hears none, and the amendment is in order.

The amendment is as follows:

On page 9, line 1, delete lines 1–3 and insert in lieu thereof the following:

(C) (i) Any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) shall be fined in any amount not exceeding $5,000, or imprisoned for not more than one year, or both.

(ii) Any individual who negligently violates the provisions of subparagraph (A) or (B) shall be fined in any amount not exceeding $5,000.

Mr. EAGLETON. Mr. President, first, I say to my colleague from Missouri that I am pleased that he is dealing with this very vexing problem of blind trusts. This has been a problem in the law for many, many years, and it is not an easy one with which to deal.

My personal bias is that blind trusts are not always blind. I could cite several examples, but the one that comes most quickly to my mind was the blind trust of Peter Flanagan, who at one time was nominated to be U.S. Ambassador to Madrid. He made much ado about the fact that during his tenure in Government, he had no notion as to how his own personal interests were being enhanced; that all his wherewithal was in a blind trust; and that he remained scrupulous in keeping that trust blind. At first blush, that all sounded very good—until we found out that the trustee was his father. One had to wonder whether a "blind" trust in those circumstances was all that blind.

Having read the Danforth modified amendment, I decided to offer this perfecting amendment, which says, in essence, that a blind trust shall be blind—and, brother, we mean it; because if you intentionally or knowingly or wilfully violate any provision, you shall be fined in an amount not to exceed $5,000 and imprisoned for not more than 1 year. This is the criminal penalty carried over from other portions of this bill.

Further, an individual who negligently violates the provisions of this subsection shall be fined in any amount not exceeding $5,000. Again, this is a provision carried over from other portions of the bill.

If this perfecting amendment to the Danforth amendment, as modified, is agreed to, we then make it crystal clear that we are very serious about this business of blind trusts; that they are, in fact,

to be blind; that they are not to be used as some kind of convenient ruse or sham; that everyone will know we mean business, because we will impose upon any violation thereof a strict criminal penalty.

That about states my case on this perfecting amendment.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. EAGLETON. I yield.

Mr. DOLE. What does the Senator's perfecting amendment do, then?

Mr. EAGLETON. If one sets up a blind trust that has only the cosmetic, surface impression that it is in fact blind, but he, in cahoots with the blind trustee, knows what the corpus of the trust is, then both of them are knowingly and willingly violating the provisions of this law. They will subject themselves to a prison term.

Mr. DOLE. Perhaps I have not studied the amendment carefully enough, but is there anything that defines who the trustee may or may not be?

Mr. EAGLETON. That is addressed in the Danforth amendment, as modified by Senator DANFORTH himself.

Mr. DOLE. What are the limitations on that?

Mr. DANFORTH. Mr. President, if the Senator from Kansas will look at page 3 of the bill, there have been some amendments to this provision, or some modifications, and it will read as follows, as modified:

> The trustee of the trust is a financial institution, an attorney, a certified public accountant, or a broker who, (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust who)— (i) is independent of any interested party such that the trustee cannot be controlled or influenced in the administration of the trust by any interested party,
>
> (ii) is not an employee of any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and (iii) is not a relative (as defined in section 308(14)) of any interested party.

Mr. DOLE. The part that the Senator from Kansas does not totally understand is the section that provides that it is not a close personal friend of any interested party.

Mr. DANFORTH. That has been deleted.

Mr. DOLE. So you cannot be a close personal friend.

Mr. DANFORTH. Well, the way it reads now is that the trustee must be independent of any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party.

Mr. DANFORTH. Mr. President, I would be happy to accept the amendment offered by my colleague from Missouri, Mr. EAGLETON.

Mr. EAGLETON. I would be pleased to yield to my distinguished colleague from Alabama.

The PRESIDING OFFICER. Does the Senator from Missouri (Mr. DANFORTH) accept the amendment to his amendment?

Mr. DANFORTH. Yes, I do.

The PRESIDING OFFICER. The amendment as modified?

Mr. DANFORTH. I accept Senator EAGLETON's amendment to my amendment as modified.

Mr. SPARKMAN. Mr. President, will the Senator yield to me?

Mr. EAGLETON. I am pleased to yield to my colleague from Alabama, Senator SPARKMAN.

Mr. SPARKMAN. I think we have to be very careful in this matter of handling blind trustee. I say that from experience that I have had in both committees.

So often we will have someone come before us appointed to an office, and he has certain assets, and we ask him the question:

> What about these assets that you have? Will they constitute a conflict of interest?

And he says:

> I have placed these—

Under the advice usually of counsel from the White House—

> in a blind trust.

We have usually accepted that fact in many, many cases.

I do not say that the amendment of your colleague is not correct. I just say that we ought to go at this thing very carefully so as not to rule out the use of legitimate blind trusts.

That is all I care to say. I do not know what the details are, but I do think we ought to go into it very carefully with our eyes open.

Mr. EAGLETON. I think the Senator from Alabama makes a very valid observation. The basic thrust of the Danforth amendment is to try to make a blind trust a truly blind and a meaningful alternative for an individual who, because of his personal financial situation, might see fit to use it. The purpose of my amendment was to say that we really mean what we say, that a blind trust is, in fact, blind and not just some kind of a convenient ruse.

Mr. DANFORTH. It is my understanding that the Carter administration has required top level members of the executive branch to place their assets in blind trusts. Also there are and have been for some time Members of Congress—and I hasten to say that I am one of them—who have believed that the blind trust method is the best available one under the circumstances to protect oneself from the possibility of a conflict of interest and from the appearance of a conflict of interest.

The question then is what is a blind trust? Can you just say something is a blind trust and make it a blind trust? I think the Senator from Alabama has made a very good point in this regard. The whole point of this amendment is to set out specific rules for determining what qualifies as a blind trust under the law. Under this amendment it is required that a person who places his assets in the blind trust must disclose the identity of the assets that have been placed in the trust, and also disclose the trust instrument, with the exception of testamentary provisions in the trust instrument.

Further, that when trust assets, original trust assets, are sold by the trustee, the trustee must make the disclosure as to the sale of those original trust assets when they reach zero or anything less than $1,000.

So that there is a presumption of continuity in the mind of the person who sets up the trust that what went in, which he has disclosed, has stayed in unless the trustee has stated otherwise.

So I really believe this amendment takes care of that problem. There is no likelihood, unless the person is violating the law and, therefore, subject to penalties under this statute, there is no possibility, for him to say, "I have cosmetically taken care of the problem of a conflict."

Mr. PERCY. Mr. President, will the Senator from Missouri yield?

Mr. DANFORTH. I yield.

Mr. PERCY. I would like to express appreciation to the Senator from Missouri as well as his distinguished colleague, Senator EAGLETON, for performing a service today in this amendment.

I have been in a blind trust. The blind trust was scrupulously observed for a period, I believe, of 6 years. I finally decided to end the blind trust because of the frustrations involved, and I put a detailed statement into the RECORD as to my reasons for so doing.

I think we are all familiar with the possibility of a blind trust being used as a guise, as a coverup and, obviously, we have made every attempt now to prevent that.

Many of us have seen a cartoon that appeared of two golfers standing on the green, one of them saying to his colleague, "I have got an idea. Why don't I set up a blind trust and you be my trustee, and you set up a blind trust and I will be your trustee."

There is a cynicism that has developed about blind trusts. The administration has encouraged and supported blind trusts and they have been set up, but many times a personal friend of the individual, the public official, setting up the trust has been designated as the trustee.

Then you have the concern about integrity and the appearance of lack of integrity.

In the letter that Robert Lipshutz, counsel to the President, addressed to Senator RIBICOFF and myself, dated June 27, I would like to read in part once again the section pertaining to blind trusts. It says:

> S. 555 provides that a blind trust will not be an acceptable method of removing conflicts of interest unless a later bill authorizes such trusts.

That is what we are now working on.

> In our testimony we encouraged the use of blind trusts properly restricted to prevent abuse. We believe that a qualified blind trust can adequately insulate a Government official from a potential conflict of interest. I understand that Senators Nunn and Danforth will offer an amendment to S. 555 permitting the use of a blind trust to the extent that the trust holdings are unknown to the beneficiary. We support such an amendment.

I think it is important that we have support of the administration on this matter. But I think there is probably a difference between the administration and Congress. The administration through the White House, has said, "We encourage the use of blind trusts," and I would like to ask the distinguished

author of this amendment whether or not there is any known position, as to whether or not the Ethics Committee or the Committee on Governmental Affairs in our deliberations, in any way took a position, that we have determined that blind trusts should be entered into and that we are encouraging them. The Senator from Illinois knows of no position we have taken on that so far. The amendment now provides a second option: A Senator can make a full and complete disclosure, a public disclosure, in accordance with the rules of the Senate; or, under the Danforth amendment he could now go to a blind trust, provided it meets the strict criteria that have been established to remove the possibility this could be looked upon as a means of evading the intent and purpose of full public disclosure.

Certainly, with the Eagleton amendment providing for criminal penalties, this shows we really do mean business by this. But these are the two routes. Neither the Senate Ethics Committee, according to the understanding of the Senator from Illinois, nor the Committee on Governmental Affairs has taken any position on this question and any Senator is free to follow one of the two routes so far as this bill is concerned. Any member of the executive or judicial branch could honorably follow either route, provided he adhered strictly to the rules, regulations and, in this case, the statute; is that correct?

Mr. DANFORTH. That is correct. There is no encouragement or discouragement of the creation of a blind trust. But it is recognized that this is an option that some in Congress and certainly the executive branch have believed is desirable and, therefore, it sets forth specific rules for determining what is a qualified blind trust and rules for what happens if the terms of this amendment are violated.

Mr. PERCY. Because our distinguished colleague participated so actively in the hearings I would like to pose a question to him. Do the requirements and criteria laid down in the Danforth amendment now before the Senate meet the rather rigid standards established by Common Cause? Representatives of Common Cause testified they would prefer there would be no provision for a blind trust, but if the committee and the Senate decided, and the House decided, that there should be a provision, then these are the criteria that should be used. Does the pending amendment essentially meet those criteria and standards that were advocated by Common Cause?

Mr. DANFORTH. That is correct. That is my understanding. My staff in working up the amendment worked with personnel of Common Cause, and also worked with people in the executive branch, people in the White House who have been active in this area.

Mr. PERCY. I once again commend my distinguished colleagues, Senator DANFORTH, Senator EAGLETON, and Senator HANSEN, who have taken a great interest in this field, and I think we have now worked out something that I trust will be acceptable to the floor manager of the bill.

Mr. RIBICOFF. If the Senator will yield, I have had a blind trust for a number of years. During the consideration before the Nelson committee I voted against the continuation of blind trusts. The Government Affairs Committee was under orders from the Senate in discussion of the Rules of Conduct to take into account the Danforth amendment to study the situation of blind trusts. Testimony was had.

I quote from the administration's position:

> There are some situations in which a blind trust should and must be available if the Government is to continue to attract and retain persons who may happen to have some substantial varied holdings. Some officials when they join the Government have holdings in a wide variety of companies and because of economic consequences cannot be expected to divest themselves immediately of such interests. While they could rescue themselves in particular matters, the range of activities of their office may be so extensive their effectiveness could be unnecessarily restricted. Proper blind trusts serve to ameliorate these situations by insulating such officials from knowledge of these holdings.
>
> The administration does not lightly give its endorsement to every proposed blind trust. Each case must be weighed carefully and approval is given only when the criteria that the administration has set up have been met.

In the Danforth amendment care was taken to specifically provide that each blind trust be filed with an ethics office. In the Senate it would have to be filed with the Ethics Committee. It would be made public and opened to perusal by the press or anyone else except such elements of a blind trust which are testamentary in nature.

The Civil Service Commission would have jurisdiction with respect to executive branch disclosure.

The judicial system would submit their documents to a proper group set up by the Chief Justice and the Judicial Council.

Also, it should be pointed out that in creating a blind trust it would be absolutely essential that a full listing of all the assets that go into the blind trust be made public, and it is assumed that the assets that go into the blind trust remain in the blind trust unless the trustee reduces the assets so that there would remain not more than $1,000 of a particular holding. He would have to certify and to make public that such sale was made.

The committee did not take any position for or against the blind trust. But it was very careful as was the staff working with Senator DANFORTH that the guidelines recommended by Common Cause were scrupulously followed.

As a consequcnce, the committee manager has no objection to the Danforth-Nunn-Cranston amendment.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. DANFORTH. I yield.

Mr JAVITS. I understand while I was out Senator PERCY took occasion to make it clear for the record an agreement with Senator RIBICOFF that the fact that we adopt this amendment—and I certainly will join with the committee in its adoption—does not mean that it is unethical not to have a blind trust or that the only way in which to satisfy ethics and this particular law when, as, and if it becomes law is to have a blind trust. I think it would be very useful if I might say to my colleagues, the managers of the bill, if we could get a concurrence to that effect from the chairman and ranking minority member of the Ethics Comeven as an ethical matter. But if Members, including myself, have this question under advisement, and I know Senator PERCY does as a personal matter. I think it would be very helpful to us. As a matter of fact, I have very grave doubts about the whole blind trust business, even as an ethical matter. But if Members wish to do it—and the administration obviously favors it—since this bill has such broad coverage, I certainly would have no objection.

But I think for ourselves here as Senators it should be made clear that if you do not choose to proceed along that route you are just as legal and just as ethical as anyone who does.

Mr. RIBICOFF. I would assume that the overwhelming number of employees in the three branches of Government would not have a blind trust. The failure to have one does not mean there is anything unethical at all. That is completely the choice of the individual in any branch of the Government. It would seem to me were it just the Senate involved I think we should have stayed with the rules adopted by the Code of Conduct in the Senate. But now we are dealing with a governmentwide set of rules and regulations that affect the executive branch, the judicial branch, and the legislative branch. So there has to be uniformity.

The administration feels very strongly that they cannot properly run their administration to attract men of competence unless they use a blind trust route.

We were very careful in having Common Cause's testimony with a set of guidelines, and it is my understanding that the Danforth amendment complies completely with the guidelines laid down by Common Cause.

Mr. JAVITS. Mr. President, if the Senator will yield, I am perfectly satisfied and ask Senator SCHMITT, the ranking minority member of the Ethics Committee, if he could, with Senator STEVENSON, include in the RECORD some assurance for Senators on that score so that there is no implication from the adoption of this amendment that we have changed our policy over the code of ethics, to wit, that we now favor blind trusts for Senators. That was all I had in mind.

Mr. SCHMITT. In response to the distinguished Senator from New York, I will certainly talk with Senator STEVENSON this afternoon and we will come to some agreement on material of that nature to put into the RECORD.

Mr. JAVITS. I thank my colleague very much.

Mr. DANFORTH. Mr. President, I simply wish to add, in response to the Senator from Connecticut, that this amendment would cover the executive branch and Congress. It would not cover the judiciary because, it is my understanding, the judiciary operates under its

own rules and that those do not include provision for blind trusts.

Mr. RIBICOFF. The point is well taken. The Senator is correct.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. DANFORTH. I yield.

Mr. ALLEN. I support the Senator's amendment and in fact support all of title III.

I wish to make this inquiry of him. Since his amendment really does not go fully to the question that I am going to raise, I might ask this of the manager of the bill, the distinguished Senator from Connecticut.

Title III sets up a disclosure system which is at variance with the disclosure required of Senators, staff members, and employees of the Senate. Is it going to be necessary for Senators, also House Members under their ethics provision, to file two statements, one under the ethics rule and one under this rule?

Mr. RIBICOFF. May I respond that they are practically identical, that statute would supersede the rule of the Senate, and there would not have to be two filings. One filing would be arranged, and I had a colloquy with Senator STEVENSON pointing out that the legislative history would apply.

Should the House fail to accept a comparable statement, should we not be able to agree in conference, or should the President veto it, then the rules of conduct adopted by the Senate for itself would supersede the rule. If there are changes, it would be essential, it would seem to me, for the Senate to change its rules accordingly.

Mr. ALLEN. This does satisfy the Senate rule?

Mr. RIBICOFF. That is correct.

Mr. ALLEN. And there would be only one filing?

Mr. RIBICOFF. There would be only one filing.

Mr. ALLEN. I thank the Senator.

Mr. NUNN. Mr. President, will the Senator yield?

Mr. DANFORTH. I yield to the Senator from Georgia.

Mr. NUNN. Mr. President, as one of the cosponsors, I support the amendment. I think it provides a very effective means of preventing a potential conflict of interest for certain individuals, although I would agree with the Senator from New York that there is no presumption one way or the other about what blind trusts could be entered into by individuals in the executive, or judicial branches of the Government.

As Senators will recall, the special committee which drafted the Code of Conduct which the Senate adopted earlier this year decided to disallow the use of a blind trust due to concern that no definitive guidelines for establishment of an effective blind trust existed. During floor consideration of the code, several Senators expressed the belief that the blind trust mechanism, if properly utilized, could provide a very effective means of preventing potential conflicts of interest. As a result, the Senate instructed the Governmental Affairs Committee to study the issue and analyze the alternatives available.

In accordance with these instructions, the Governmental Affairs Committee conducted hearings on the blind trust issue earlier this month. We heard from several sources including Senators, representatives of the administration, and Common Cause. I believe that the consensus of the witnesses who appeared before the committee was that the blind trust mechanism, properly circumscribed, could in fact be an effective tool, in conjunction with public disclosure, in the prevention of conflicts of interest in Government. Most witnesses made constructive suggestions regarding possible guidelines for establishment of such a trust in order to insure its truly blind character. Many of these suggestions have been incorporated into the provisions of the amendment which is being offered today.

It is important to recognize the purpose and effect of a properly constructed blind trust. Such a trust places the corpus out of the knowledge and control of the government official and thereby precludes his use of any information obtained in an official capacity in management of these personal assets. Furthermore, a trust which is truly blind shields the identity of his assets from the knowledge of the official thereby eliminating the possibility of personal holdings influencing official acts. This mechanism, therefore, not only eliminates the appearance of a conflict of interest but, if properly established and utilized, prevents a conflict in fact. Mere public disclosure, while providing the public with information regarding an official's holdings, could result in a conflict of interest because, by definition, the official would also have complete knowledge of his holdings and possibly by influenced thereby. Many public officials have recognized this important point and are currently using the blind trust to prevent conflicts.

Analysis of this kind produced the conclusion that rather than abolish blind trusts our focus should be upon the development of reasonable guidelines for the establishment of a true blind trust. I believe that this amendment does just that. As I mentioned at the outset, many of its provisions represent suggestions made by witnesses at our hearings.

The amendment contemplates providing strict guidelines for the establishment and maintenance of a "publicly disclosed blind trust."

A public official wishing to use such a mechanism must publicly disclose the terms of the trust instrument along with the identity and category of value of each asset which is originally placed in the trust. The assets which are initially placed into the trust are assumed to remain as part of the corpus until such time as the trustee certifies that a particular asset has been disposed of. At that point, due to the strict limitations which are placed on communications between the trustor and the trustee and the required independence of the trustee, the public official will be truly blind to the identity of the newly acquired assets. This mechanism represents an efficient marriage of the principles of public disclosure and the effective shielding properties of a blind trust.

The appropriate supervisory ethics office must approve the trust instrument and the identity of the trustee prior to the trust being certified as a publicly disclosed blind trust. Communications between the public official and the trustee are strictly circumscribed. The official can instruct the trustee regarding the character of investment which is desired and may obtain sufficient information to complete his personal tax return. The information on the trust tax return would not be disclosed to the official. A quarterly report to the public official regarding the total value of the trust or net income is permitted. In addition, a request for cash or other unspecified assets is permitted if made in writing.

In order to insure compliance with the restrictions imposed by this amendment, a penalty of $5,000 is provided for in the event the trustee knowingly or negligently discloses restricted information or if the public official knowingly obtains such information.

Mr. President, these are just a few of the details of this amendment. I believe it represents a compresensive and reasoned approach to the issue of blind trusts. The original concern regarding these trusts was that no uniform standards existed which would guarantee that the trust was in fact blind. This amendment provides standards which were developed after considerable study and in consultation with groups representing all points of view. Adoption of these strict guidelines will provide a public official with the option of utilizing a mechanism which I believe to be an effective tool in preventing potential conflicts. With standards of this kind now available, there is no logical reason to oppose this tool.

ADDITIONAL STATEMENTS SUBMITTED

Mr. DOLE. Mr. President, the Senator from Kansas supports the amendment by the Senator from Missouri. Basically, blind trusts offer a viable alternative for avoiding conflicts of interest for public officials, if we lay down requirements insuring that they are truly blind. My own interest in this matter stems not from my situation, but from my wife's. As a member of the Federal Trade Commission, it is recommended that she establish such a trust to avoid conflict of interest. In her case, it has worked well to insulate her from conflicts problems. This amendment will allow her to continue using this means and avoid the sort of problems which are the subject of this bill.

There is little doubt that the phrase "blind trust" can be abused. Sometimes it is a misnomer used to describe something which is not truly "blind" at all. But the concept is valid and it provides a meaningful tool to avoid conflicts of interest, if the trust comes up to certain standards. By insuring that they are blind, we have served the public interest by eliminating bogus blind trusts and providing another good means for public officials to avoid conflicts of interest.

But how do we regulate such trusts so that they do not hide an official's assets from everyone but the official? And how

do we avoid letting the phrase "blind trust" become a tool of politicians seeking to obscure a conflict of interest? Mr. President, I believe that the amendment will provide the protection needed.

The requirements of this amendment are tough and should serve to eliminate problems. It requires an institutional trustee who is independent of the official, it limits communication between the trustee and the beneficiary, requires disclosures of assets that have not turned over since formation of the trust, and requires that the terms of the trust agreement be made public.

Of course, the public officials integrity act affects high-ranking officials of all three branches and will affect officials throughout the Government. Certainly, the blind trust is a useful mechanism for certain Members of the Senate and House. But there are even more compelling reasons for its use by members of quasi-judicial bodies who can have very serious conflicts problems. Whereas, Members of Congress pass on legislation which almost always has a rather broad effect upon many industries, the member of a regulatory commission passes upon specific cases involving specific corporations. For such an individual disclosure creates, rather than solves, a conflict of interest problem. The fact that the bill we are considering today affects not only ourselves, but members of quasi-judicial bodies as well is an even more compelling reason for passage of this amendment.

Mr. President, I urge adoption of this amendment. This is not the first time that this issue has come before this body. Senator BARTLETT offered an amendment with the same basic thrust during the ethics code debate. At that time, the managers of the bill expressed a desire to have further study on this important matter. Such a study was mandated and the amendment which we have before us now is largely the product of that effort. The Senator from Kansas compliments those who were involved in working out this language and urges adoption of this approach for avoiding improper influences and the appearance of impropriety in the conduct of our official duties.

Mr. RIBICOFF. Mr. President, I yield back the remainder of my time.

Mr. DANFORTH. Mr. President, I ask for a vote.

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

The amendment, as amended, was agreed to.

Mr. DANFORTH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The clerk will state the first committee amendment.

The legislative clerk read as follows:

On page 43, strike the period after line 1, and insert "by and with the advice and consent of the Senate".

On line 22, after the word "prosecutor", insert "by and with the advice and consent of the Senate".

The PRESIDING OFFICER. Who yields time?

Mr. RIBICOFF. Mr. President, I oppose this amendment. I understand the distignuished Senator from Alabama has an amendment to that section.

I suggest the absence of a quorum, the time for the quorum call to be taken out of my time.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

UP AMENDMENT 554

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

The PRESIDING OFFICER (Mr. ANDERSON). Without objection, it is so ordered.

Who yields time?

Mr. STONE. Will the managers of the bill yield me 2 or 3 minutes for an amendment?

Mr. RIBICOFF. The Senator may have a half hour if he wishes.

Mr. STONE. I thank the Senator.

Mr. President, I call up an amendment at the desk.

The PRESIDING OFFICER. Until the two committee amendments are——

Mr. STONE. Mr. President, I ask unanimous consent that the pending amendment be set aside temporarily.

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

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Florida (Mr. STONE), for himself and Mr. MCINTYRE, proposes unprinted amendment numbered 554.

On page 104, line 9, insert "(i)" after "list".

On page 104, line 11, after "property" insert ", or (ii) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value,".

On page 104, line 21, after the end period insert: "In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.".

Mr. STONE. Mr. President, in response to the suggestions of the Senator from Illinois, the committee staff drafted this amendment for the Senator from New Hampshire (Mr. MCINTYRE) and myself in order to require that, if this additional mode of reporting were used, the method of reporting, the method of tax assessment, the formula, would have to be revealed and the full valuation computed and shown. In the reporting of real estate and personal property that is subject to local, State, or county tax assessments, this amendment allows the officeholder to compute his valuation year to year, or as often as we are required to report, based on the neutral assessment of an elected or appointed tax assessor or his equivalent, instead of the only other two methods now in the bill, cost or market.

It is frequently difficult to assess actual cost. For example, if someone builds a construction project over a period of time, the valuations of the goods and materials and services get very difficult to value properly. The skepticism of the public can be wreaked on one in cases like that.

Here, if there is a tax assessor and if someone wants to compute the value of his real estate or personal property according to the tax assessment—let us say the assessor values generally, in the county or the State or the district, at 90 percent—we would put in tax assessed value by the such-and-such authority; formula used, 90 percent; plus the 10 percent. The form would show the total, the estimate, and people can go and check. Those records are public. The tax assessment records are public as well. It takes care of the inheritance situation, the Government situation, the self-construction situation, and those people who do not want to put their property on the market, nor, for the reasons I have advanced, find it possible, or readily possible, to discuss costs.

I have asked that the managers of the bill look favorably upon this.

I reserve the remainder of my time.

Mr. RIBICOFF. Mr. President, we have had a colloquy on this before. During the course of other colloquies with the chairman of the Committee on Ethics, I pointed out to him that the distinguished Senator from Florida and the distinguished Senator from New Hampshire were going to propose this type of amendment. I understand the problem being posed by the Senator from Florida and I am sympathetic with the problem.

I find it acceptable to me as an alternative, and I accept the amendment of the Senator from Florida.

Mr. STONE. I thank the manager of the bill.

Mr. PERCY. The Senator from Illinois not only finds it acceptable, but I commend the Senator from Florida for raising the point. I think it provides a very quick and easy way of arriving at a fair evaluation, probably better than drawing three or four brokers in and having an assessment made, and the cost is based on a percentage of the assessed value, which I think we might find higher.

I think this is perfectly fair and acceptable method and, as long as the provision has been made, as it has, that it is adjusted, so it is known on the face of it and the individual does not have to go back and probe and dig as to how that assessment of value was made, I think the Senator has made a distinct contribution to our bill. I find it acceptable.

Mr. STONE. I really appreciate that.

Mr. STEVENSON. Mr. President, I want to make sure that what we are doing here does not erase something done earlier. The point is that the three procedures that will now be established for evaluation of land with the adoption of this amendment, are not exclusive.

Mr. STONE. No, they are not.

Mr. STEVENSON. They can be used,

not just as a basis for determining the value, but as one among several indices which a Member can use to arrive at an informed opinion about the value, which would then go into the report. So there are these three, but they are not an exclusive list.

Am I not right?

Mr. STONE. That is correct.

Mr. RIBICOFF. The Senator from Illinois is correct and this is an additional alternative.

Mr. STEVENSON. I thank the Senator.

Mr. RIBICOFF. I yield back the remainder of my time.

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

The amendment was agreed to.

The PRESIDING OFFICER. The question recurs on the first committee amendment.

Who yields time?

The Senator from Alabama.

Mr. ALLEN. Mr. President, I ask unanimous consent that the committee amendments may be laid aside temporarily in order that I might bring up an amendment which is at the desk.

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

UP AMENDMENT NO. 555

Mr. ALLEN. Mr. President, I submit this amendment on behalf of myself, Senator HATCH, and Senator HELMS, and I ask unanimous consent that their names be added to the amendment.

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

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN), for himself, Mr. HATCH, and Mr. HELMS, proposes an unprinted amendment numbered 555.

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

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

On page 63, delete lines 22 through 24 and lines 1 through 20 on page 64 and insert in lieu thereof the following:

"(a) Beginning with the two-year period commencing on the date chapter 39 of this title takes effect, five judges or justices shall be assigned for each successive two-year period to a division of the United States Court of Appeals for the District of Columbia to be the special panel of the court for the purposes of chapter 39 of this title.

"(b) Except as provided in subsection (f) of this section, assignment to the division established in subsection (a) of this section shall not be a bar to other judicial assignments during the term of such division.

"(c) In assigning judges or justices to sit on the division established in subsection (a) of this section, priority shall be given to senior retired circuit judges and senior retired justices.

"(d) The chief judge of the United States Court of Appeals for the District of Columbia shall make a request to the Chief Justice of the United States, without presenting a certificate of necessity, to designate and assign, in accordance with section 294 of this title, five circuit court judges or justices, one of which shall be a judge of the U.S. Court of Appeals for the District of Columbia, to the division established under subsection (a) of this section."

Mr. ALLEN. Mr. President, I yield myself such time as I may use.

Mr. President, there is a body of legal opinion to the effect that the courts cannot appoint a special prosecutor. The committee states that they have sufficient legal opinion to justify it in proceeding with the bill as drawn; that is, having the special prosecutor chosen, in effect, by the courts.

That might probably well be decided at a later date in litigation on the subject.

But the method provided in the bill for choosing the panel which chooses the special prosecutor is not of a nationwide composition. The bill, as drawn, provides that the chief judge of the Circuit Court of Appeals of the District of Columbia shall have the right, if he sees fit, to appoint the panel or, in his discretion, to call on the Chief Justice to appoint the panel.

If he so desired, he could appoint the panel from members of his own court only. So that the members of a panel having a nationwide problem before it under the present bill would be chosen by the chief judge of the Court of Appeals of the District of Columbia from members of his court.

Now, the amendment offered by the distinguished Senator from Utah and the distinguished Senator from North Carolina provides that the panel will be set up in this fashion, that the chief judge of the Court of Appeals of the District of Columbia shall request the Chief Justice to appoint a panel of five, whereas the bill calls for three. One of those five would have to be a judge of the Circuit Court of Appeals of the District of Columbia. The other four could be from circuit courts throughout the country, from any of the 11 circuit courts of appeal.

They could be members of the Supreme Court, or circuit courts of appeals, or retired Justices of the Supreme Court, or retired members of the court of appeals.

Then that panel having been so chosen would not have any authority to appoint a special prosecutor, and this is also provided in the bill, once the panel is set up the procedure is the same under the amendment as under the bill. But the Attorney General, if he has sufficient complaints about unlawful activity by the officers named in the bill, President, Vice President, Cabinet officers, certain top-ranking officials, and he makes an investigation and finds that there is reasonable grounds for naming a special prosecutor, could request the special prosecutor to be appointed by the panel.

The panel then would appoint the special prosecutor. It would not necessarily be only one special prosecutor. There could be one special prosecutor appointed in the area of a particular illegal activity by certain officials, another special prosecutor, provided the Attorney General made the request, appointed to investigate and prosecute in an entirely different area.

It is left in the hands of the Attorney General to make the request and then he would have I would hope, something approaching a nationwide panel of five throughout the country, rather than three judges chosen on the Court of Appeals here in the District of Columbia.

I believe this ought to be spread out over the country and that is what the amendment provides.

Mr. RIBICOFF addressed the Chair.

Mr. HATCH. Will the Senator yield?

Mr. RIBICOFF. Mr. President, I thank the distinguished Senator from Alabama and the Senator from Utah and the Senator from North Carolina for improving the bill and making a distinct contribution.

The amendment is acceptable to the manager of the bill.

I want to make it clear that what has been provided in the amendment is in accordance with the definition in article II, section 2, clause 2, of the Constitution as follows:

But the Congress may, by law, vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or the heads of the Department.

I do believe that the amendment by the distinguished Senator from Alabama does comply with article II, section 2, clause 2 of the Constitution.

The amendment is acceptable to the manager of the bill.

Mr. PERCY. Mr. President, the amendment is acceptable and I join my distinguished colleague in commending Senator ALLEN for his contribution.

Mr. ALLEN. I thank the Senator.

Mr. President, I yield such time as the distinguished Senator from Utah desires.

Mr. HATCH. Mr. President, as I understand it, this amendment provides that the five judges to be appointed by the Chief Justice will be from different circuit courts of appeals or the Supreme Court Justices, is that correct?

Mr. ALLEN. Yes.

I think it might be well to provide—I wonder if the floor manager would agree to this modification—that not more than one member of the panel would come from any one circuit?

Mr. RIBICOFF. Mr. President, I have no objection at all if the Senator would like to so modify his amendment.

Mr. ALLEN. I so modify my amendment.

The modification is as follows:

At the end of the Allen amendment (UP-555) add the following:

"Not more than one judge or justice or retired judge or justice may be named to the panel from a particular court."

Mr. HATCH. Mr. President, I believe the Senator stated in his recitation of the amendment that one of the five judges would be a D.C. court of appeals judge. I thought he could come from any court of appeals.

Mr. RIBICOFF. I think the reason for that is that the Attorney General is in Washington, the Chief Justice is in Washington, the administration is going to be in Washington, and if you had five men from all over the country, it

would be very complex. It would be much easier for administration and the facilities of the court if at least one of the judges would be from the circuit court in the District of Columbia; but he would be appointed, of course, by the Chief Justice. He would make that choice. It is a matter of convenience in the panel.

This approach assures that the appointment will be by a "court," within the meaning of title III of the Constitution, and that the appointment procedure will satisfy article II, section 2, clause 2 of the Constitution.

Mr. HATCH. I believe there still are constitutional questions, and I do not want to fail to say that. However, I think this is a reasonable approach that may resolve the difficulties, and I hope it will. So I support this amendment and associate myself with the remarks of the distinguished Senator from Alabama.

Mr. ALLEN. Mr. President, I modify my amendment by adding at the end thereof the following sentence:

Not more than one judge or justice or retired judge or justice may be named to the panel from a particular court.

The PRESIDING OFFICER. The amendment is so modified.

Mr. ALLEN. Mr. President, I yield back the remainder of my time.

Mr. RIBICOFF. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

The PRESIDING OFFICER. The question occurs on the first committee amendment.

Mr. RIBICOFF. Mr. President, I oppose the committee amendment. I think the other amendment has taken its place. I yield back the remainder of my time.

I ask that the first committee amendment be rejected.

Mr. ALLEN. That has been supplanted by my amendment.

Mr. RIBICOFF. That is right. The first committee amendment really has been supplanted by the Allen amendment.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was rejected.

The PRESIDING OFFICER. The clerk will report the second committee amendment.

Mr. RIBICOFF. The second committee amendment, I believe, has been adopted.

The PRESIDING OFFICER. There are some other parts of the amendment that have not been adopted or acted upon.

Mr. RIBICOFF. At the beginning of the session, we asked unanimous consent that these amendments——

The PRESIDING OFFICER. The amendment by the Senator from Illinois adopted one part of committee amendment No. 2.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that all other Judiciary Committee amendments be tabled.

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

Mr. RIBICOFF. Now we are back to the bill.

A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. RIBICOFF. The bill is open to further amendment. Is that correct?

The PRESIDING OFFICER. Yes.

UP AMENDMENT NO. 557

Mr. SCHMITT. Mr. President, I have at the desk an unprinted amendment submitted by myself and Mr. JAVITS.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Mexico (Mr. SCHMITT), for himself and Mr. JAVITS proposes an unprinted amendment numbered 557.

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

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

The amendment is as follows:

On page 105, line 10, strike the period and add the following: "if such interests are within the constructive control of the reporting individual. For the purposes of this subparagraph, an interest is in the constructive control of a reporting individual if the enhancement of the interest would substantially benefit the reporting individual".

On page 106, after line 25, redesginate subparagraph "(e)" as subparagraph "(f)" and insert the following new subparagraph:

"(e) An individual only is required to report information within his knowledge.".

Mr. RIBICOFF. Mr. President, will the Senator yield?

Mr. SCHMITT. I yield.

Mr. RIBICOFF. Mr. President, I believe we should have a quorum call so that Senator CHILES and Senator EAGLETON will have an opportunity to come to the floor and handle this amendment.

Mr. HELMS. Mr. President, will the Senator withhold that?

Mr. RIBICOFF. Yes.

Mr. HELMS. Mr. President, I ask unanimous consent that Dr. Jim McClellan, of my staff, have the privilege of the floor during the discussion of this measure and any votes thereon.

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

Mr. HELMS. 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. RIBICOFF. 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. RIBICOFF. Mr. President, I ask unanimous consent that the Schmitt-Javits amendment be temporarily laid aside, subject to an amendment being brought up by the Senator from Pennsylvania (Mr. HEINZ).

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

UP AMENDMENT NO. 558

Mr. HEINZ. Mr. President, I send an unprinted amendment to the desk and I ask for its immediate consideration. I offer this amendment on behalf of myself and Senator CHILES of Florida.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ), for himself and Mr. CHILES, proposes unprinted amendment numbered 558.

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

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

The amendment is as follows:

On page 118, after line 8, add the following new section and redesignate subsequent sections accordingly:

"ADVISORY COMMISSION ON ETHICS

"SEC. 308. (a) There is established an independent advisory commission to be known as the National Advisory Commission on Ethics in Government (hereinafter in this section referred to as the "Commission").

"(b)(1) The Commission shall be composed of nine members who shall be appointed from private life, as follows:

"(A) three appointed by the President of the United States, no more than two of whom shall be affiliated with the same political party;

"(B) two appointed by the President of the Senate, provided that such appointees shall not be affiliated with the same political party;

"(C) two appointed by the Speaker of the House of Representatives, provided that such appointees shall not be affiliated with the same political party, and

"(D) two appointed by the Chief Justice of the United States, provided that such appointees shall not be affiliated with the same political party.

"(2) The Commission shall elect a Chairman and a Vice Chairman from among its members. The Chairman and the Vice Chairman shall not be affiliated with the same political party. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman.

"(3) The terms of office of persons first appointed as members of the Commission shall be for the period of the 1979 calendar year.

"(4) After the close of the 1979 calendar year, persons shall be appointed as members of the Commission with respect to the 1983 calendar year. The terms of office of persons so appointed shall be for the period of the 1983 calendar year.

"(5) A vacancy in the membership of the Commission shall be filled in the manner in which the original appointment was made.

"(6) Each member of the Commission shall be paid at the rate of $100 for each day such member is engaged upon the work of the Commission, and shall be allowed travel expenses, including a per diem allowance, in accordance with section 5703(b) of title 5 of the United States Code, when engaged in performance of services for the Commission.

"(c)(1) Without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates, and on a temporary basis for periods covering all or part of any calendar

year referred to in subsection (b) of this section—

"(A) the Commission shall appoint an Executive Director and General Counsel and fix their basic pay at the rate provided for level V of the Executive Schedule by section 5316 of Title 5 of the United States Code; and

"(B) with the approval of the Commission, the Executive Director is authorized to appoint and fix the basis pay (at respective rates not in excess of the maximum rate of the General Schedule in section 5332 of Title 5 of the United States Code) of such additional personnel as may be necessary to carry out the function of the Commission.

"(2) Upon the request of the Commission, the head of any department, agency, or establishment of any branch of the Federal Government is authorized to detail, on a reimbursable basis, for periods covering all or part of any calendar year referred to in subsection (b) of this section, any personnel of such department, agency, or establishment in carrying out its functions.

"(d) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

"(e) The Administrator of General Services shall provide administrative support services for the Commission on a reimbursable basis.

"(f) The Commission shall conduct, in each of the respective calendar years referred to in subsection (b) of this section, a review of—

"(1) the effectiveness in avoiding conflicts of interest and the efficiency of the operation of the financial disclosure system established by this title, and a summary of actions taken under Sec. 307 for—

"(A) Members of Congress, Congressional candidates, legislative branch employees;

"(B) the Judiciary, and

"(C) executive branch officials and employees.

"(2) the effectiveness and frequency of use of remedies for conflicts of interest, including but not limited to, divestiture and disqualification and blind trusts;

"(3) the effectiveness of the enforcement systems established to insure compliance with financial disclosure and other requirements designed to minimize conflicts of interest.

"(4) the effectiveness of post-employment restrictions established by this title in eliminating the interchange of personnel between government and industry, and whether the preemployment reporting requirements established by this title reveal any need for additional legislation to avoid conflicts of interest arising from previous employment.

"(5) any other matters relating to the financial conflicts of interest of public officials.

"(g) The Commission shall submit to the President of the United States, the President of the Senate, the Speaker of the House of Representatives and the Chief Justice of the United States a report of the results of each review conducted by the Commission under subsection (f) of this section, together with its recommendations. Each such report shall be submitted not later than January 1 next following the close of any calendar year in which the review is conducted by the Commission.".

Mr. HEINZ. Mr. President, this amendment which I have discussed with both Senator RIBICOFF and Senator PERCY establishes an Advisory Commission on Ethics that would meet once every 4 years for a period of time during the year in which it would meet, starting in calendar 1979 and then meeting again in calendar 1983.

The purpose of this advisory commission would be to help Congress, the executive branch, the judicial branch, in evaluating the question of how well the ethics laws in S. 555 really are working.

The reason we need, Mr. President, it seems to me, an independent Advisory Commission on Ethics as proposed in this amendment is because we do not want to be in the position of the fox doing oversight on the chicken coop. Since in this bill we do call upon Congress, call upon the executive branch, call upon the Civil Service Commission, the Attorney General, specifically in the executive branch to construct and enforce the code of ethics, it seems to me we need periodically someone who is in a position to be totally objective about just how well our ethics laws will work.

What we want, Mr. President, is for this commission to tell us whether the rules that the various enforcement and standards-setting organizations that are created or established in S. 555 are doing a good job and establishing good rules, we want to be advised as to the effectiveness of enforcement and, finally, and I think this is particularly pertinent to all our colleagues, we want to be assured that when advisory opinions are given by any of these organizations to any of the three branches that those advisory opinions are timely, accurate, adequate, and clear.

That, Mr. President, is the basic purpose of this amendment. As I said, the commission meets every 4 years for up to a year, the details of which are set forth in the amendment.

Mr. President, I would be happy to yield to my good friend, the Senator from Connecticut.

Mr. RIBICOFF. Mr. President, the amendment is acceptable to the manager of the bill.

Mr. PERCY. It is certainly acceptable to the Senator from Illinois.

The PRESIDING OFFICER. Is all time yielded back?

Mr. RIBICOFF. Mr. President, I yield back the remainder of my time.

Mr. HEINZ. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 559

Mr. RIBICOFF. Mr. President, on behalf of the Senator from South Dakota (Mr. ABOUREZK) I send a correcting typographical amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Connecticut (Mr. RIBICOFF) for Mr. ABOUREZK proposes unprinted amendment No. 559.

On page 75, line 12 insert the word "subcommittee" before the word "or".

Mr. RIBICOFF. Mr. President, this amendment corrects a typographical error in section 203 of title II. It conforms section 203 to section 206 so both authorize counsel to intervene in a case in the name of a subcommittee.

Mr. President, I ask unanimous consent that the Senator from Colorado (Mr. HASKELL) be added as a cosponsor of this amendment.

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

Mr. RIBICOFF. Mr. President, I move that the amendment be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

MOTION TO RECONSIDER VOTE

Mr. ALLEN. Mr. President, I ask unanimous consent to move to reconsider the vote by which the amendment of the Senator from Utah, the Senator from North Carolina, and the Senator from Alabama was agreed to.

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

Mr. ALLEN. Mr. President, I move to reconsider the vote by which the amendment of the Senator from Utah, the Senator from North Carolina, and the Senator from Alabama was agreed to.

Mr. HELMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

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

UP AMENDMENT 557

Mr. SCHMITT. Mr. President, the amendment offered by myself and Senator JAVITS provides for S. 555 the same language that was incorporated in Senate Resolution 110 dealing with the subject of the interest of an individual's spouse with respect to reporting of financial activities.

As I said in introducing a similar amendment on March 23, 1977, I think it is extremely important in this day and age that we recognize even among ourselves that the individual interest of Americans is in many cases separable and should be separable from the interest of their spouses or the people upon whom they depend for the majority of their sustenance.

If we do not so recognize then we are going into the face of a general trend that has been established in this country.

I call to the attention of my colleagues the equal rights amendment and other activities that are aimed at the very problem of the individual rights of Americans, whether male or female, or of any ethnic minority, racial minority or religious minority.

I think it is inappropriate for the Senate to take a different course than is being taken by the rest of the Nation.

For further history and discussion I refer the Senate to the debate on this issue on March 23 and March 24, 1977.

At the conclusion of that debate, the

language of this amendment was agreed to by the Senate by a vote of 93 to 1.

Basically, the amendment is that the interests would be reported if such interests are within, quoting from the amendment—

The constructive control of the reporting individual. For the purposes of this subparagraph, an interest is in the constructive control of a reporting individual if the enhancement of the interest would substantially benefit the reporting individual.

In another portion of the amendment, we deal with the reporting requirements on an individual under this legislation, and say that "An individual only is required to report information within his knowledge."

So basically we are, in this amendment, providing for some reasonable latitude in the relationships between individuals and their spouses and other members of their families.

Mr. President, I yield the Senator from New York such time as he may require.

Mr. RIBICOFF. Mr. President, will the Senator yield me just a moment?

Mr. JAVITS. I yield.

Mr. RIBICOFF. Mr. President, I ask for the yeas and nays on passage.

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

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, I believe that the matter has been so thoroughly debated here that we can assume that members have some recollection of the debate, but I believe that the interchange in connection with the debate is so important that I direct the attention of my colleagues to the debate on a comparable amendment considered in the Senate on March 23 and March 24, to be found at pages 8844 through 8973, insofar as it relates to the comparable amendment, which I believe was amendment No. 84.

Mr. President, this raises, as everyone knows, the very difficult problem of the modern woman and the Senator, or the modern Senator and the modern husband, in that we all feel, and the expressions were very great at the time of the debate on the provision which is now in our own Ethics Code, that it simply is impossible to have the old-fashioned standard which is contained in this bill, which is an absolute standard that the husband must report upon the wife as if he were both people. Of course, Mr. President, modern wives have their own interests and their own affairs in terms of business, and will not take kindly to this merging of personalities.

Then it is by no means always true that wives and husbands file joint returns. In my family, we do not. My wife files a separate return; she has business interests of her own, and I do; and there are other families where the same things occur. Quite a few Senators, Mr. President, spoke on this issue with great feeling at the time it was up before, and ultimately it carried, the amendment now proposed by Senator SCHMITT and myself, by a vote of 93 to 1, with the concurrence, by the way, of Senator RIBICOFF and Senator PERCY.

I am a member of the Government Affairs Committee; as a matter of fact, I am the second-ranking Republican member, and when the matter came up, we debated this issue rather hotly. A majority of the committee—the vote was 7 to 4—went with what I consider a very old-fashioned provision contained in the bill, at pages 105, lines 7 to 10, and did not even wish to qualify it with the requirement of knowledge, which seemed rather arbitrary and unreasonable, and Senator SCHMITT and I felt that the matter had to be pressed here.

Since that time there have been a considerable number of second thoughts, and it has been recognized that this matter has to be not quite as cut-and-dried as it is inserted in this bill. By the way, the expressions of opinion were that because it was universally applicable to both the executive and legislative departments, we could not make the distinction we had made in our own Code of Ethics. A number of Members voted that way who have as fully at heart as I have the new independence of women. I am very gratified and was deeply grateful that Senator RIBICOFF, the chairman of the committee, voted with us, which was very much in fidelity to the position he had taken on the new amendment we had won to the Ethics Code.

The Committee on the Judiciary had some second thoughts on this, too, and they have come to us with a suggestion for compromise of this provision. I would like, if I may, with the indulgence of the managers of the bill, to ask a couple of questions on that compromise.

I read the proposed compromise into the RECORD, Mr. President, as follows:

It would add, at line 10 of page 105, the following:

Provided, That a reporting individual shall not be required to report any specific information concerning interests of a spouse or dependent if the reporting individual certifies to the supervising ethics office that (a) he or she has no knowledge of such information; (b) he or she has made every reasonable effort to obtain the required information from his or her spouse or dependent; (c) he or she derives and expects to derive no benefit from such interest; and (d) that such interests were not derived directly or indirectly from interests or income formerly owned or controlled by the reporting individual.

Mr. President, I believe, as to the items of this compromise that I have read, that items (a), (c), and (d) are themselves encompassed within the provisions now in the Senate Code of Ethics, to wit:

For purposes of this paragraph, an interest is in the constructive control of a reporting individual if the enhancement of the interest would substantially benefit the reporting individual.

I do not believe that anything is added, really, because I think it is within the spirit of items (a), (c), and (d) that if an individual has any real interest in the matter, that individual should report it, of course—either direct or indirect, or constructive, or whatever. The only questions that worry me are these, and I would like to kind of talk these out with the manager of the bill:

One is this: He or she shall have no knowledge of such interest.

That raises this question: If we look at the Code of Ethics and what is required to be reported, we find that it relates to subsection (a) (3) of this particular provision, which says this:

The identity of each source of income, other than earned income, received during such calendar year which exceeds $100.

And so on.

That means that the wife's income must be reported if the Member has knowledge of it.

Many women object to that, on the ground that it gives illusory ideas as to what wealth they have—you know, that it means they are going to be overcharged by the hairdresser, or will be the subject of efforts to sell by stock salesmen, and so on. There is objection to that on the ground that it is none of anybody's business what their income is, if the husband has no constructive interest, which is the language of the Senate ethics bill on that particular subject.

I will ask all my questions at once so they can be answered together.

As to earned income, the only requirement is that the husband shall report who the wife works for and whether she earns $1,000 a year.

That is the earned income provision. But then this requirement for reporting goes on to another section, which is section 302 (e) through (i), and that calls for reporting the following:

The identity and category of value of each item of real property held, directly or indirectly,

Which has a fair market value in excess of $1,000.

That, again, is a matter of disclosing the wife's property, even if her husband has no constructive interest.

(2), the identity and category of value of each item of personal property

Having a value in excess of $1,000.

I would have to disclose what she has in the way of jewelry, let us assume.

(f), the identity and category of each—

Mr. RIBICOFF. I think the wife's jewelry would be exempt from being required to be reported. It is personal and has nothing to do with business. They do not have to report the wife's jewelry.

Mr. JAVITS. That would not be considered.

(f), the identity and category of value of each personal liability.

That would have to be stated, would it not?

Mr. RIBICOFF. If the husband knew it.

Mr. JAVITS. "(g), the identity, date, and category of value of any transaction, directly or indirectly, in securities or commodities during such calendar year exceeding $1,000, except that (1) the identity of the recipient of any gift" involving any transaction within the family.

So all of her transactions in securities would have to be stated if he had knowledge.

Mr. RIBICOFF. If he had knowledge.

Mr. JAVITS. Then, further:

(h) the identity, date, and category of value of any purchase, sale, or exchange, directly or indirectly, of any interest in real property,

Except, again, the identity of any charitable gift, the number of acres, the street address, and so on. So it would apply to a personal residence.

(i) the identity of and a description of the nature of any interest in an option, mineral lease, copyright, or patent right held during such calendar year.

That is the limit of the disclosure which needs to be made.

The question I would like to ask the Senator is this: I can understand where transactions in securities or gifts which the wife might receive, and transactions in real property, might conceivably, if the parties were not separated, give some clue to some impropriety of activity, but I must say that I am a bit confounded by the nonearned income.

Also, I can even understand the fact that she is employed by somebody.

I must say I am deeply concerned about the flat reporting proposition of the exact amount of her income so it is very clear that X's wife is wealthy, without any relationship whatever to whether these were ill-gotten gains or whether the husband in any way was responsible in some way which would trace any impropriety to him. That worries me.

May I hear from the manager his view as to that proposition, how he feels it might be justified?

Mr. RIBICOFF. I am in the embarrassing situation of having strongly believed that all property of the spouse should be reported. During the debate on the adoption of the code of ethics, I agreed to the compromise offered by the Schmitt-Javits proposal and I accepted it. I felt honor-bound, having accepted it, when it came up in the Governmental Affairs Committee. Even though I basically believed in full disclosure of the spouse's interest, I feel bound to keep with my original compromise and acceptance of the proposal on the floor of the Senate. Consequently, I voted against my personal belief, voted with the distinguished Senator from New York, and I was in the minority.

I would be pleased, naturally, if we could work out the compromise the administration seeks with the distinguished Senator from New York and the distinguished Senator from New Mexico because that would obviate many problems.

Again preliminarily, their concern is that we are not now dealing with 100 individuals of the U.S. Senate. We are passing a general law that applies to some 15,000 people in the executive and legislative branches. Consequently, it would be impossible to get involved in interpretation of what is constructive knowledge. Therefore, they want an absolute reporting of the spouse's interest. Because from their experience in working out the problems and information requested from the appointees in the executive branch, they felt it was necessary to have an absolute.

Consequently, in the proviso that we are talking about, if I could go over them one by one, if the Senator or the employee has no knowledge of his wife's interest, that is clear. He or she has made every reasonable effort to obtain the required information from his or her spouse and dependents. I personally would not expect the Senator to go out and hire a private detective to find out what his wife does or does not have.

Mr. JAVITS. Or chain her to the bedstead.

Mr. RIBICOFF. Or chain her to the bed post. [Laughter.]

I would suppose if his wife was very active in the real estate market, and he read in the paper that she had bought a piece of property, he would know that. If his wife was very active in the commodity market, in the stock exchange, he certainly would have a right to make inquiry if her income was high.

That he or she derives and expects to derive no benefit from such interest. Well, one does or does not.

If a husband and wife are living together and know what their salary is and the husband finds out they have a home in Palm Beach and one in Long Island on Fairfield County, and they are living in a home with two extra automobiles, he must realize there is an income coming from somewhere and he is getting the benefit from it. He is swimming in the swimming pool or living in Palm Beach. I think under those circumstances there would be an obligation on his part to try to determine where that income came from because he is a direct beneficiary.

Of course, (D) should be very easy. If the spouse's interest and income comes directly from gifts that the government official had given him or her, or joint ownership or conveyance made by the government official or the establishment of a trust, it would seem to me there is an obligation on the government official's part to disclose.

May I say that all of this is subject to interpretation by the Ethics Committee.

Personally, as a member of the Ethics Committee, I would take the word of my fellow Senators, that they tried to do (A), (B), (C), or (D). Unless it was so obvious that there was a falsehood involved or an evasion, I do not think I would question the bona fides, an affidavit, or statement of my fellow Senators, personally.

The control over what happens with this body of 100 individuals would be derived from the six colleagues who are on the Ethics Committee. Having served with the other five men, as we go over the problems, I find a sense of fairness and broadmindedness.

When it comes to the employees in the executive branch, that determination is going to have to be made by the Civil Service Commission, which will have an office to check on the 12,000 men and women in the executive branch who are covered. I suppose the President, before making an appointment, would have the right to be more exact. I would not place 100 individuals in the U.S. Senate in the same category as an appointee in the executive branch. We have been elected by the people of our States. I have the utmost faith and confidence in the honesty and integrity of my fellow Senators.

Once this is adopted and becomes law, the Ethics Committee will have the problem of wrestling with the questionnaire which will be drawn up by the staff, the Senator from New Mexico, myself, the Senator from Connecticut (Mr. WEICKER), the Senator from Texas (Mr. TOWER), the Senator from North Carolina (Mr. MORGAN), and the chairman (Mr. STEVENSON). My feeling is we are not going to put any Senator through the third degree. We are going to make up a questionnaire. My feeling is that in the face of something very obvious we will take what is reported. I have a belief in the bonafides of my fellow Senators that they are going to tell the truth in answering these. I do not know how else I can respond to the Senator. I have faith in the other 99 men in this body.

Mr. JAVITS. I think the Senator is responding very frankly and very properly. I shall tell the Senator what worries me.

The question is whether, because a woman is married to a Senator and without any constructive trust of any kind or character—no benefit whatever by that Senator—in her earnings and her property or anything else, because she is his wife, if she does not want her affairs spread on the public record, she has to be separated from him. That is really what this gets down to. That is what really worries me.

I think it is a real worry. With the modern, independent woman, do we want to say to her, "Because you are married to a Senator, your affairs are public property, even though, if you were not married to him, they would be completely private, unless you choose to separate from him to keep your affairs private"?

Mr. RIBICOFF. I do not want any wife to separate from a Senator for that reason. But let me put it this way: I hate from the bottom of my soul the fact that any of us, including myself, has to spread on the public record what we have or do not have. But as a U.S. Senator, we are required to do so.

I suppose that if a person marries a man in politics and he is a U.S. Senator, it is required of the U.S. Senator; there are prerequisites that the spouse gets, and the honor of being married to a Senator. And there are certain disabilities; the fact that the spouse cannot spend as much time with her husband as she might like, the fact that there are long periods of time when she does not have his companionship, and times when she has to go and campaign with him when she may not like going campaigning with him. I suppose one of the disabilities she has is that she has to disclose her financial assets when she marries the guy.

I do not know how else I can answer the distinguished Senator. There are benefits and detriments to being married to a U.S. Senator or public official. All of us in public life know it. We know what they are without detailing it.

I suppose our wives have the same benefits, the same disabilities. I know of no way, may I say to the Senator from New York, for whom I have the highest respect, that I can give assurance or that I can come up with a standard that will affect 100 Senators evenly. We are 100 distinct personalities. We are married to women who are variables, as they should be, with distinct personalities.

We are never going to find a rule that will satisfy 100 Senators and 100 spouses.

I tried, the best way I could, as we developed the Code of Conduct, to listen to the problems. Two men on this floor had a problem that is completely legitimate, and I think we responded. The Senator from Kansas married a woman, a great lady, who is in the Federal Government. The Senator from Delaware is married to a woman who has an independent profession, and a respected profession. Throughout this body, we have similar situations.

I do not know how we can take care of every case. We took care, I believe, of the problem of the Senator from Kansas and the Senator from Delaware and the Senators similarly situated. If I could make provisions for 100 Senators with 100 separate problems, I would take the time to do so. I do not know how we can do it in law. I will be very honest with the Senator from New York. I do not know how to do it.

Mr. JAVITS. I yield to the Senator from Illinois.

Mr. PERCY. I think it is well to keep in mind that we are not just talking about Senators. This is a male institution as of now, but we are talking about the executive branch as well, and a great many employees there. We are also talking about the problem that would be encountered when the administration seeks out, say, a wife of some prominent businessman, whose business affairs are very sizable. The wife is brought into Government at a very high level and requires his full and complete disclosure. This presents, I think, a considerable problem.

We have, in a sense, taken care of that kind of problem by providing, now, for a blind trust. There is an honorable route that can be followed by that couple, if they so desire.

I also point out to my colleague from New York, the author of this amendment with Senator SCHMITT, that it is possible, of course, to merge and combine the income and report it as a couple. That is fully provided for. It does not require that there be a separate reporting for one spouse and a separate reporting for another. They can be merged together. By deduction, I presume, because we have put a limitation on outside earned income of Senators, it can be easily deduced how much of the outside earned income is of the other spouse.

By providing for the blind trust route, I think we have provided an avenue. But also I think that the Senator from New York and the distinguished Senator from New Mexico (Mr. SCHMITT), who have worked so diligently in this field, in the wording of this amendment that they are now offering, have provided a protection. They have taken into account and recognized that people have separate lives and there are separate circumstances.

All we are saying in this amendment, and I support the amendment, is that every effort must be made to obtain the information. This is unlike the case that we talked of before, where we were not taking a position. There was a neutral position by the Congress as to whether someone goes the route of full disclosure or goes the route of blind trust. Either route is looked upon as an honorable route to pursue, equally meritorious. In this case, the burden of responsibility is placed on the officeholder to make every reasonable effort to obtain the information. If he simply cannot, then, obviously, he cannot disclose his spouse's finances. I think that there is a provision for that.

The one question I have of the author of the amendment concerns the subsection "c" dealing with whether the spouse derives and expects no benefit from such interest. I ask whether or not that can be defined in this colloquy a little more precisely, because that could be subject to a lot of interpretation. Even though the one spouse received no direct payments, no direct benefits, as the distinguished Senator from Connecticut said, if they share in a swimming pool that may have been built by the spouse, has the officeholder benefited or not?

If a person has an obligation to fully support a spouse and that obligation is relieved considerably by the other spouse's income, has the public officeholder benefited to that extent, then? Would they then have some duty, even under amendment? I wonder if we could more precisely define what we mean by "benefit." That is the only question the Senator from Illinois has.

Mr. JAVITS. In the first place, I have not proposed this. This is the pending Schmitt amendment. That is not yet proposed. It may not be.

I shall not protract the discussion. We shall have to decide, yea or nay.

One thing that is clear is this: The difference between the Schmitt amendment and what the administration is suggesting is a real one, the difference between a substantive interest—does the husband have any substantive interest in the wife's property or what she does, or does he not? If he does not, under the Schmitt amendment, he does not have to report. If he does, then he does have to report.

The PRESIDING OFFICER (Mr. SARBANES). The time of the Senator from New Mexico has expired. The Senator from Connecticut has 10 minutes remaining.

Mr. JAVITS. Mr. President, I have an amendment which is without time limit. I ask unanimous consent that this amendment and any amendments thereto may be considered as my amendment, which, under the unanimous-consent agreement, had no time limit.

The PRESIDING OFFICER. Is there objection to the request?

The Chair hears none. Without objection, it is so ordered.

Mr. JAVITS. I thank my colleagues.

I shall not protract the discussion. I have no desire to do so.

The difference is this: in the present situation of a code of ethics, a member must report anything in which he has any interest, direct or indirect. Senator RIBICOFF defined that very, very strictly. I have included in the RECORD, so that definition could hold for the Schmitt amendment, the whole record of the debate.

It is epitomized in the words which are contained in the Schmitt amendment:

If the enhancement of the interest would substantially benefit the reporting individual.

The difference between that and what the administration suggests is that whether or not we have any interest that is going to be enhanced, we still have to give the facts about our wife's income, who she works for, if she is in a profession, and what stock or other transactions, or real estate transactions, she has had.

That is a very real difference because our wives may violently object to having her personal operations, or property, or purchases and sales disclosed.

But if we accept the administration's position, that would have to be disclosed.

So there is a real substantive difference and that is the thing I have been trying to rationalize out myself. That is really a close question.

That is why I asked the question, "Because she is married to you, should all of her personal transactions be disclosed even though you have no interest in them whatever, of any character?"

I think I would have no trouble whatever with the administration's suggestion insofar as it says that he or she derives and expects to derive no benefit from such interests, and that such interests were not derived directly or indirectly from interests or income formally owned or controlled by the reporting individual.

What troubles me, unless the wife is separated from her husband, granting he has no interest whatever, he still must tell her story and she has got to be spread on the public record for what she has, what income she has had, what transactions she has had, just because she is the person's wife.

That is why I got free time, because I would like to put this up to the managers, perhaps a proper distinction might be the following, that where the husband and wife file a joint return he is obliged to give all this information, but where the husband and wife file separate returns, then a constructive trust rule applies.

Unless he has an interest, he is not supposed to disclose her information.

Mr. RIBICOFF. I would be against accepting that because it is calculated on an economic basis. How does it work out when applied on the basis of taxes?

Mr. JAVITS. Right.

Mr. RIBICOFF. But I would feel very uneasy with that.

I say that, to me, where the spouse really has an independent career, to a great extent is separate and apart from the Government official, and their life is on that type of level I can understand that there was no connection. Where the official spends his time in the U.S. Senate, and has love and affection for his spouse who is completely independent, I can understand a certification. This would be acceptable, and I think our colleagues know that.

But I think for men, like myself, who have a close and continuous relationship with their wives, to come in and say, "I do not know what my wife has" would be a fraud upon the Senate and on the bill and that would not be acceptable.

There is no easy answer to this. A person is married to a U.S. Senator—and there are some pluses and minuses in being married to a U.S. Senator, or a public official, or a Secretary of State, or an Attorney General—and as part of being married to an individual in public life comes some of the disabilities and unhappiness with these reporting provisions.

I do not have an answer for the distinguished Senator from New York. I cannot make it easy for him and I cannot make it easier for my colleagues.

Mr. JAVITS. Will the Senator yield?

Mr. RIBICOFF. I wish I could help the Senator. I cannot.

Mr. JAVITS. I understand.

Does the Senator not think a fair way might be to give the Senate the choice between these two provisions?

In other words, let the Senate make its choice now on the vote. We could easily do this procedurally.

Mr. RIBICOFF. I have been placed in an unhappy position, that Senators who want to oppose this did not come to the floor, because I was under the impression that they would be willing to accept the administration proviso.

So I find myself debating this when I had not intended to debate it.

Mr. JAVITS. Can we give them a quorum? They can easily come here?

Mr. RIBICOFF. Surely.

Mr. JAVITS. There is no time on this amendment.

I suggest the absence of a quorum to try to get Senator EAGLETON and Senator CHILES here.

Mr. RIBICOFF. I do not know. I cannot tell the Senator what to do, to vote up or down.

Mr. JAVITS. No.

Mr. RIBICOFF. And maybe none of it will prevail.

Mr. JAVITS. That is correct.

Mr. RIBICOFF. The Senator wants his cake and to eat it, too. If he does one, or the other one, take this one.

I was under the impression this was acceptable. Apparently, it is not.

Mr. JAVITS. Not to me. I did not give the Senator any such impression, that it was acceptable to me.

Mr. RIBICOFF. Somehow, I had that impression. That is why I did not call for the Senators.

Mr. JAVITS. No, I am sure——

Mr. RIBICOFF. Then I misunderstood.

Mr. JAVITS. Now there is no misunderstanding to what the Senator told me. It was satisfactory to Senator CHILES and Senator EAGLETON. I have not agreed to it.

Mr. RIBICOFF. I was under that impression. Otherwise, I would have insisted that they come here.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

JAVITS-SCHMITT CONSTRUCTIVE CONTROL-DISCLOSURE AMENDMENT

Mr. DOLE. Mr. President, I rise to support the amendment which would adopt the language in our own Code of Ethics for the Public Official Integrity Act. This Senator understands the concern expressed by those who want to make doubly sure that any disclosure exemption for the assets owned by a spouse would not serve as a loophole which would injure the intent of this legislation.

However, this is not a blanket exception and applies only in certain limited circumstances. In this day and age, I cannot see why we have such a hard time conceiving of a husband's and wife's financial arrangements as being separate, at least in some cases. Long ago, English common law dictated that a husband and wife were one person under the law and that person was the husband. This Senator sees no reason why the Senate should adopt an approach to financial disclosure reminiscent of this discredited, ancient notion. If our wives were simple extensions of ourselves, this Senator would not have any problems with the bill. But that is not the case. It is not the case in this Senator's marriage, nor is it the case in many other marriages represented in this Chamber.

Mr. President, this Senator urges adoption of the constructive control concept as a sensible way to avoid a loophole in the disclosure provisions while protecting the independent rights of the spouse.

Mr. JAVITS. Mr. President, I ask for the yeas and nays on this amendment.

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

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Delaware (Mr. BIDEN), the Senator from California (Mr. CRANSTON), the Senator from Kentucky (Mr. FORD), the Senator from Alaska (Mr. GRAVEL), the Senator from Louisiana (Mr. LONG), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Montana (Mr. METCALF) are necessarily absent.

I further announce that the Senator from Iowa (Mr. CULVER) is absent on official business.

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

Mr. STEVENS. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Utah (Mr. GARN), the Senator from Michigan (Mr. GRIFFIN), the Senator from Texas (Mr. TOWER), the Senator from Wyoming (Mr. WALLOP), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Oklahoma (Mr. BARTLETT) is absent due to illness.

The result was announced—yeas 36, nays 47, as follows:

[Rollcall Vote No. 244 Leg.]

YEAS—36

Baker	Hatfield	Randolph
Bayh	Hayakawa	Roth
Bellmon	Helms	Schmitt
Burdick	Javits	Schweiker
Cannon	Laxalt	Scott
Curtis	Lugar	Stafford
Danforth	Mathias	Stennis
Dole	McClure	Stevens
Domenici	Moynihan	Stone
Goldwater	Packwood	Talmadge
Hansen	Pearson	Thurmond
Hatch	Pell	Williams

NAYS—47

Allen	Hart	Melcher
Anderson	Haskell	Metzenbaum
Bentsen	Hathaway	Morgan
Bumpers	Heinz	Muskie
Byrd, Harry F., Jr.	Hollings	Nelson
	Huddleston	Nunn
Byrd, Robert C.	Humphrey	Percy
Case	Inouye	Proxmire
Chiles	Jackson	Ribicoff
Church	Johnston	Riegle
Clark	Kennedy	Sarbanes
DeConcini	Leahy	Sasser
Durkin	Magnuson	Sparkman
Eagleton	Matsunaga	Stevenson
Eastland	McGovern	Weicker
Glenn	McIntyre	Zorinsky

NOT VOTING—17

Abourezk	Culver	McClellan
Bartlett	Ford	Metcalf
Biden	Garn	Tower
Brooke	Gravel	Wallop
Chafee	Griffin	Young
Cranston	Long	

So the Javits-Schmitt amendment was rejected.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PERCY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 560

Mr. JAVITS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS), for himself and Mr. SCHMITT, proposes an unprinted amendment No. 560.

On page 105 add the following after the period on line 10:

Provided that a reporting individual shall not be required to report any specific information concerning interest of a spouse or dependent if the reporting individual certifies to the supervising ethics office that: (A) he or she has no knowledge of such information; (B) he or she has made every reasonable effort to obtain the required information from his or her spouse or dependent; (C) he or she derives and expects to derive no benefit from such interests; (D) and that such interests were not derived directly or indirectly from interests or income formerly owned or controlled by the reporting individual.

Mr. JAVITS. Mr. President, this is the amendment as suggested to us by the administration. The managers of the bill

are under absolutely no obligation to take it at all. I do not hold them or anyone else to agree to it.

But I propose it because it did represent what the administration is willing to accept as a definition of what will have to be defined anyhow under this particular provision in the bill which reads absolutely but as a matter of law would not be absolute. In other words, the provision says at page 105, lines 7 to 10:

For the purposes of subsection (a)(3) and subsections (e) through (l) of section 302, a reporting individual shall also report the interests of the spouse or dependents of that individual.

The next section deals with a matter of spouses living separate and apart.

But it strikes me that if a spouse is to report on the interest, that is, if a husband is to report on the interest of his wife, which means her income, or whether investment income, or securities trading income, or real property trading income, then he has to know about it. I do not see any ethics committee or anyone else who would have him liable if he did not know about it. The definition of the administration, which I offer as an amendment exactly as they submitted it to us, calls for knowledge. It calls for every reasonable opportunity to obtain the required knowledge which again is only reasonable. As we said a minute ago, you cannot chain your wife to a bedstead or threaten her with whatever you threaten her with if she does not tell you, and that he or she should derive or expect to derive any benefit. And this does not come out of anything which the husband did or did not own on a previous occasion.

It seems to me the Senate has decided, and I think it is very right that it should, having decided 93 to 1 on the Senate code of ethics, that it wanted the provision which we have just voted down. I think it was right to submit that to the Senate after such a topheavy vote. I think with such persuasive reasons in the modern independence of women to support it, I believe that the Senate at least should adopt a reasonable implementation of what on the face of it is a flat and unerasonable provision, if you just read it literally, which was offered to us by the administration.

So I feel it my duty to offer this amendment.

Again I repeat the managers can oppose it violently and say, "Well, you had one vote; you are not entitled to another; we are going to beat you on it."

That is their privilege.

But I feel it my duty to offer it to the Senate, and I hope the Senate will vote it up.

The PRESIDING OFFICER. Will Members please be in order.

The Senator from Connecticut.

Mr. RIBICOFF. Mr. President, I think the Senate is due an explanation.

The administration was opposed to the Javits-Schmitt amendment which the Senate voted down. They felt strongly that there should not be a double standard of ethics, that the husband or the employee should report and his spouse should not report, and they found with 15,000 employees it was very hard to determine a standard where the spouse, the government official would not disclose his wife's interests.

In an effort to work this out, the administration came up with this compromise to offer to Senator JAVITS and Senator SCHMITT. Senator PERCY and I were under the impression that this would be accepted. Senator CHILES and a majority of the committee were strongly opposed to the Schmitt-Javits approach, and the vote in the committee was 7 to 4.

I voted with the minority, with Senator JAVITS and Senator SCHMITT, because during the consideration of the code of conduct and assisting the Senator from Wisconsin (Mr. NELSON), I agreed to accept the compromise.

After this debate, it was decided by the distinguished Senator from New York, which was his prerogative, to go for a vote, and he lost that vote because I feel that the Senate does not want a double standard.

I do not think we should have in the Senate rich women with Senators as husbands, period. And the Senators are the men who have to disclose what they have. Personally, I hate disclosures. I consider it demeaning to spread on the record every penny that I have or what my assets are. I believe in personal privacy.

But if I should disclose, I think my wife should disclose. If a Senator is married to a rich woman and he may be a pauper, and he has the benefit of his wife's property, his wife's income, he should also disclose.

But I do not look upon being a Senator as an opportunity to get even. There was an opportunity to work this out in the compromise, and I thought we had the compromise. But the Senator from New York decided that he wanted to have two bites to the cherry.

He felt he was going to win on his original amendment, and then he would have that, and if he lost on that amendment he would come back to this one and prevail on the weaker proposal.

This is what I think the situation is.

Mr. SCHMITT. Mr. President, will the Senator yield?

Mr. RIBICOFF. I will yield in 1 second.

I, therefore, felt that, and I want to thank the Senate for upholding the position that the committee took. However, the administration was willing to work out this compromise and I was willing to take this compromise.

Having been willing to take this compromise and now having won, and I believe the Senate would back me again on this proposal, I am willing to accept it now. But, I do think I owe the Senate an explanation of what has been going on here. I am willing to accept the amendment offered by the Senator from New York.

SEVERAL SENATORS. Vote! Vote! Vote!

Mr. JAVITS. Mr. President, I wish, if I may, to have just 1 minute for the Senate to have an explanation from me, also.

Senators must remember that in this matter I was associated with a great many other people. It will be remembered that on the code of ethics a large number of Senators expressed themselves.

I could not accept any compromise which did not represent at least an acceptance by those who backed me.

I feel I owe that explanation to the Senate.

I thank my colleague very much for his generous attitude which I appreciate.

SEVERAL SENATORS. Vote! Vote!

The PRESIDING OFFICER. Is all time yielded back?

Mr. SCHMITT. Mr. President, one further explanation.

In all due respect to the Senator——

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, I yield 1 minute to the Senator.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. SCHMITT. It was my decision to go with the original language of the amendment. The Senator from New York asked for the yeas and nays. It was my decision, because I felt it offered a much more equitable approach to this whole problem of how, in government, men and women deal with their relationships with their spouses. That was the fundamental reason why I made that suggestion.

Mr. JAVITS. Mr. President, I yield back the remainder of my time.

Mr. RIBICOFF. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 561

Mr. ALLEN. Mr. President, I call up an amendment which I have at the desk, and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN), for himself, Mr. HATCH, and Mr. HELMS, proposes an unprinted amendment numbered 561:

On page 89, line 16, insert the following after "(2)":

"With respect—

Mr. ALLEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with, and I will explain it.

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

The amendment is as follows:

On page 89, line 16 insert the following after "(27)": "With respect to a resolution or concurrent resolution pursuant to Section 203(a), (A)".

On page 90, line 3 strike "(3)" and insert "(B)".

On page 90, line 7 strike "(4)" and insert "(C)".

Mr. ALLEN. Mr. President, section 203(a) provides that the congressional counsel shall defend a House of Congress or a committee, subcommittee, Member, officer, or employee of a House of Congress when directed to do so by two-thirds of the Members of that House serving on the joint leadership group, or by the adoption of a resolution by such House.

In other words, two-thirds of the leadership can direct the congressional counsel to defend one House or a committee of one House, or an officer or employee or a Member of one House.

Then, where the whole Congress is involved, or a joint committee or an office or agency of Congress, or an employee of such office or agency, the majority of the joint leadership can instruct the congressional counsel to defend.

Then, if they are unable to get the two-thirds majority of the leadership of the one House or both Houses, depending on what is involved——

Mr. RIBICOFF. Mr. President, will the Senator yield?

Mr. ALLEN. I yield.

Mr. RIBICOFF. I have looked at the Senator's amendment and I think it is a good amendment.

Under the committee amendment, section 211(a) would still apply to all resolutions to authorize a counsel to represent Congress. Under the amendment, section 211(a)(2) would now apply only to resolutions or concurrent resolutions pursuant to section 203(a). Section 203(a) resolutions require special procedures, because under section 203(a), a very real harm can occur if there is any delay in authorizing the counsel to defend a member of the committee.

This is an excellent amendment, and the Senator and his colleagues have been constructive. I accept the Senator's amendment.

Mr. ALLEN. I thank the Senator from Connecticut for his explanation, which is much better than the one I was giving. I believe it is safe to say that the Senator's opinion is concurred in by the ranking minority member; is that not correct?

Mr. PERCY. Mr. President, I join the manager of the bill in support of the amendment. I commend the Senator from Alabama for offering it.

Mr. ALLEN. I thank both Senators.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. ALLEN. I yield back the remainder of my time.

Mr. RIBICOFF. I yield back the remainder of my time.

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

The amendment was agreed to.

UP AMENDMENT NO. 562

Mr. RIEGLE. Mr. President, I call up an unprinted amendment which I have at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Michigan (Mr. RIEGLE), for himself, Mr. HEINZ, Mr. DOLE, Mr. DECONCINI, Mr. ZORINSKY, and Mr. HELMS proposes an unprinted amendment numbered 562:

On page 48, after line 19, insert the following

(7) For the purposes of section—

Mr. RIEGLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with, and I will attempt, with my cosponsors, Mr. HEINZ and others, to explain the amendment, rather than have it read.

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

The amendment is as follows:

On page 48, after line 19, insert the following:

"(7) For the purposes of section 592(h) of this title, a Representative or Senator in the Congress of the United States.".

On page 53, after line 15, insert the following:

"(h)(1) Notwithstanding any other provision of this title, the Attorney General shall, upon enactment of this title, conduct for a period not to exceed ninety days, a preliminary investigation into whether there has been since 1970 improper or illegal conduct on the part of any Representative or Senator in the Congress of the United States with respect to the receipt or acceptance of any valuable consideration from representatives of any foreign government in order to influence legislation or other government action.

"(2)(A) If the Attorney General, upon completion of the preliminary investigation, finds that the matter is so unsubstantiated that no further investigation or prosecution is warranted, the Attorney General shall so notify the division of the court pursuant to subsection (b).

"(B) If the Attorney General, upon completion of the preliminary investigation, finds that the matter warrants further investigation or prosecution or if ninety days has elapsed from the time of enactment of this title without a finding by the Attorney General that the matter is so unsubstantiated as not to warrant further investigation or prosecution, then the Attorney General shall apply to the division of the court for the appointment of a special prosecutor pursuant to subsection (c).".

Mr. RIEGLE. I would say to my colleagues that the amendment that we offer is one that sets out very clearly a procedure that will be followed by the Attorney General with respect to an investigation that is presently underway, that is referred to by several names, but is, in effect, the investigation of possible efforts to secure undue influence by the Korean Government.

As we know, much has been said and written about allegations that Members of Congress, in the past, may have been approached and involved in relationships that would be improper by representatives of that Government, and investigative efforts have been underway for some time.

One thing that concerns me very much is that in some quarters, this has been referred to as a possible "Watergate of the Congress," and witnesses who have appeared in recent days before other committees of Congress, I think, have raised great suspicion and concern in the public mind.

I was in my home State this last weekend, and I would say that, more so than any other comment, I ran into comments from citizens asking about the extent of that situation, and the degree to which representatives of that foreign government or other foreign governments had attempted to buy influence with Members of Congress.

Our amendment is very simple and very straightforward. It follows the exact language in the provisions of the bill itself. It says that within 90 days of the enactment of this legislation, the responsibility would be upon the Attorney General to indicate that his investigations showed him that there was no problem and no need for further prosecution or further action; or if, at the end of 90 days, it should be the finding of the Attorney General that there was cause for further action, at that point he would so clarify, and the court at that time would bring into being a special prosecutor under the procedures that the bill outlines, so that that case could be taken up by a special prosecutor.

In the instance that the Attorney General would not state any position at the end of 90 days, again, in that instance, a special prosecutor would be named by the court, and the matter would be taken up in that fashion.

That is the intent of the amendment. As to the rationale for such an amendment, I think it is crucial right now that the Congress be prepared to apply the same kinds of unflinching standards to itself as we are suggesting here be applied to members of the executive branch. A cloud does hang over Congress with respect to the Korean allegations. Weeks and months have passed, and there is absolutely no indication of when these issues might be resolved. Frankly, I do not want the Attorney General or this administration caught in a situation——

Mr. HART. Mr. President, may we have order,

The PRESIDING OFFICER. The Senate will be in order. Senators will please take their seats.

Mr. RIBICOFF. Mr. President, will the Senator yield?

Mr. RIEGLE. For a question. I would like to finish my statement.

Mr. RIBICOFF. If the Senator will yield, I think I can save us a lot of time.

Mr. RIEGLE. I yield.

Mr. RIBICOFF. I have discussed this matter with Senator PERCY.

We do believe that the allegations of a possible Korean scandal are of such a widespread nature that it would have a salutary effect if the Attorney General feels, after study, as the Senator has provided, it would warrant a special prosecutor. As manager of the bill, I am willing to accept the amendment offered by the Senator from Michigan.

Mr. RIEGLE. I thank the chairman. I might say it is offered by Senator HEINZ and myself, with other cosponsors. I appreciate the action of the chairman.

I yield to the Senator from Pennsylvania.

Mr. HEINZ. I thank the Senator from Michigan for yielding.

I was not sure if the people are listed as cosponsor who indicated a desire to be cosponsors. My understanding is that Senator LUGAR desires to be listed. Senator ROTH, Senator SCHMITT, Senator DOLE, Senator PERCY, Senator HAYAKAWA, and Senator HATCH indicated to me prior to the offering of the amendment that they wanted to be included as cosponsors.

I thank the distinguished Senator from Connecticut and the distinguished Senator from Illinois for having taken a careful look at this amendment. I think it makes what is currently a very diffi-

cult situation for the administration a little better situation.

At the present time, if any of us were in the shoes of the Attorney General, we would be damned if we did and damned if we did not, when it came to investigating any allegations involving the Congress.

To date, it is a known fact that there had not been one indictment issued by this or the previous Department of Justice under the Ford administration. I think that in large measure reflects the necessarily ambivalent attitude that any member of the executive branch is going to have when they come up to the Congress day in and day out seeking to work with us cooperatively on legislation and then on the other hand find themselves in the very difficult position of having to look deeply into this body with respect to a possible criminal investigation of the staff, members, or whatever.

I believe the amendment the committee has graciously agreed to accept really helps our entire country out of what currently is a difficult situation.

I thank Senator RIBICOFF and Senator PERCY for having been so farsighted and so helpful.

Mr. PERCY. Mr. President, I would like to comment briefly and express appreciation to the authors of the amendment. I do so for several reasons. We are dealing in this bill in part with the Watergate situation, which is in the past and we hope well behind us. We are now trying to look ahead to prevent future Watergates. Here we have a situation which has cast a shadow over the Congress. Certainly, we should vigorously go on record as supporting whatever investigation is proper and necessary with regard to both Houses, and directing the Justice Department to move ahead and take a good hard look at this for the next few months and clear the air. We ought to clear the air as quickly as we possibly can. The whole purpose of this bill is to restore public faith in the political processes and in the branches of government in this country, and the men and women to whom they have entrusted public responsibility.

By this amendment I believe we have faced right up to the problem, not just to the past, but to the present and to the future. For that reason, I find the amendment not only acceptable, but commendable.

Mr. HEINZ. I thank the Senator.

SEVERAL SENATORS. Vote! Vote!

The PRESIDING OFFICER. Who yields time?

Mr. RIBICOFF. Mr. President, I yield back the remainder of my time.

Mr. RIEGLE. Mr. President, I yield to the Senator from Kansas.

Mr. DOLE. Mr. President, the Senator from Kansas is pleased to cosponsor the Heinz-Riegle amendment. As we all know, there have been very serious allegations about members of Congress and there is a need to clear the air.

Many individuals are under a cloud and have been subjected to endless speculation and innuendo. It is high time facts replaced fancy. While the Senator from Kansas is not charging that there has been deliberate foot-dragging, I believe we should adopt this amendment.

Of course, Attorney General Griffin Bell is in a very difficult position with regard to this situation. I believe that he is making every effort to come to grips with the problem. However, he does oppose the appointment of a Special Prosecutor as demonstrated by the following correspondence between he and myself.

This Senator believes that this amendment will be of assistance to the Attorney General, however. My support of this amendment should not be interpreted as an attempt to undermine his efforts, but is an honest attempt to assist him in getting to the root of these allegations.

Mr. President, I ask unanimous consent that correspondence between myself and the Attorney General be made a part of the RECORD.

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

MARCH 25, 1977.

Hon. GRIFFIN BELL,
Attorney General of the United States, Department of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: The recent conflicting and confusing news reports about the status of the Justice Department's investigation into allegations of illegal payments to members of Congress from representatives of the Republic of Korea prompt me to write this letter.

I can appreciate the difficult and very sensitive position you are in and, therefore, recommend the remaining phase of this investigation be turned over to a special prosecutor.

I look forward to your response.

Sincerely yours,

BOB DOLE,
U.S. Senator.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., May 19, 1977.

Hon. ROBERT DOLE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DOLE: In your letter of March 25, 1977, you suggested that the remaining phase of the Korean bribery investigation be turned over to a special prosecutor.

In the present case, unlike Watergate, there are no allegations against the Attorney General or other Department officials. There is also no indication of involvement by others in the Administration. Accordingly, I felt that appointment of a special prosecutor for this matter is inappropriate and unnecessary.

I can assure you that the investigation will be pursued expeditiously, but thoroughly to its full and proper conclusion. No deadlines have been set for the completion of the investigation and no restraints have been placed upon it. It will include vigorous pursuit of all substantial leads.

Yours sincerely,

GRIFFIN B. BELL,
Attorney General.

Mr. RIEGLE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. RIEGLE. Mr. President, might I indicate, too, that Senators ALLEN and BURDICK have also asked to be included as cosponsors to the amendment.

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

If there be no further amendment to be proposed, the question is on the engrossment—the Senator from Kansas.

UP AMENDMENT NO. 563

Mr. DOLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an unprinted amendment No. 563.

On page 62, after line 3, insert the following: "(b)(2) Upon leaving office, any person who served as Special Prosecutor, Deputy Prosecutor or Assistant Prosecutor shall not accept or hold any office of profit or trust under the United States for a period of 3 years.".

Mr. DOLE. Mr. President, I have had an opportunity to discuss this amendment briefly with the members of the minority staff. I believe it is consistent with other language in the bill, and also consistent with utterances we have had from the administration. If there is any special opposition to the amendment, I would like to discuss it further.

The public official integrity bill contains an analogous provision on page 54:

The division of the court may not appoint as a special prosecutor any person who holds or recently held any office of profit or trust under the United States.

In contrast this amendment applies prospectively. Someone who holds the office of special prosecutor, deputy prosecutor, or assistant prosecutor could not be rewarded at some future time with Federal service for things he may have done as special prosecutor.

Mr. RIBICOFF. Mr. President, I rise to oppose this amendment. We are talking about two different things. In the bill we bar the appointment of a person who has recently held a job in the Federal Government.

Now what we are saying is if we have a man who served as special prosecutor, deputy prosecutor, or assistant prosecutor, he shall not be eligible to hold any office of profit or trust under the United States for 3 years.

I would hope that in the appointment of a special prosecutor the five judges of the circuit court would pick men of outstanding qualifications and character and ability. After that difficult assignment, to give them a bag of stones and say, "After you have worked so hard in the job as a special prosecutor you now cannot hold a position of trust in the United States for 3 years," is an insult.

What we are doing is making it impossible to get men of character and ability. We are ruling out any outstanding lawyer in the United States, who could do this job and do it right, from ever holding public office. We do not do it for any other prosecutor. I do not know of any U.S. attorney, I know of no other prosecuting attorney in any local, State, or Federal office, who is barred for 3 years from holding public office. I think it is an insult to any person who is chosen for this job, and I oppose this amendment.

Mr. PERCY. Mr. President, I oppose

the amendment simply because I think it would relegate us to finding second-class people for a special prosecutor. We ought to aim for the very best that we can get. To prevent former special prosecutors from taking any office in the Federal Government, to prevent them from even running for public office—I think it would certainly be a disincentive at the very time we need the highest incentive to get the best possible people to serve.

I oppose the amendment.

Mr. DOLE. The purpose is just the opposite; the purpose of my amendment is to attract the best qualified people from the private sector; people who are not looking for Government service. When we look back, we find Mr. Cox did not want any public service when he finished his role as public prosecutor. Neither did Mr. Jaworski. We are looking for the best qualified people possible. This should not be a springboard for Government careers. We should never face a situation where a special prosecutor would receive a Federal job as a reward for services rendered. Likewise, we should avoid any appearance that such a thing was happening.

I feel very strongly about the possibility of rewarding special prosecutors, or the appearance of impropriety, but will consent to a voice vote on my amendment.

I yield back my time.

Mr. RIBICOFF. I yield back my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment.

The amendment was rejected.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

UP AMENDMENT NO. 564

Mr. BAKER. Mr. President, I send an amendment to the desk and ask that it be considered.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER) proposes unprinted amendment No. 564.

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

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

The amendment is as follows:

Beginning on page 46, line 20, strike out all through page 69, line 12, and insert in lieu thereof the following:

REORGANIZATION OF THE DEPARTMENT OF JUSTICE

SEC. 101. (a) Title 28, United States Code, is amended by adding after chapter 31 the following new chapter:

"CHAPTER 32—DIVISION OF GOVERNMENT CRIMES

"Sec.
"528. Establishment of Division of Government Crimes.
"529. Jurisdiction.
"530. Powers.
"530A. Memoranda to judicial panel.
"530B. Reports to the Congress.

"§ 528. Establishment of Division of Government Crimes

"(a) (1) There is established within the Department of Justice the Division of Government Crimes which shall be under the direction of an Assistant Attorney General for Government Crimes (hereafter referred to as the 'Assistant Attorney General') who shall be appointed by the President, by and with the advice and consent of the Senate.

"(2) There shall be in the Division of Government Crimes a Deputy Assistant Attorney General for Government Crimes (hereafter referred to as the 'Deputy Assistant Attorney General') who shall be appointed by the President, by and with the advice and consent of the Senate.

"(3) During any absence, disability, or vacancy in the office of the Assistant Attorney General, the Deputy Assistant Attorney General shall serve as Acting Assistant Attorney General.

"(b) No individual shall be appointed Assistant Attorney General unless such individual—

"(1) is admitted to the practice of law before the highest court of a State or States or the District of Columbia; and

"(2) is, at the time of such appointment, a member in good standing of the bar of the Supreme Court of the United States.

"(c) The President shall report to the Congress in writing and with precision the cause for which any individual serving as Assistant Attorney General or Deputy Assistant Attorney General is removed.

"§ 529. Jurisdiction

"(a) The Assistant Attorney General shall have jurisdiction to exercise the powers specified in section 530 of this title (1) with respect to any matter as to which there is reasonable cause to believe involves the violation of any Federal law by any Government officer or employee, whether elected or appointed; (2) cases referred by the Attorney General because of actual or potential conflicts of interest; (3) criminal cases referred to him by the Federal Election Commission; and (4) allegations of violations by any person of Federal laws relating to campaigns and elections for elective office.

"(b) Any information, allegation, or complaint received by any officer or employee of any branch of Government relating to any violation specified in subsection (a) of this section shall be expeditiously reported to the Assistant Attorney General.

"(c) The Attorney General or the Assistant Attorney General may elect to waive such jurisdiction with respect to any alleged violation. In such case, the Attorney General or the Assistant Attorney General shall refer any evidence of such violation to the appropriate law enforcement authority.

"§ 530. Powers

"(a) Subject to the provisions of subsection (b) of this section, the Assistant Attorney General, in carrying out the provisions of this chapter, shall have the same power to act on behalf of the United States as the Attorney General. In exercising such power, he may conduct such investigations as may be necessary, represent the United States in any legal proceeding, and take such other actions as may be necessary. Nothing in this subsection shall be construed to authorize the Assistant Attorney General to exercise the power of the Attorney General under chapter 119 of title 18.

"(b) The Attorney General may overrule any action or position taken or proposed by the Assistant Attorney General and such decision to overrule shall be final. The Attorney General shall report promptly in writing to the Congress the reason for his decision to overrule any such action or position.

"§ 530A. Memoranda to judicial panel

"(a) (1) Whenever the Attorney General or Assistant Attorney General shall receive specific information that any of the persons described in subsection (b) may have violated any Federal criminal law, other than a violation constituting a petty offense, the Attorney General shall, not later than ninety days after receiving such information, submit a memorandum containing a summary of the information received, a summary of the results of any investigation of such information, and the disposition thereof to a division of the court described in subsection (c). In the event that a majority of the division of the court shall disagree with the disposition of the case, it shall so notify the Attorney General in writing, including the grounds for the disagreement, and such writing shall be included in the annual report of the Attorney General to the Congress as required in section 530B.

"(2) The Attorney General and the Assistant Attorney General shall furnish, upon request, to such division any additional information which such division deems necessary.

"(b) The persons referred to in subsection (a) of this section are—

"(1) the President or Vice President;

"(2) any individual serving in a position listed in section 5312 of title 5;

"(3) any individual working in the Executive Office of the President and compensated at a rate not less than the rate provided for level IV of the Executive Schedule under section 5315 of title 5;

"(4) any individual working in the Department of Justice and compensated at a rate not less than the rate provided for level III of the Executive Schedule under section 5314 of title 5; any assistant attorney general involved in criminal law enforcement; the Director of Central Intelligence; the Deputy Director of Central Intelligence; and the Commissioner of Internal Revenue;

"(5) any individual who held any office or position described in any of paragraphs (1) through (4) of this subsection during the term of the President in office on the date the Attorney General receives the information under subsection (a) (hereafter in this subsection referred to as the 'incumbent President') or during the period during which the President immediately preceding such incumbent President held office, if such preceding President was of the same political party as the incumbent President;

"(6) a national campaign manager or chairman of any national campaign committee seeking the election or reelection of the President; and

"(7) a Member of the Congress, including any individual who was a Member of the Congress on the date the Attorney General receives the information under subsection (a).

"(c) For purposes of subsection (a), the division of the court shall consist of a panel of three justices or judges appointed by the chief judge of the United States Court of Appeals for the District of Columbia.

"§ 530B. Reports to the Congress

"(a) The Assistant Attorney General shall report to Congress with respect to any matter as to which he has reasonable cause to believe is evidence of an impeachable offense.

"(b) (1) At the beginning of each calendar year, the Attorney General shall report to the Congress on the activities and operation of the Division of Government Crimes for the preceding year.

"(2) Such report shall specify the number and types of investigations and prosecutions subject to the jurisdiction of the division and the disposition thereof, but shall not include any information which would impair an ongoing investigation, prosecution, or proceeding, or which the Attorney General determines would constitute an improper invasion of personal privacy.".

(b) The analysis of part II of title 28, United States Code, is amended by adding after the item following chapter 31 the following new item:

"32. Division of Government Crimes.. 528".

(c) (1) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(114) Assistant Attorney General for Government Crimes.".

(2) Section 5316 of such title is amended by adding at the end thereof the following new paragraph:

"(141) Deputy Assistant Attorney General for Government Crimes.".

Mr. BAKER. Mr. President, this amendment would strike title I of the bill relating to the creation of an Office of Government Crimes and the appointment of a temporary special prosecutor. It would substitute in lieu thereof a new title providing for the creation of a Division of Government Crimes within the Department of Justice, under the supervision of an Assistant Attorney General for Government Crimes to be appointed by the President with the advice and consent of the Senate. The Assistant Attorney General would have jurisdiction over all cases in which there was an alleged violation of any Federal law by any Government officer or employee, whether elected or appointed; cases referred by the Attorney General because of actual or potential conflicts of interest; criminal case referred to him by the Federal Election Commission; and allegations of violations by any person of Federal laws relating to campaigns and elections for elective office.

In other words, Mr. President, the Assistant Attorney General for Government Crimes would have the authority to prosecute possible wrong-doing by members or employees of the executive, legislative, and judicial branches of Government. Although the Attorney General may overrule any action or position taken or proposed by the Assistant Attorney General, the Attorney General must report promptly in writing to the Congress the reason for his decision.

Should the Assistant Attorney General for Government Crimes be removed from office, the Attorney General is required to report in writing to the Congress the precise reasons for such removal.

This amendment differs slightly, but only slightly, from the amendment Senator PERCY and I offered to S. 495 approximately 2 years ago. Although I understand and sympathize with the efforts of the bill's sponsors to create an effective mechanism for a special prosecutor who is insulated from partisan pressures, I am convinced that judicial appointment of such a prosecutor is unconstitutional.

Basically, I believe that article II, section 1 of the Constitution stating that the "Executive power shall be vested in a President" and article II, section 3 specifying that the President shall "take Care that the Laws be faithfully executed" make it clear that the prosecutorial function is an executive one.

Secondly, although it is arguable that under article II, section 2, clause 2, Congress could vest the power to appoint a temporary special prosecutor in the "courts of law," it is clear to me that an official exercising such prosecutorial and investigative authority constitutionally must be an executive officer, appointed by the executive branch. Moreover, the power vested by the Congress in "courts of law" relates only to temporary appointments to fill vacancies of limited scope in time and geographical authority.

Admittedly, the Constitution does not create analytically precise or rigidly segregated categories of governmental function among the three branches; there are areas of overlay and shared responsibilities arising from a system of checks and balances. However, the combination of the vesting of "Executive Power," under article II, section 1, and the charge, under article II, section 3, that the President "take Care that the Laws be faithfully executed," seemingly delineates an immutable area of executive responsibility, that is, enforcement of the laws, which would be revocable only by constitutional amendment. As James Madison stated while serving in the Congress:

I conceive that if any power whatsoever is in the nature of the executive, it is the power of appointing, overseeing, and controlling those who execute the laws.

Numerous decisions have been rendered by the U.S. Supreme Court and lower Federal courts in this area and I ask unanimous consent that a memorandum detailing those decisions be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. BAKER. The question that remains is whether an Assistant Attorney General in a Division of Government Crimes can be sufficiently insulated from political pressure to avoid possible obstruction of justice. I believe that he can be protected effectively and my amendment would protect him in several ways including: First, his or her appointment would be subject to the advice and consent of the Senate; second, the Attorney General must report in writing to the Congress whenever he overrules any action or position taken by the Assistant Attorney General; third, the Attorney General must state in writing the reasons for removing the Assistant Attorney General; fourth, the Attorney General must report annually to the Congress on the activities of the Division including the disposition of cases; and fifth, whenever the target of specific allegations is the President, Vice President, or other designated top officials including Members of Congress, then the Justice Department would be required to transmit a summary of the evidence, investigation, and disposition of the case to a special three-judge panel appointed by the chief judge of the D.C. Circuit Court. If the panel found the Justice Department's disposition of the case improper, it would so inform the Department and provide the specific reasons. That report would then be included as part of the Attorney General's annual report to the Congress.

In conclusion, the intent of my amendment is to avoid the probable unconstitutionality of empowering the judiciary to appoint a temporary special prosecutor and substitute a permanent division within the Justice Department which is effectively insulated.

EXHIBIT 1

MEMORANDUM

Although distinguishable from a potential challenge to the provisions of S. 555, numerous decisions have ruled that the prosecution of offenses against the United States is an executive function and, in accordance with separation of powers, cannot be exercised either by the judiciary or by the legislature.[1] In *Ponzi v. Feesenden*[2] the Supreme Court ruled that the faithful execution clause of article II makes clear that the President is vested with the federal prosecutorial authority, stating that: The Attorney General is the head of the Department of Justice . . . He is the hand of the President in taking care that the laws of the United States in protection of the interests of the United States in legal proceedings and in the prosecution of offenses, be faithfully executed."[3] A similar decision was reached by the Court of Appeals for the Fifth Circuit in *United States v. Cox*,[4] where the court ruled that a United States Attorney cannot be required by the district court to sign an indictment initiating the prosecution of federal offenses. Reiterating the "hand of the President" principle of *Ponzi*, the court in *Cox* declared that the United States Attorney was "an executive official of the government" when exercising the discretion as to whether or not to prosecute a particular case.[5] The court then found "as an incident of the constitutional separation of powers, that the courts are not to interfere with the free exercise of the discretionary powers of the attorneys of the United States . . ."[6]

Furthermore, in *United States v. Nixon*[7] the Supreme Court, in concluding that the Special Prosecutor possessed sufficient standing to bring an action to enforce the tapes subpoena against the President, explicitly acknowledged that the power being exercised by the Special Prosecutor was the executive power under article II to conduct the criminal litigation of the United States, which had been vested in the Attorney General[8] and then delegated in part to the Special prosecutor.[9] As has been stated by former Counsel to the Special Prosecutor Philip Lacovara:

(I)t was always implicit in the arguments submitted (to the Court) . . . that the President had the ultimate constitutional responsibility to take care that the laws were faithfully executed. We argued only that Congress could authorize that function to be exercised by subordinate *Executive* officials . . . and that they are free to pursue this responsibility . . . only until the President chooses to exercise his ultimate constitutional power to remove the subordinate from office . . .[10]

The decision in *United States v. Nixon* also complements a line of cases beginning with *Myers v. United States*[11] and ending with *Wiener v. United States*,[12] recognizing that purely executive functions, that is, the irreducible powers conferred upon the President by article II, must be performed under the direction of the President. In other words, the article II executive power, which includes the faithful execution of the laws, is exercisable only by the President and his subordinate executive officers, and, therefore, constitutionally cannot be allocated by Congress to independent agencies.[13] It is only those "executive" tasks which are merely incidental to the quasi-legislative and quasi-judicial responsibilities delegated to independent agencies which constitutionally can be delegated to such agencies by Congress.[14] The Watergate Special Prosecutor in *United States v. Nixon* was a subordinate of the Attorney General, and hence of the President, and was exercising an exclusive article II power in prosecuting criminal offenses against the United States—a power which, according to the rationale of *Myers* and *Wiener*, could not be exercised by an independent agent. In short, the *Myers* line of cases recognized that article II power could be exercised only by the President and his subordinates, and correspondingly, implicit

Footnotes at end of article.

in *United States v. Nixon* is the proposition that the special prosecutor was a subordinate executive officer under the ultimate authority of the President and was not independent per se of the executive branch.

FOOTNOTES

[1] See, e.g., Confiscation Cases, 74 U.S. (7 Wall.) 454 (1868); Smith v. United States, 375 F.2d 243 (5th Cir. 1967); *In re* Grand Jury January 1969, 315 F. Supp. 662 (D. Md. 1970); Pugach v. Klein, 193 F. Supp. 630 (S.D.N.Y. 1961).

[2] 258 U.S. 254 (1922); *accord,* Springer v. Phillipine Islands, 277 U.S. 189 (1928); Newman v. United States, 382 F.2d 479 (D.C. Cir. 1967). The Court in Springer found that the executive function includes "the authority. . . . to enforce (laws) or *appoint the agents charged with the duty of such enforcement.*" 277 U.S. at 202 (emphasis added). See also 2 Op. Att'y Gen. 482, 48–793 (1831).

[3] 258 U.S. at 262.

[4] 342 F.2d 167 (5th Cir.), *cert. denied,* 381 U.S. 935 (1965).

[5] 342 F.2d at 171.

[6] *Id.; accord,* Newman v. United States, 382 F.2d 479 (D.C. Cir. 1967). The court of appeals held that the lower court possessed no authority to review prosecutorial decisions as the "Constitution places on the Executive the duty to see that the 'laws are faithfully executed' and the responsibility must reside with that power." 382 F.2d at 482 n. 9.

[7] 418 U.S. 683 (1974).

[8] See 28 U.S.C. 516 (1970).

[9] 418 U.S. at 694 n.8. The "independence" of the Watergate Special Prosecutor as upheld in the case depended upon the existence of regulations promulgated by the Attorney General which had the force of law, *Id.* at 695–96.

[10] Perspectives on S. 495, at 113.

[11] 272 U.S. 52 (1926).

[12] 357 U.S. 379 (1958).

[13] Wiener v. United States, 357 U.S. 349 (1958); Humphrey's Executor v. United States, 295 U.S. 602 (1935); Myers v. United States, 272 U.S. 52 (1926).

[14] See Humphrey's Executor v. United States, 295 U.S. 602 (1935); note 46 *infra* and accompanying text.

Mr. BAKER. Mr. President, this final and concluding word at this point: nobody argues, I think, with the necessity for the regularizing of procedures by which attention is drawn to and the examination of alleged public crimes is undertaken. But I think it is foolhardy for us to undertake something that, to me, at least, is patently unconstitutional when there is a constitutional alternative. This has been argued many times in this Chamber, Mr. President. It has been passed on to the courts on many occasions. I urge and submit that, notwithstanding the manifest good intentions and careful efforts of the distinguished managers of this bill, this section of the bill, in my view, is unconstitutional and should be stricken and substituted for.

Mr. RIBICOFF. Mr. President, I rise to oppose this amendment. After all we have learned from Watergate and the necessity of a special prosecutor, at this stage of the proceeding, to say that, under certain circumstances, we do not need one, when, evidently, it was the overwhelming sentiment of this body, just a few minutes ago, to indicate that we might want a special prosecutor to handle the problems of corruption of Congress in the potential Korean scandal, is not understandable to me. President Ford was for a special prosecutor. President Carter is for a special prosecutor. The American Bar Association recommends a special prosecutor. Common Cause recommended a special prosecutor. The Watergate Committee's final report recommended a special prosecutor. The Watergate Special Prosecutor's Task Force Final Report recommends a special prosecutor when needed. All three special prosecutors—Mr. Cox, Mr. Jaworski, and Mr. Ruth—came out for a special prosecutor. All constitutional scholars have stated that this appointment and this method are constitutional.

I ask unanimous consent that memoranda on the constitutionality of this provision be printed in the RECORD at this point.

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

COURT APPOINTMENT OF A TEMPORARY SPECIAL PROSECUTOR IS CONSTITUTIONAL

The issue of whether a temporary special prosecutor can be appointed by a court of law under the Constitution is one that has been studied and debated by various committees in the Senate for well over 5 years. This matter has been looked into in detail by the Judiciary Committee, as is described in their report on S. 555. This matter has also been studied in depth by the Governmental Affairs Committee.

The Governmental Affairs Committee has no doubts about the Constitutionality of permitting court appointment of a temporary special prosecutor. Over the last 2 years, the committee has received a number of legal opinions from distinguished scholars of the Constitution stating that such a mechanism was Constitutional. Specifically, last year we received a letter from Paul J. Mishkan, the Emanuel Heller Professor of Law at the University of California School of Law at Berkeley unequivocally stating his belief that such appointment is Constitutional.

Mr. President, I ask unanimous consent that that letter be printed in the record at the conclusion of my remarks.

During the consideration of S. 495 last year, the American Bar Association prepared a memorandum on, among other things, the constitutionality of court appointment of a temporary special prosecutor.

Mr. President, I ask unanimous consent that that memorandum be printed in the record at the conclusion of my remarks.

During the hearings on S. 555 this year, the Department of Justice discussed the Constitutionality of the appointment mechanism contained in this legislation at considerable length. I asked unanimous consent that the testimony of the Justice Department before the Committee on Governmental Affairs on the Constitutionality of Title I of S. 555 be printed in the record at the conclusion of my remarks.

The basic argument with respect to the Constitutionality of court appointment of a temporary prosecutor is that a special prosecutor is an officer of the United States. Article II, Section 2, Clause 2 of the Constitution sets forth the manner in which officers of the United States must be appointed. The Constitution specifically gives Congress the power and the responsibility to determine which of the different mechanisms for the appointment of an officer of the United States set forth in this provision of the Constitution will be used in a particular case. That clause specifically states that Congress can specify that an inferior officer of the United States be appointed by a court of law.

It is under this same clause of the Constitution that an Attorney General is permitted to appoint a temporary special prosecutor as was done during Watergate by Attorney General Richardson. This clause of the Constitution states that an inferior officer can be appointed by a head of a department. Under that authority, Archibald Cox was appointed as temporary special prosecutor. That very same clause says that Congress may choose as an alternative to appointment by a head of department appointment by a court of law.

Those who argue that court appointment is not permitted by the Constitution state that, even though the clear language of the Constitution appears to permit such an appointment, the concept of separation of powers overrules the clear language of that provision of the Constitution. This argument has been rejected on a number of occasions by the Supreme Court. The standard applied by the Supreme Court in the *Siebold* case (*Ex parte Siebold,* 100 U.S. 371 (1880)) is whether the appointment by the court of an officer is incongruent with the functions of the court. By any reasonable analysis, it is clear that the court appointment of a special prosecutor is not incongruent with the court's functions.

First of all, a prosecutor is an officer of the court as well as an official of the executive branch. More than any other attorney, a prosecutor has an obligation to the court and the prosecutor's standards of conduct are a matter of great concern to the court. Second, by definition, when a temporary special prosecutor is needed because of a conflict of interest on the part of the Attorney General or the President, it would be incongruent for the special prosecutor to be appointed by the very individuals who have a conflict of interest. It is in these very rare but important situations when court appointment is so necessary. Finally, court appointment of prosecutors is a well-established practice. Presently, the Federal courts are given authority to appoint an individual as United States attorney to fill a vacancy in such a position until the President appoints someone to permanently fill that position. It is also common practice in many states for special prosecutors to be appointed by the courts.

Therefore, I believe there can be little question that court appointment of a temporary special prosecutor, where there is an institutional conflict of interest on the part of the Attorney General or the President, is Constitutional. This view is shared by some very distinguished company, including the Attorney General, the American Bar Association, the President of the United States, Professor Archibald Cox, and Professor Paul Mishkan.

UNIVERSITY OF CALIFORNIA, BERKELEY,
Berkeley, Calif., May 10, 1976.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR SENATOR RIBICOFF: I am pleased to give you and the Committee my opinion on Title I of S. 495, particularly as to the constitutionality and policy direction of the provisions for appointment of a temporary special prosecutor.

Almost needless to say, there can be no question concerning Congress' power to establish a Division of Government Crimes within the Justice Department and to provide for the head of that Division to be an Assistant Attorney General appointed by the President with the advice and consent of the Senate. Nor can there be any doubt about Congress' power to authorize the Attorney General alone to appoint a temporary special prosecutor. I am not aware that any question has been raised concerning this and the matter has in any event been firmly settled by relatively recent holdings of the Supreme Court and other federal courts.

The power of the Congress to authorize

appointment of a temporary special prosecutor by a court is in my judgment equally well-founded Constitutionally. Its source is Article II, Section 2, clause 2:

". . . the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

This is the same provision which supports the empowering of the Attorney General to appoint. It follows that a temporary special prosecutor is an "inferior Officer" within the meaning of this provision and that this is clearly settled by those court holdings which accept such an appointment by the Attorney General alone.

The only possible distinction between appointment by a court and by an Attorney General would have to be based on the proposition that the quoted language of Article II, Section 2 should be constructively limited to vesting "in the Courts of Law" only appointments of officers whose work is somehow judicial or related to the courts—and then on the further argument that a special prosecutor does not fall within that category. That position is clearly wrong; both of its propositions have been soundly rejected as a matter of authority, history, and sound constitutional construction.

The first half—the suggestion that the constitutional authority for Congress to authorize appointments by the courts is restricted to judicially-related inferior officers—was squarely rejected by the Supreme Court in *Ex Parte Siebold*, 100 U.S. 371 (1880). The Court there held that while Congress might appropriately be guided by such considerations of role-relatedness, the Constitution itself imposed no such limitations.

Beyond that there is authority and history even more directly in point confirming that appointment of prosecutors by judges is Constitutionally valid. As is well known, there is now and has long been established provision for appointment by Federal District Courts of temporary United States attorneys. (The current statute is 28 U.S.C. § 546.) This provision has been in operation for a goodly time now and apparently is of unquestioned validity.

Indeed, the idea that judicial appointment of prosecutors is well within the Constitutional scheme goes back to the founding of the nation. A number of Framers of the Constitution (including such leaders as Ellsworth and Paterson) were members of the Senate Judiciary Committee in the First Congress which initially proposed that local United States attorneys be appointed by the District Judges and that the Attorney General be appointed by the Supreme Court. Though this proposal never became law, the fact that these men saw fit to report it to the Floor of the Senate certainly indicates that they viewed it as entirely consistent with the Constitution.

Moreover, the contemporary history of that period confirms in another way that prosecution for crime was not perceived as a function belonging exclusively to Executive appointees. The First Congress (which has been characterized as virtually a continued session of the Constitutional Convention) explicitly provided for criminal prosecutions to be instituted and maintained to conclusion by *private individuals* as well as public prosecutors. [One example of this, out of many, is the statute outlawing larceny in Federal territory, 1 Stat. 112 § 16 (Act of April 30, 1790).]

The foregoing, in my view, clearly support the judgment that Congress may constitutionally authorize judicial appointment of a prosecutor, even one with general prosecutorial authority. Judicial appointment of a temporary special prosecutor with the specific charge provided for in Title I of S. 495 is an *a fortiori* case. That legislation addresses itself to the particular situation in which there is a conflict of interest within the Executive Branch. To whatever extent concepts of separation of powers might be viewed as arguing for some limitation on judicial appointment of prosecutors, those concepts would have their least force with regard to the situation dealt with here in which the Executive Branch would otherwise be investigating and considering prosecution of its own top officials.

The basic authority for judicial appointment of a temporary special prosecutor being valid, the only remaining question relates to the additional functions given the appointing Court by the Act; these include receiving reports from the Attorney General and determining whether a conflict of interest, or the appearance thereof, exists. These functions, which are clearly related to, and concomitants of, the power of appointment are also in my judgment soundly constitutional. Though some authority can be cited for this proposition, the point may be most clearly made by analogy. Assume that Congress authorized judicial appointment of referees, masters, clerks, or other such officers up to a certain number and then provided that actual appointments should be made only as necessary to handle expected increases in court business as specified by statutory criteria. Would there be any doubt that the legislation would be valid not only in authorizing the courts to determine when those statutory criteria were met, but also in empowering them to receive census and other demographic material and relevant economic data from the Commerce and Treasury Departments, as well as the Justice Department and the Administrative Office of the Courts, in order to provide the factual basis for making that determination? The answer seems to me clear: Congress has the power to specify the statutory criteria and may authorize the Courts to receive relevant data in order to determine whether the criteria have been met. On this basis, I believe that the ancillary provisions contained in Title I of S. 495 are entirely valid. I might add that, in my view, the fact that these criteria and arrangements are structured so as to limit the judicial appointment of a temporary special prosecutor to the most necessary circumstances of conflict of interest reinforces that conclusion. As I have indicated, judicial appointment of a standing special prosecutor would pose no constitutional problems; there should certainly be no more where the purpose of the additional procedures is to insure that the appointment is limited to those circumstances of greatest necessity.

The policy judgments are, of course, more open to differences of views than the constitutional ones. I believe that the policy direction taken by Title I of S. 495 is a sound one. It clearly seeks to focus primary responsibility for the enforcement of federal law, even as to government officials within the Executive Branch, in the Department of Justice and subject to the immediate supervision of the Attorney General. That seems to me entirely appropriate and entirely sound. Despite the occasional lapses—which are inevitable in any human institution—the Department of Justice certainly warrants the reposing of trust and confidence in its abilities and dedication. Maintenance of esprit, responsibility, dedication and high competence can only be achieved by the reposing of such confidence. At the same time, in special circumstances where the conflict of interests or the potential or appearance thereof reaches to the highest levels of the Executive Branch, it is appropriate to make special arrangements. Even here, I note that the proposed legislation would give primary initiative to the Attorney General; that, too, seems to me appropriate. And the final provision for judicial appointment of a temporary special prosecutor in the extraordinary circumstances where such independence from the Executive Branch is essential is, in my judgment, a salutary improvement and learning from experience. Though I do not speak to every detail of the Bill in structuring the interface between the role of the Department of Justice and the appointing court, the general approach taken here seems to me wise and the product of a careful and thoughtful legislative process. Further consideration, and perhaps specificially consultation with the Department of Justice, may help improve some of the particulars. But I am favorably impressed with the basic contours of Title I of the Bill as it now stands and strongly support its general policy direction.

Sincerely,

PAUL J. MISHKIN,
Emanuel Heller Professor of Law.

AMERICAN BAR ASSOCIATION,
Washington, D.C., June 3, 1977.

Hon. ROMAN HRUSKA,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HRUSKA: At the hearings held before the Senate Judiciary Committee on S. 495 May 27, 1976, you asked me to comment on several issues which arose during the hearing. These included the thrust of *Ex parte Siebold*, 100 U.S. 371 (1880) with respect to the appointing power of the courts; and *United States* v. *Cox*, 342 F. 2d 167 (5th Cir. 1965), cert. denied 85 Sup. Ct. 1767 (1965), and *United States* v. *Cowan*, 524 F. 2d 504 (5th Cir. 1975), with respect to prosecutorial discretion. You also asked for an analysis of the meaning of the phrase "inferior officer" as contained in the Constitution and the role of the federal prosecutor as a minister of justice and quasi-judicial official. Finally, you asked for a comparison of the relevant provisions of Title I of S. 495 and the recommendations of the American Bar Association contained in the report of its Special Committee to Study Federal Law Enforcement Agencies.

THE APPOINTING POWER OF FEDERAL COURTS

The *Siebold* case involved a statute imposing upon federal circuit courts the duty of appointing supervisors of elections. It was alleged that these duties were entirely executive in character and that no power could be conferred upon the courts of the United States to appoint officers whose duties are not connected with the judicial branch of the government. The United States Supreme Court rejected these arguments and upheld the courts' appointment power.

The Court cited Article II, Section 2 of the U.S. Constitution which provides that "the Congress may be law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments." Of this provision the Court said:

It is no doubt usual and proper to vest the appointment of inferior officers in that department of the government, executive or judicial, or in that particular executive department to which the duties of such officers appertain. But there is no absolute requirement to this effect in the Constitution; and, if there were, it would be difficult in many cases to determine to which department an officer properly belonged . . . but as the Constitution stands, the selection of the appointing power, as between the functionaries named, is a matter resting in the discretion of Congress and, looking at the subject in a practical light, it is perhaps better that it should rest there than that the country should be harassed by the endless controversies to which a more specific direction on this subject might have given rise.

The Court also stated that the duty to appoint inferior officers, "when required thereto by law, is a constitutional duty of the courts. . . ." The Court then posited the "in-

congruity" test, stating that unless there exists an incongruity between the duties to be performed and the appointing authority such "as to excuse the courts from its performance, or . . . render their acts void," the appointment will be valid.

Congress has provided for the appointment by the district court of U.S. attorneys when a vacancy occurs (28 U.S.C. 546). This power was upheld in *United States v. Solomon*, 216 F. Supp. 235 (S.D.N.Y. 1963). Professor Paul Freund of Harvard believes that judicial appointment of a special prosecutor may rest on even firmer footing than the appointment of a U.S. attorney to fill a vacancy. He has pointed out that, although limited in tenure, a U.S. attorney appointed by the court assumes all the power of that office regardless of the subject matter. The special prosecutor, on the other hand, has a far more limited jurisdiction under S. 495, where the specific jurisdiction of the temporary special prosecutor is to be defined by the appointing power.

THE PROSECUTIONAL FUNCTION

During the hearing you raised a question as to whether or not the prosecutor performed a function so executive in nature as to render the appointment of a temporary special prosecutor, albeit under clearly defined circumstances and with limited jurisdiction, incongruous under *Ex parte Siebold*. In answering this question, we must consider three factors: the nature and scope of the prosecutor's function; the interrelationship between the different actors (judge, prosecutor, and defense attorney) in the criminal justice system; and the problems inherent in having individuals investigating and prosecuting crimes involving high-ranking government officials.

Former Attorney General Robert H. Jackson stated that the prosecutor has more control over life, liberty, and reputation than any other person in America, that he has tremendous discretion, and that the manner in which he conducts investigations has a profound affect on the lives of citizens.

The American Bar Association has stated that the prosecutor is not only an advocate but an administrator of justice and that his duty is to seek justice, not merely to convict. His obligation is to protect the innocent as well as to convict the guilty, to guard the rights of the accused as well as to enforce the rights of the public. The ABA concluded:

"This is one of the senses in which the prosecutor has sometimes been described as a 'minister of justice' or as occupying a quasi-judicial position. In the present context, both concepts can be embraced in more contemporary terminology by describing him as an administrator of justice." (*Standards Relating to the Prosecution Function and the Defense Function*, American Bar Association (1971), p. 44.)

The function of the prosecutor in determining probable cause for arrest and for submitting a case to a grand jury has been described as quasi-judicial in several Supreme Court cases. See *Ocampo v. United States*, 234 U.S. 91 (1913) and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). In the pretrial stage of the criminal justice system, the police or other law enforcement officer makes an arrest and may cause a complaint to be filed. He then recommends to the prosecutor that a formal charge be instituted. The prosecutor carefully reviews the recommendation of the arresting officer and supporting evidence before deciding to submit the case to the grand jury for its consideration or before filing an information in open court.

The extensive responsibilities of prosecutors have given rise to their being regarded as quasi-judicial officials entitled to a type of "judicial immunity" befitting such quasi-judicial status. In *Golden v. Smith*, 324 F. Supp. 727 (D.C. Ore. 1971), the court found there was no liability on the part of a prosecutor for damages caused by an allegedly illegal arrest and detention, noting that "prosecutors, as quasi-judicial officers, have an immunity similar to that of judges for acts which constitute an integral part of the judicial process."

It is settled that a prosecutor is both an officer of the executive branch and an officer of the court. As Judge (now Chief Justice) Burger stated regarding the role of the U.S. attorney:

An attorney for the United States, as any other attorney, however, appears in a dual role. He is at once an officer of the court and the agent and attorney for a client; in the first capacity he is responsible to the court for the manner of his conduct of a case, i.e., his demeanor, deportment and ethical conduct. *Newman v. United States*, 382 F.2d 479, (D.C. Cir. 1967).

The American Bar Association points out that all serious criminal cases require the participation of three entities: the judge, the counsel for the prosecution, and the counsel for the accused. Absent any one of these (barring valid waiver of counsel), the court is incomplete. In short, "court" must be viewed as a three-legged structure which cannot stand without the support of all three.

Thus, the prosecutor plays a role within the court system in the investigation and prosecution of crimes which goes far beyond purely executive or administrative functions. Appointing a temporary special prosecutor under the limited circumstances and with the limited jurisdiction set forth in S. 495 is no more incongruous than the appointment by the district court of temporary U.S. attorney who would assume all the power of that office regardless of the subject matter.

S. 495 does not casually place the appointing authority in the court. The bill places upon the Attorney General the primary responsibility for appointing a temporary special prosecutor. It is only after a review of a case in which the Attorney General has held that there is no conflict of interest and has made no appointment that the proposed court division would consider appointing a temporary special prosecutor, and then only if it found a conflict. In such a circumstance, where the court has found a conflict of interest in the Executive Branch, it could well be said that incongruity would inhere in an executive appointment. But, whether that is true or not, this situation is one in which the Attorney General has decided not to make an appointment, and therefore an investigation might not occur unless another authority is given the power to make the appointment.

The American Bar Association has stated the following:

A prosecutor should avoid the appearance or reality of a conflict of interest with respect to his official duties. In some instances, as defined in the Code of Professional Responsibility, his failure to do so will constitute unprofessional conduct. (*Standards Relating to the Prosecution Function and the Defense Function*, § 1.2)

Chief Justice Burger stated in *Newman, supra*, that an attorney for the United States is responsible to the court for his ethical conduct. In *Sherman* v. *United States*, 356 U.S. 380 (1958), the Supreme Court spoke of the general supervisory power of courts over the administration of criminal justice:

Insofar as they are used as instrumentalities in the administration of criminal justice, the federal courts have an obligation to set their face against enforcement of law by lawless means or means that violate rationally vindicated standards of justice, and to refuse to sustain such methods by effectuating them. They do this in the exercise of a recognized jurisdiction to formulate and apply "proper standards for the enforcement of the federal criminal law in the criminal courts."

To impose "ethical conduct" and enforce "rationally vindicated standards of justice," a court of law may be authorized to appoint a temporary special prosecutor under clearly defined circumstances and with limited jurisdiction.

TEMPORARY SPECIAL PROSECUTOR AS AN INFERIOR OFFICER

During the hearing you raised the question of whether the temporary special prosecutor provided for in S. 495 was an "inferior officer" under Article II, Section 2 of the Constitution. (It should be noted that the Attorney General's authority under present law to appoint a temporary special prosecutor is based on this Section, and that the "inferior officer" question applies equally to his appointments and those by a court.) Professor Paul Freund holds that an office is an inferior office if it is inferior to those that have been enumerated in the Constitution, namely ambassadors, public ministers, consuls and judges of the Supreme Court. Another authority, Professor Paul Mishkin of the Boalt Hall School of Law of the University of California, believes that the history of the development of that clause in the Constitutional Convention indicates that "inferior officer" means anybody inferior to the appointing authorities in Article II, Section 2.

The meaning of "inferior officer" has been explicitly interpreted in *Collins' Case*, 14 Ct. Cl. 569 (1878). In that case, the court characterized the Congressional power to establish appointing authority in this manner:

Thus it may authorize the President or the head of the war department to appoint an army officer, because the officer to be appointed is inferior to the one thus vested with the appointing power. The word "inferior" is not here used in that vague, indefinite, and quite inaccurate sense which has been suggested—the sense of petit or unimportant; but it means subordinate or inferior to those officers in whom respectively the power of appointment may be vested—the President, the courts of law and the heads of departments.

I conclude that the historical record, the language of the Constitution and the holding of the federal courts give clear indication that a temporary special prosecutor appointed under the provisions of S. 495 would be an "inferior officer."

PROSECUTORIAL DISCRETION

During the hearings it was stated by other witnesses that S. 495 would involve an unconsitutional interference with the discretion of the prosecutor in violation of separation of powers in the Constitution. I was asked to comment on *United States* v. *Cox* and *United States* v. *Cowan* in this respect.

At the outset it should be stated that S. 495 in no way authorizes the appointing court to interfere in the exercise of the prosecutor's discretion in handling a particular case. The court is given only two functions, both unrelated to the exercise of that discretion. First, the court may be called upon to review the relationship of the President or the Attorney General to potential defendants only insofar as it may constitute a conflict of interest as defined in S. 495. Should the court find such a conflict, it could then appoint a temporary special prosecutor.

Second, at the time of making such an appointment, the court would establish the overall jurisdiction of the temporary special prosecutor with respect to the matter to be investigated. Once having made the appointment based upon a conflict of interest standard, and after having stated the jurisdiction, the special division of the court would no longer have any authority to second-guess decisions made by the temporary special prosecutor in the course of the inves-

tigation and any subsequent judicial proceedings.

United States v. Cox and *United States v. Cowan* stand for the proposition that prior to the return of an indictment or the filing of an information, the Attorney General and subordinates have the absolute power and discretion to institute or not institute a prosecution. Nothing in S. 495 contravenes these holdings. We should not confuse the power of appointment and the authority to establish basic jurisdiction with the supervision of the prosecutor in a case as it progresses. To avoid any connotation of such supervision, S. 495 provides that the Attorney General, and only the Attorney General may remove the temporary special prosecutor for "extraordinary improprieties." The only role which the court would play in such an instance would be to review the removal to ascertain whether or not this standard has been met.

You asked for some special commentary concerning *United States v. Cowan*. That case involved the appointment of a special prosecutor by a district court judge in Texas after he refused to dismiss a case under Rule 48 (a) of the Federal Rules of Criminal Procedure and the local U.S. attorney then refused to proceed with the case. The Fifth Circuit Court of Appeals reviewed the history of the development of Rule 48(a) and concluded that, while a court could refuse to dismiss a case under certain circumstances, the district court in this matter had exceeded the bounds of its discretion in denying the government's motion to dismiss. Having so concluded the court stated, "We have no cause to consider the propriety of its order effectuating that denial by appointing special prosecutors." Thus, the case is not dispositive of any issues relating to the appointing of special prosecutors.

CONCLUSION

The questions you have raised focus on the scope of the powers of federal courts under the Constitution. The "separation of powers" principle inherent in the Constitution did not assume tightly compartmentalized branches of government. In commenting on this structure the Supreme Court, in an opinion authored by Chief Justice Burger, stated:

In designing the structure of our government and dividing and allocating the sovereign power among three co-equal branches, the Framers of the Constitution sought to provide a comprehensive system, but the separate powers were not intended to operate with absolute independence.

While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity. (*United States v. Nixon*, 418 U.S. 683, 707 (1974)).

In discussing the conflict between the absolute discretion of the prosecutor in initiating prosecution, and Rule 48(a) of the Federal Rules of Criminal Procedure authorizing the dismissal of a case "by leave of the court," Judge Murrah in *United States* v. *Cowan* spelled out the nature of the court's power:

We think the rule [48(a)] should and can be construed to preserve the essential judicial function of protecting the public interest in the evenhanded administration of criminal justice without encroaching on the primary duty of the Executive to take care that the laws are faithfully executed. The resulting balance of power is precisely what the Framers intended. As Judge Wisdom put it, quoting Montesquieu, " 'To prevent the abuse of power, it is necessary that by the very disposition of things, power should be a check to power' . . . [thus] the Framers wove a web of checks and balances designed to prevent abuse of power" and "were too sophisticated to believe that the three branches of government were absolutely separate, airtight departments." *United States* v. *Cox*. . . . From this, it seems altogether proper to say that the phrase "by leave of court" in Rule 48(a) was intended to modify and condition the absolute power of the Executive, consistently with the Framer's concept of Separation of Powers, by erecting a check on the abuse of Executive prerogatives. . . . The rule was not promulgated to shift absolute power from the Executive to the Judicial Branch. Rather, it was intended as a power to check power.

The proposed authority in S. 495 for a division of the U.S. Court of Appeals to appoint a temporary special prosecutor is intended and acts as "a power to check power." The special prosecutor, once appointed, would exclusively exercise prosecutorial direction.

I am attaching a chart which compares the ABA recommendations on the Government Crimes Division and the temporary special prosecutor mechanism with the provisions of Title I of S. 495. As you will note, they are markedly similar.

I hope this letter is responsive to your requests. We stand ready to offer any further assistance should it be desired.

Sincerely,

HERBERT S. MILLER,
Reporter/Consultant to the Special Committee.

Enclosure.

[A Comparison of the Provisions of Title I of S. 495, The Watergate Reorganization and Reform Act of 1976, and the American Bar Association Recommendations Contained in its Report]

"PREVENTING IMPROPER INFLUENCES ON FEDERAL LAW ENFORCEMENT AGENCIES"

The Special Committee to Study Federal Law Enforcement Agencies of the American Bar Association published a report in January, 1976, entitled "Preventing Improper Influences on Federal Law Enforcement Agencies." The report contained twenty specific recommendations for preventing abuses of these agencies, all twenty of which were approved by the Association's House of Delegates in February, 1976, as official policy.

Two of those recommendations ("Prosecuting Government Crimes" and "Special Prosecutor") are almost totally in accord with the provisions of Title I of S. 495, the Watergate Reorganization and Reform Act of 1976, as reported on May 12, 1976, by the U.S. Senate Committee on Government Operations. The following analysis compares the ABA recommendations to the S. 495 provisions.

Issue	S. 495 Approach	ABA Approach
	Division of Government Crimes	
1. Establishment of division.	By statute.	By statute.
2. Jurisdiction.	Federal criminal law violations by high-level government officials; federal criminal law violations by all government employees if work-related; lobbying, campaign and election law violations.	Violations of federal laws by government officials; cases referred by the Federal Election Commission; violations of federal campaign laws.
3. Selection of Assistant Attorney General.	Presidential appointment, Senate confirmation.	Presidential appointment, Senate confirmation.
4. Qualifications of Assistant Attorney General.	Must not have held a high-level position of trust and responsibility in campaign of elected President or Vice-President within five years preceding appointment.	No recommendation with respect to the Assistant Attorney General, although a similar restriction on nominees for Attorney General and Deputy Attorney General was recommended.
5. Term of Assistant Attorney.	Coterminus with that of the President making the appointment.	No recommendation.
6. Requirements in Office.	(a) Shall not engage in outside business. (b) Shall report to Congress each session on Division's activities.	(a) No recommendation. (b) No specific reporting recommendation; although the ABA report contemplates close Congressional scrutiny of this statutorily-mandated division.
7. Supervision of Assistant Attorney General.	By Attorney General.	By Attorney General.
	Temporary Special Prosecutor (TSP) Mechanism	
1. Circumstances triggering.	Conflict of interest or appearance thereof in which the President or the Attorney General has a direct and substantial personal or partisan political interest in the outcome of the proposed criminal investigation or prosecution (with matters involving specified government officials being automatically deemed to create a conflict).	(a) Conflicts of interest, implications of partiality or alleged misconduct as delineated in ABA *Standard Relating to the Prosecution and Defense Function;* (b) Appearance of professional impropriety under Canon 9 of ABA Code of Professional Responsibility; (c) Improper influence or obstruction of justice as defined in 18 U.S.C. 1501–1510.

Issue	S. 495 Approach	ABA Approach
2. Action to be taken by Attorney General.	(a) File memorandum with Court summarizing allegations and result of preliminary investigation, including information relevant to determining existence of a conflict of interest; the Attorney General's findings; and whether the Attorney General has disqualified himself and appointed a temporary special prosecutor or not; (b) Appoint a temporary special prosecutor if he deems it appropriate.	(a) File memorandum with Court stating facts, legal conclusion and decision with respect to whether or not to appoint a temporary special prosecutor; (b) Appoint a temporary special prosecutor if he deems it appropriate; (c) Request the Court to make the appointment.
3. Alternative means of bringing conflict situation to Court's attention.	Any individual, after 30 days' notice to Attorney General of information raising a conflict issue, may petition Court to review the matter.	The Court can act on its own authority to review allegations of conflict.
4. Response by Court where no TSP appointment made by Attorney General.	Review matter and determine whether a conflict exists, and if so, appoint a TSP.	Review matter and determine whether a conflict exists, and if so, either call upon the Attorney General to appoint a TSP or make such appointment itself.
5. Response by Court where Attorney General has appointed a TSP.	Review appointment to determine if TSP is himself in a conflict situation and, if so, appoint a different TSP.	Review appointment to determine if TSP is himself in a conflict situation and, if so, call upon the Attorney General to make a new appointment or appoint a different TSP.
6. Jurisdiction of TSP.	Whoever appoints the TSP shall specify in writing the matters which such prosecutor is authorized to investigate and prosecute. The statement of jurisdiction in the case of appointment by the Attorney General is subject to review by the Court to determine whether it is "sufficiently broad to enable the TSP to carry out the purposes of this chapter."	The appointing authority would delineate the jurisdiction. Where the Attorney General has made the appointment, the statement of jurisdiction in his memorandum to the Court would be reviewed by the Court and modified where necessary.
7. Removal of TSP.	(a) Upon filing with Attorney General of report stating that all investigations and prosecutions have been completed; (b) By Attorney General for "extraordinary improprieties," subject to review by Court.	(a) No specific recommendation. (b) By Attorney General for "extraordinary improprieties," subject to review by Court.
8. Powers of TSP.	Within specified jurisdiction the same power as an Assistant Attorney General for Government Crimes, except that TSP can appeal any decision in a case to which he is a party without approval of Attorney General or Solicitor General.	Within specified jurisdiction the same power as the Attorney General or a U.S. Attorney in prosecuting a case.
9. Nature of Court.	Division of three judges of the U.S. Court of Appeals for the District of Columbia; judges to be assigned for a two-year term by the chief judge, with priority given to senior retired circuit court judges and senior retired justices; prohibition against judges who participated in process of appointing TSP from deciding on matters brought thereafter by TSP's office.	Special Court of appointment composed of three retired senior federal circuit court judges appointed by the Chief Justice for a two-year term.
10. Expedited judicial review.	Detailed mechanism for expediting judicial review of actions challenging TSP's authority.	No recommendation.
11. Disqualification of Department of Justice employees.	Requires Attorney General to promulgate rules and regulations requiring officers and employees of the Department to disqualify themselves in matters where a conflict, or appearance thereof, may result.	No recommendation.

STATEMENT OF JOHN HARMON

Mr. Chairman and Members of the Committee:

I am pleased to appear today to provide the views of the Department of Justice on Titles I and II of S. 555, the Public Official Integrity Act of 1977. We support the principles underlying these titles which would provide for the appointment of a temporary special prosecutor and create an Office of Congressional Legal Counsel.

With respect to Title I, our support for the special prosecutor provision of the bill should not be misunderstood by this Committee or by the American people as any indication that the Department of Justice cannot or would not forcefully and effectively prosecute even the highest officials of the Executive Branch where there was evidence of criminal wrongdoing. To the contrary, our first duty is to our first client, the American people and the Constitution. And let there be no question that this Department of Justice stands ready to enforce the laws of the United States, fairly and firmly, against all who would violate those laws, no matter what their office or position.

However, we recognize that public perceptions and the appearance of justice are often as important as justice itself. We also recognize that in light of Watergate and its aftermath public confidence in our system of justice must be restored. We must not only do justice, but be able to assure the public that justice has been done. It is in this spirit that I come here for the Department of Justice to support the principles underlying the special prosecutor provision of S. 555.

With regard to Title II and the creation of an Office of Congressional Legal Counsel, the Department of Justice recognizes that the basic decisions whether to establish such office and what structure the office or offices should take are policy questions for Congress to decide. It would be inappropriate for the Department of Justice to enter the debate over those threshold policy questions. However, we do believe that it might be useful in your consideration of the policy issues to know that the Department does not oppose the establishment of an Office of Congressional Legal Counsel in principle and that after reviewing the powers provided in the bill we believe, except for the power of intervention, the Congress might legitimately vest those powers in the Office. Therefore, I am here today to support the basic principles underlying both the special prosecutor and the congressional counsel provisions of S. 555.

There are, however, particular aspects of both Titles I and II which either pose constitutional problems or which would be detrimental to the fair and efficient administration of justice. While the Department generally supports the proposals here, we believe that the deletion or modification of certain problematical provisions will result in a bill which is both more workable and less subject to constitutional objections.

TITLE I

1. Special Prosecutor

In essence, Title I provides for judicial appointment of a temporary special prosecutor in instances where the Attorney General receives a non-frivolous allegation that certain specified persons have violated any Federal criminal law. More particularly, the bill requires the Attorney General to conduct an investigation whenever he receives "specific information" that the President or Vice President, individuals serving at Level I or II of the Executive Schedule, certain high-level officials working in the Executve Office, the Director of the FBI, and certain campaign personnel have violated any Federal criminal law. If, after a period not to exceed sixty days, the Attorney General determines that the "matter is so unsubstantiated that no further investigation or prosecution is warranted," he shall so notify a special court of three judges chosen by the chief judge of the United States Court of Appeals for the District of Columbia; the court would then have no power to appoint a special prosecutor. If, however, the Attorney General finds that the matter warrants further investigation or prosecution (or sixty days elapse without any determination by the Attorney General), he is required to apply to the court for appointment of a special prosecutor. This same action is required of the Attorney General where he determines that a pending investigation or any resulting prosecution "may so directly and substantially affect the political or personal interests of the President or the Attorney General or the interests of the President's political party as to make it inappropriate in the interest of the administration of justice for the Department of Justice to conduct such investigation." Upon receipt of the Attorney General's application, the court is required to appoint a special prosecutor's jurisdiction.

The special prosecutor is given broad power to hire a staff, to conduct investigations and prosecutions, and to secure access to pertinent Department of Justice records and resources. He is obliged to submit reports to Congress and to "cooperate with the exercise of . . . oversight jurisdiction" by the appropriate committees of Congress. He may be removed from office, other than by impeachment and conviction, by the Attorney General but only for "extraordinary improprieties" or similar conduct. The bill also provides for the termination of the speical prosecutor's office upon the completion of its assigned tasks.

As I have already indicated, the Department of Justice endorses the concept of resort to a temporary special prosecutor in extraordinary circumstances. We also support the general approach adopted in this bill. The Department has no objections to the manner in which the appointment process is initiated, the method of judicial appointment, or the restrictions placed on the Executive's power of removal over the special prosecutor.

In view of the departure which this bill takes with respect to the normal methods of appointing and removing Executive officials, I shall briefly state our views as to the constitutionality of the measures here. We believe that judicial appointment is justified by the Appointments Clause, Article II, section 2, and the extraordinary circumstances which would mandate a recourse to a special prosecutor. It is our view that ordinarily Article II, section 2 cannot be used to override the fundamental principle of the separation of powers; this principle would generally require that the Executive be allowed to appoint those officials carrying out Executive functions. However, the circumstances surrounding misconduct by high-level officials and the need to preserve the appearance of justice would warrant a judicial appointment here. In such exceptional circumstances we do not believe that an "incongruous" duty would be imposed upon the courts. *See* Ex parte Siebold, 100 U.S 371, 398 (1879).

The extraordinary circumstances inherent in the need for resort to a special prosecutor would also justify the restrictions placed on the Executive's power of removal in this instance. Ordinarily Congress may not impose limitations on the Executive's unfettered discretion to remove an Executive official. *Myers* v. *United States*, 272 U.S. 52 (1926). Subsequent decisions have narrowed this principle to allow for limitations to be placed with respect to those whose quasi-legislative or quasi-judicial duties require a degree of independence from the Executive. *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935); *Wiener* v. *United States*, 357 U.S. 349 (1958). It is not entirely clear whether these decisions might apply to Executive officials, see *Morgan* v. *Tennessee Valley Authority*, 115 F. 2d 990, 994 (6th Cir. 1940); both the explicit language in those decisions, as well as their reliance on the principle of separation of powers, creates the risk that even in such a situation as this the power of the Executive to remove its own officials may not be restricted. However, on balance we think that the extraordinary circumstances which would warrant a resort to a special prosecutor would also justify granting him the measure of independence provided in the bill.

While the Department supports the basic approach of this bill, we would suggest that the bill as presently drafted to require resort to a special prosecutor with respect to all federal criminal violations by all the individuals specified in the bill including all Level II executives may be overbroad. We would concede that at least the appearance of conflicts of interest inhere any time the highest-level officials (e.g., the President, Vice President, and the Attorney General) are allegedly involved in any sort of criminal conduct, and we support the appointment of a special prosecutor in such instances. However, we believe that conflicts may not necessarily arise with respect to *all* of the other individuals specified in the bill or with regard to *every* violation of the Federal criminal law.

We would suggest, first, that the bill's scope as to the individuals covered might be narrowed. While conflicts of interest may appear with respect to many of the officials specified in the bill, we would submit that no conflict whatsoever exists insofar as some specified individuals are concerned—e.g., most of those serving at Level II of the Executive Schedule. The Department is willing and fully capable to prosecute these individuals where it is warranted, and these individuals are not so close to the President that a conflict of interest would inevitably appear. Of course, if a conflict does develop, the Attorney General could always refer a case to the special prosecutor under the procedure specified in proposed section 592(e).

We would further suggest that the types of crimes included in the bill be narrowed. We agree with the bill's approach of mandating a referral to a special prosecutor in the case of any alleged federal criminal violation insofar as the highest-level officials (e.g., the President, Vice President, and the Attorney General) are concerned. However, it is doubtful whether such conflicts necessarily arise where officials other than these are allegedly involved in criminal conduct which does not involve an abuse of office, obstruction of justice, perjury, or a violation of the election or campaign laws. In these instances we believe that the Department is fully capable of investigating and prosecuting these officials. The principal House bill, H.R. 2835, shares this view, since it mandates a referral to a special prosecutor only in cases involving the sorts of crime just mentioned; this is particularly noteworthy since H.R. 2835 contains in some respects more stringent precautions to ensure against conflicts of interest interfering with the prosecution of official misconduct. Again, if a conflict of interest does arise, the Attorney General could refer it to a special prosecutor under the procedure specified in proposed section 592(e).

It might be said that the adoption of such limitations here would make the bill unnecessarily complex and would not lead to any offsetting advantages. However, we believe that a resort to a special prosecutor should be reserved for those extraordinary instances where the appearance of conflicts of interest is substantial. The appointment of a special prosecutor in instances other than this merely creates unwarranted and undesirable risks—e.g., loss of public confidence in the Department, the undermining of Department morale, damaging publicity to the individual under investigation, and the potential for abuse and departure from established policies and guidelines. It should be apparent that, in view of the problems which may arise from the appointment of a special prosecutor, an unnecessary appointment can undermine, rather than further, the administration of justice.

The Department would also like to offer several brief suggestions regarding other aspects of the bill:

(1) We believe that the time frame for the preliminary investigations should be expanded somewhat. While many investigations can be completed in sixty days, a longer time period—e.g., ninety days with an automatic thirty-day extension upon a certification to the court—would allow for a more effective screening of frivolous allegations and would thereby avoid unnecessary referrals to a special prosecutor.

(2) In the interest of allowing for a speedy and confidential resolution of allegations, referral of more than one matter to an existing special prosecutor should be allowed. Proposed section 593(c) could be interpreted to allow for this, but we think this matter should be stated more clearly. In addition, provision might also be made for referral to a United States Attorney if speed or confidentiality become particularly important; the fact that the special court would appoint him should be a sufficient safeguard to ensure his independence.

(3) We recommend that the provision requiring the special prosecutor to "cooperate" with the "oversight jurisdiction" of Congressional committees be eliminated. We think that this provision is ambiguous and can only lead to confusion on the part of the special prosecutor; it may even be taken to imply that Congress could exercise control over prosecutorial decisions. If this provision is to remain in the bill, we would strongly suggest that it be written so as to eliminate this implication.

(4) We also recommend that the provision allowing for a discretionary referral by the Attorney General to a special prosecutor, proposed section 592(e), be somewhat delimited. We would suggest, first, that the Attorney General be explicitly allowed to make the same sort of determinations as to the substantiality of allegations as he does under the automatic referral procedure. We would also suggest the insertion of a provision allowing for a disqualification of the Attorney General to eliminate any conflict of interest. Finally, we would recommend that the reference to the interests of the President's political party be eliminated lest this provision be deemed to apply broadly in cases involving criminal conduct by any member of *either* political party, as prosecution against member of the "other" party might just as well affect the interests of the President's party as prosecution of members within his party.

(5) In addition, we recommend that the Attorney General's determination under proposed section 592(e) be made unreviewable in the courts. Otherwise, a prosecution could be delayed on the grounds that the Attorney General should have, or should not have, transferred a case to the special prosecutor.

(6) We believe that proposed section 595 (e), allowing Congress to request the Attorney General to apply for the appointment of a special prosecutor or to explain his failure to do so, should be eliminated. If the situation is one requiring the automatic appointment of a special prosecutor upon a determination that the allegations were not unsubstantiated, the Attorney General presumably would be in the process of making, or would already have made, a report to the court. If it were appropriate to disclose that information, they could do so.

The only situation where a report to Congress might be justified would arise in those instances where, under proposed section 592 (e), the Attorney General determines that a referral to a special prosecutor is not necessary. In such instances we would not object to a provision requiring the Attorney General to explain why he believed no conflict of interest existed; we do not believe he should be required to explain any aspect of his determination relating to the exercise of prosecutorial discretion.

(7) We recommend that a provision be inserted requiring the special prosecutor to follow standard Department policies and regulations unless some special need requires otherwise. This proposal is necessary to the fair and uniform application of the law.

(8) The provision requiring a notification to Congress of information which may constitute grounds for an impeachment should be deleted. In view of the ambiguity of what constitutes grounds for impeachment, this provision will only serve to create confusion. Moreover, such disclosure to Congress might have the effect of compromising an ongoing investigation or prosecution or of prejudicing the rights of the individual involved.

(9) We believe that proposed section 597 (a), which requires the Department to suspend all investigations or proceedings within the special prosecutor's jurisdiction, should be modified. Given the haziness of jurisdictional lines, this provision could require the Department to discontinue major proceedings only tangentially related to the matter referred to the special prosecutor. The section should at least provide for an exception whereby the Attorney General and the special prosecutor could agree that the Department could retain jurisdiction over such matters.

2. Office of Government Crimes

The bill would establish within the Department of Justice an Office of Government Crimes, to be headed by a Director appointed by the President by and with the advice and consent of the Senate. The Attorney General could determine the organizational placement of the Office, to which he would be required to delegate, except as to matters referred to a special prosecutor under the bill, jurisdiction of: (1) violations of federal criminal law by any individual who holds (or at the time of violation held) a position as an elected or appointed federal government officer, employee or special employee, if such violation related to his government position; (2) violations of federal criminal laws relating to lobbying, conflicts of interest, campaigns, and election to public office committed by any person, except insofar as such violations involve discrimination or intimidation on grounds of race, color, religion, or national origin; and (3) the supervision of investigations and prosecutions of federal criminal violations involving State or local government officials or employees. In addition, the Attorney General could delegate to the Office any other matters he deemed appropriate.

The purpose of this proposal apparently is to strengthen the enforcement of federal laws designed to insure the integrity of public officials and governmental processes by centralizing the responsibility for supervision and enforcement of such laws in a single unit of the Department of Justice. While the Department shares this concern, it is our belief that this laudable goal has already been achieved by the creation of the Public Integrity Section within the Criminal Division in March of 1976. That Section, which has a jurisdiction virtually commensurate with the jurisdiction that S. 555 would confer upon the Office of Government Crimes, has functioned vigorously and with considerable success in the more than one year since its formation.

In our view, the statutory requirement of an Office of Government Crimes would have distinct disadvantages. On the one hand, if the Office were located outside the Criminal Division, the adoption and maintenance of uniform prosecutive policies—for example grand jury utilization, use of electronic surveillance techniques, and grants of immunity—would be seriously diluted. Such a splintering of criminal law enforcement responsibility would also lead to a duplication of effort in those numerous investigations that overlap with other criminal matters, particularly those handled by the Fraud and Organized Crime and Racketeering Sections of the Criminal Division. (An illustration of such an overlapping situation is a fraud investigation of a federal housing program (conducted by the Fraud Section) which develops information that H.U.D. employees are involved in or using their office to further the scheme).

On the other hand, placing the Office within the Criminal Division would give rise to problems of a quite different nature, arising from the fact that both the head of the Office and the Assistant Attorney General in charge of the Criminal Division would be Executive Level appointees. This fact, coupled with the direct access to the Attorney General that S. 555 would grant to the Director of the Office, would make effective supervision of the Office by the Assistant Attorney General difficult at best, and might well lead to unwholesome conflicts within the Division that would reduce the efficient administration of the anti-corruption laws.

In short, we believe that the objective we share with this Committee of diligence and prompt investigation and prosecution of crimes of public corruption can be better achieved by the existing institutional structure of the Public Integrity Section, which has effectively concentrated Departmental resources for this task. The Congress can of course monitor the efforts of the Department in this regard through hearings or requests for reports from the Attorney General, Deputy Attorney General, and Assistant Attorney General in charge of the Criminal Division. But for the present, and so long as the Public Integrity Section continues to perform its function at a high level of effectiveness, we believe there is no occasion to depart from this structure by legislatively mandating a new institutional unit within the Department. We note that the principal House bill, H.R. 2835, dealing with the establishment of a special prosecutor and related matters, contains no provision comparable to that in S. 555 calling for the formation of a Government Crimes Office. We think this considered omission, reflecting a confidence in the Attorney General and in the benefits of retaining flexibility of the organizational structure within the Department, is the wiser course.

3. Other proposals

Finally, the Department supports the provision in Title I requiring the promulgation of rules and regulations concerning disqualification in cases of conflicts of interest.

TITLE II

This title establishes an Office of Congressional Legal Counsel and requires that Office to perform certain duties relating to the rendering of legal advice to Congress or representing Congress in court in specified circumstances. The Department supports the establishment of the Office of Congressional Legal Counsel in principle and supports most of the functions vested in it by S. 555. However, we have serious constitutional objections to certain of the bill's provisions.

In brief, the bill provides for a Congressional Legal Counsel to be appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate. Upon a proper authorization from the Congress, the Counsel is required to perform the following functions: (1) to defend Congress, its offices and agencies, committees, members, officers or employees in any civil action (a) where such individuals are parties defendant and the validity of action taken by them in their official capacity is at issue or (b) where a subpena or order is directed at such parties in their official capacity; (2) to bring a civil action to enforce any congressional subpena except for those issued to Executive officials acting within their official capacity; (3) to represent Congress in requesting the Courts to issue an order granting immunity to individuals ordered to testify in congressional proceedings; (4) to advise and cooperate with various individuals and entities connected with assorted congressional functions; and (5) to intervene or appear as amicus curiae in any legal action where (a) the United States is a party, the constitutionality of an Act of Congress is challenged, and such constitutionality "is not adequately defended by counsel for the United States," or (b) the powers and responsibilities of Congress under the Constitution are placed in issue.

We support the vesting of most of these functions in the Congressional Legal Counsel. The provisions authorizing the Counsel to give legal advice to the various congressional components, for example, relate exclusively to Congress' performance of its legislative functions and are thereby quite properly lodged in the Congress itself. The same can be said of the provisions requiring the Counsel to defend Congress and its members in certain situations. We have no constitutional objections to such authorizations; the defense of these actions, even though it may literally involve defense of official actions undertaken pursuant to the laws of the United States by Members of Congress, do not constitute, in our opinion, the kind of "enforcement of the laws" that the Supreme Court has ruled in *Buckley* v. *Valeo*, must be lodged exclusively with the Executive Branch under our constitutional principles of separation of powers. Thus the Department in the past has not regarded it as constitutionally mandatory to represent all Members of Congress or congressional committees whose actions are challenged and it has often advised them to obtain their own counsel when defense of their actions would conflict with Executive Branch duties and responsibilities. In such cases the establishment of an Office of Congressional Counsel would benefit the Department as well as congressional defendants by assuring them adequate and vigorous representation.

We also support the provisions allowing the Congressional Counsel to undertake the enforcement of subpoenas and representation of Congress in immunity proceedings, but constitutional cautions are in order. At first glance enforcement of a subpoena might be

regarded as "enforcement of the law" which may only be performed by the Executive, see *Buckley* v. *Valeo, supra* at 138, and by those who are "Officers of the United States" appointed pursuant to Article II, section 2, *Id.* at 138–40. However, while we believe this is to be a close case, we have concluded that the congressional enforcement of subpoenas in the context presented by the bill is not subject to constitutional constrictions. Rather a congressional subpoena is an integral part of the legislative process, *Eastland* v. *United States Servicemen's Fund*, 421 U.S. 491, 504–5 (1975), and we believe the civil enforcement of such subpoenas may also legitimately be regarded as within the legislative process. For this reason, it is our conclusion that this "investigative and informative" power may appropriately be lodged in the Congress, *Buckley* v. *Valeo, supra* at 137–38; the officials who are empowered to exercise this power will thus be carrying out "appropriate legislative functions" and need not be appointed pursuant to Article II, section 2. *Id.* at 128.

We reach a different conclusion, however, with respect to the provisions authorizing the Counsel to intervene or appear amicus curiae in certain legal actions. While we have no objection to Congress' appearance as amicus curiae in an action as any other third party could, we have serious reservations about the intervention provision.

Section 206(a) would permit the Counsel to intervene in any "legal action" pending in a Federal or State court where the United States is a party and the constitutionality of an Act of Congress is not defended by counsel for the United States or where the powers and responsibilities of Congress under the Constitution are placed in issue. We assume that the term "legal action" was not intended to include criminal proceedings. The "Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a criminal case," *United States* v. *Nixon*, 418 U.S. 683, 693 (1974), and we do not believe the Constitution would permit interference with the exercise of the executive power by the Congressional Legal Counsel on behalf of a coordinate branch of the Federal Government or a House officer or Member of Congress having a particular interest in the matter. *See also Confiscation Cases*, 7 Wall, 454 (1869).

The intervention provision raises questions in civil actions as well. It is not clear whom the Counsel would be representing in defending the constitutionality of an Act of Congress when the United States is a party and counsel for the United States is not defending the constitutionality of the Act. Certainly the Counsel could not represent the United States in such an action. The conduct of litigation on behalf of the United States is part of the President's constitutional responsibility to take care that the laws be faithfully executed, Art. II, § 3; *Buckley* v. *Valeo, supra*, at 138; *United States* v. *Nixon*, 418 U.S. at 693; *United States* v. *Cox*, 342 F. 2d 167, 171 (5th Cir. 1965), and intervention by the Counsel established under this bill would permit Congress unconstitutionally to infringe on that power. The Supreme Court held in *Buckley* v. *Valeo, supra* at 138–140, that only "Officers of the United States" appointed pursuant to Article II, section 2 of the Constitution may conduct civil litigation on behalf of the United States for the purpose of vindicating public rights. Under the bill, the Congressional Legal Counsel will be appointed by the President pro tempore of the Senate and the Speaker of the House of Representatives, and will therefore not be an "Officer of the United States" empowered to represent the United States.

The interests represented by the Counsel would therefore be those of Congress, a House of Congress, or an officer, committee, or committee chairman of a House of Congress. This is implicit in section 203(c) of the bill, which sets forth the requirements for authorizing the Counsel to intervene or appear as amicus curiae under section 206 on behalf of these parties. We seriously question whether Congress, a House of Congress, or an officer, committee or committee chairman would have standing under the Constitution to intervene to defend the constitutionality of an Act of Congress.

Once a bill becomes law, a Congressman's and presumably the entire Congress' interest in attaching or upholding the constitutionality of the law is indistinguishable from that of any other citizen and is too generalized to provide a basis for standing under the Constitution. *Harrington* v. *Schlesinger*, 528 F.2d 455, 459 (4th Cir. 1975). An Act of Congress cannot confer standing where the constitutional requisites for a "case or controversy" under Article III are lacking. Insofar as section 206(a) attempts to confer standing which does not already exist, it must be without force and effect, and to the extent that it simply recognizes standing which has already been established by the Constitution and acknowledged by the courts, it is unnecessary.

Where Congress or a House of Congress does have standing to bring a civil action, and therefore to intervene, *e.g.*, *Coleman* v. *Miller*, 307 U.S. 433 (1939); *Kennedy* v. *Sampson*, 511 F.2d 430 (D.C. Cir. 1976), the Department of Justice has no objection to the interests of Congress being represented by the Congressional Legal Counsel should the counsel for the United States be unable for whatever reason to represent those interests, and we would support a redraft of section 206(a) to so provide.

One other constitutional problem appears apart from the powers conferred on the Counsel. Several provisions of the bill amend 28 U.S.C. §§ 1345 and 2403 to prevent those statutes from being used as a basis for the Executive Branch to assert the unconstitutionality of an Act of Congress. Although the Department has only rarely challenged the constitutionality of an Act of Congress in court, a congressional limitation on the Department's ability to do so must be regarded as unconstitutional. Even though the President is bound to faithfully execute the laws, he is also sworn to "preserve, protect and defend the Constitution of the United States." Article II, section 1. The discharge of this duty requires the Department, as the agent of the President, to enforce the law in a manner it believes to conform with the Constitution. These proposals could also lead to an unconstitutional erosion of Executive authority if they prevented the Department from challenging statutory restrictions on the President's power or prerogatives—a role which, although rarely invoked, is necessary if the principle of separation of powers is to be preserved. Finally, these proposals also present ethical problems for Department of Justice lawyers; for example, by requiring them to assert arguments which they believe to be frivolous, Disciplinary Rules 7–101(B)(2) and 7–102(A)(2) would be violated. *See also* Ethical Considerations 7–4, 7–14.

The Department of Justice has no views on those aspects of Title II which I have not previously addressed. We believe that, since this Title deals largely with Congress' internal functions, Congress should be free to structure the procedural and accountability provisions in the manner it wishes.

Mr. RIBICOFF. Mr. President, I hope that the Senate defeats the amendment of the Senator from Tennessee.

Mr. BAKER. Mr. President, with extraordinary and great respect for my colleague from Connecticut. I respectfully join issue on the idea that all constitutional scholars consider this approach constitutional. I think the memorandum which I have submitted will clearly indicate the contrary. I think, Mr. President, that the important point to remember is that nobody—I hope nobody—opposes the idea of investigating and thoroughly examining and prosecuting, if need be, allegations and charges of public malfeasance or misfeasance. But one of the prime questions before us here is how that office will be filled. To have a judicially appointed office, in that respect, I think is unconstitutional.

I submit, Mr. President, that the clear duty of the Senate is to pass laws that have a reasonable expectation of standing th. scrutiny of constitutional examination, and there is a clear alternative here. That is to permit the President to make that appointment, which my amendment would do.

Mr. President, I previously called on the President of the United States to appoint a special prosecutor in the case of the so-called KCIA investigation. I renew that call now. But, as I said at the beginning, in my opening remarks, I think there is also a need to regularize the procedure by which we examine the several allegations of misconduct which do now or may hereafter occur with respect to personnel, not only of the executive department but of the congressional department as well, or even of the judicial. That is the purpose of this amendment, Mr. President. I urge my colleague to adopt it.

Mr. PERCY. Mr. President, I shall not delay the Senate but a moment. I feel duty bound, due to the fact that my distinguished colleague has now offered the revised version of the original Baker-Percy or Percy-Baker amendment, to explain why I shall oppose my own amendment.

I do so because at the time we initially introduced this amendment—several years ago—it would have created a division of government crimes. It was opposed by President Ford's appointee, then Attorney General Ed Levi.

We have listened to a great deal of testimony. We have had extensive hearings on this subject. We have conducted considerable negotiations. The revised title I is the product of these negotiations. This morning we have again amended that in order to obtain the full support of the Attorney General for what we are undertaking.

I think we now have a fine title. I think we improved the title by the amendment offered by Senator HEINZ and Senator RIEGLE dealing with the possibility of alleged corruption of Members of Congress by foreign governments.

But I do feel, in my best judgment and the best advice we can get from the Attorney General and widely reported constiutional authorities that this title is constitutional.

It is also backed by the American Bar Association.

I, therefore, will cast my vote against the Baker amendment and will urge that we support title I as it now stands in the bill.

SEVERAL SENATORS. Vote! Vote!

The PRESIDING OFFICER. Who yields time?

Mr. RIBICOFF. Mr. President, I yield back my time.

Mr. BAKER. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Tennessee.

The amendment was rejected.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the amendment of the Committee on Governmental Affairs in the nature of a substitute, as amended.

The amendment, as amended, was agreed to.

ADDITIONAL STATEMENTS SUBMITTED

Mr. THURMOND. Mr. President, I note with interest in section 208(a)(3) of the bill that the Congressional Legal Counsel is mandated to advise, consult, and cooperate with:

> . . . the Comptroller General, the General Accounting Office, the Office of Legislative Counsel of the Senate, the Office of Legislative Counsel of the House of Representatives, and the Congressional Research Service, except that none of the responsibilities and authority granted by this title to the Congressional Legal Counsel shall be construed to affect or infringe upon any functions, powers, or duties of the Comptroller General of the United States.

The Congressional Research Service, and in particular the American Law Division, has served as a valuable source of legal research and is available to provide such services as tracking litigation of interest to Congress, advice to investigating committees with respect to legality and issuance of subpenas, and background research for official acts. These activities should not be subordinated to the new Office of Legal Counsel. The work of the Office of Congressional Legal Counsel should not be duplicative of the work of the American Law Division.

Mr. President, I would like to ask the distinguished managers of the bill whether they have considered the relationship and how they envision the institutional interface between the Office of Legal Counsel and the American Law Division of the Library of Congress.

Mr. HASKELL. Mr. President, I want to comment only briefly on the various questions of ethics in Government which are addressed in the Public Officials Integrity Act.

Earlier this year, Howard Fleiger wrote in an editorial for U.S. News & World Report that—

> No greater challenge faces the Carter Administration and the new Congress than that of restoring public confidence in the political character of America.

I believe that is a challenge to which the President and the Congress have effectively responded in the first 6 months of this year. Before his inauguration, Jimmy Carter took steps to insure that he and high-ranking officials of his administration did what was necessary to assure their freedom from the appearance of potential misuse of public office. The President subsequently proposed statutory changes necessary to carry this cleansing process further.

The Congress has also responded to that very real need. Each body has enacted a tough new code of conduct, and we are today enacting legislation to effect Government-wide standards of ethical financial conduct and to create new methods to enforce those standards effectively.

In the 94th Congress I introduced legislation mandating Government-wide disclosure and creating an Office of Ethics Enforcement within the Civil Service Commission. I again advocated that approach in February of this year when I introduced S. 673.

I am deeply gratified that the Committee on Governmental Affairs has recognized the worth of such an approach in the legislation before us and that such an approach has also been endorsed by the administration. The need for a special Office of Ethics Enforcement was further documented by the General Accounting Office in a study released in February.

That report, issued February 28, 1977, noted the need for further development of agency policy and criteria for evaluating potential conflicts of interest, for improved procedures of collection and review of employee disclosure statements, and for more effective and enforceable regulations and standards. The report also documented the need for a formal advisory service and periodic audit and evaluation of agency disclosure systems, and called for greater enforcement authority to be vested in the Civil Service Commission.

An Office of Ethics Enforcement—or an Office on Government Ethics as it is now to be called—within the Civil Service Commission will be in a position, with staff and status appropriate to its task, to tackle the present problems of ethics enforcement within the executive branch. We have known for some time what those problems are: inadequate guidelines regarding financial conflicts of interest, haphazard enforcement, and the generally low priority given to ethics questions within various agencies and by the Civil Service Commission.

The record of the Civil Service Commission leaves much to be desired. Clearly if the Office of Government Ethics within the Commission is to be successful, it must rise above the low regard in which the Commission has been widely held. By making the Director of the Office a Presidential appointee subject to Senate confirmation, I believe we signal our determination that such an office will have the backing of the highest levels of Government, and that it will be held strictly accountable for its record.

With such backing, I believe a special Office of Government Ethics will be an effective solution to the shortcomings of the present system, while creating a minimum of new Government machinery. Such an approach places realistic demands on the Civil Service Commission and provides a needed guarantee that strict standards of financial ethics will be evenly and effectively enforced.

By acting expeditiously on this important matter the Congress will further live up to a national commitment to demonstrating clearly and effectively that our Government is indeed again worthy of public confidence.

Mr. JAVITS. Mr. President, I am pleased to join with my colleagues, Senator RIBICOFF and Senator PERCY, and other members of the Governmental Affairs Committee in recommending to the Senate the legislation which we have before us today. This legislation is the direct outgrowth of months of thoughtful analysis and study of the institutional defects of our governmental processes uncovered in the aftermath of the Watergate affair. It is based upon the assumption that the Federal system of justice is not effectively structured to deal with misconduct involving individuals in the top ranks of any Presidential administration.

It is a fact that the disabling and disheartening reality that politics and justice had become intolerably intertwined threatened to destroy public confidence in the integrity of our Government.

We also know that all too often we forget the lessons of the past and repeat those same tragic mistakes. In my judgment, S. 555 will help to repair those institutional weaknesses without undermining the constitutional foundation of our governmental system.

The committee, the administration, Attorney General Bell, former Attorney General Levi, and the members of the Senate Judiciary Committee have all come together in an attempt to resolve constitutional and policy questions of great importance and great subtlety.

I wish to congratulate our chairman, Senator RIBICOFF and our ranking minority member, Senator PERCY for the substantial commitment which they made to this legislation during the past 2 years. The issues involved herein are extremely complex and have required an enormous amount of analysis and hardwork. I wish also to compliment the excellent work on title II of the bill by Senator ABOUREZK and his Judiciary Subcommittee on the Separation of Powers. I think that particular note should be made of the outstanding staff work carried out in connection with this bill by David Schaefer, Robert Sloan, John Childers, and Chuck Ludlum.

Title I of S. 555 would require the appointment of a temporary special prosecutor by the court when serious allegations of criminal conduct arise concerning certain high level members of the executive branch. It would also establish an Office of Government Crimes within the Department of Justice to handle alleged criminal violations by Government officers or employees which are not referred to a temporary special prosecutor. I strongly support the principle and substance underlying title I. I must say, however, that the approach adopted by the committee does raise questions regarding the way in which the provision will work in practice. I have no objection as to the manner in which the appointment process is initiated, the method of judicial appointment, or the restrictions placed on the Executive's power of removal over the special prosecutor. It is contemplated that the procedure pro-

vided in the bill for such appointments will be resorted to only in extraordinary circumstances.

Mr. President, during my years in Congress, I have frequently noted the institutional disabilities under which the Congress exercises its constitutional functions. The most serious of those disabilities is the lack of its own Office of Legal Counsel. In recent years, this disability was most dramatically felt during the executive-legislative struggles over the impoundment power asserted by President Nixon.

I and Senators HUMPHREY and ABOUREZK and former Senator MONDALE all introduced bills over the years to establish an Office of Legal Counsel. Our own hearings and the hearings of the Separation of Powers Subcommittee have analyzed: First, the extent to which the Justice Department provides representation for Members, committees and employees of Congress, and under what circumstances and conditions; and second, the extent to which the Department finds itself defending on behalf of Congress, the constitutionality of statutes which the executive branch believes to be unconstitutional.

The bill provides for a congressional legal counsel to be appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate. Upon a proper authorization from the Congress, the counsel is required to perform the following functions: First, to defend Congress, its offices and agencies, committees, Members, officers, or employees in any civil action where such individuals are parties defendant and the validity of action taken by them in their official capacity is at issue or where a subpena or order is directed at such parties in their official capacity; second, to bring a civil action to enforce any congressional subpena except for those issued to executive officials acting within their official capacity; third, to represent Congress in requesting the courts to issue an order granting immunity to individuals ordered to testify in congressional proceedings; fourth, to advise and cooperate with various individuals and entities connected with assorted congressional functions; and fifth, to intervene or appear as amicus curiae in any legal action where the United States is a party, the constitutionality of an act of Congress is challenged, and such constitutionality "is not adequately defended by counsel for the United States;" or the powers and responsibilities of Congress under the Constitution are placed in issue.

At present Congress has no in-house litigation counsel despite the fact that Congress has in recent years been involved in more than a hundred court cases—in most instances as a defendant. The Justice Department normally represents Congress in this litigation pursuant to 2 U.S.C. 118 or 28 U.S.C. 517–518. Increasingly, however, the Department has found itself unable to represent Congress due to a conflict of interest with its duty to represent the executive branch. In other cases Congress has deemed it advisable to retain private counsel notwithstanding offers from the Department to provide representation.

Aside from the instances where the Department does not represent Congress, there is a continuing need for a congressional counsel to advise congressional committees on a day-to-day basis on how to avoid or anticipate litigation, to advise Congress in responding to subpenas for congressional documents, to bring civil actions to enforce congressional subpenas, and to intervene or appear as amicus on behalf of Congress. In the last year alone Congress has retained private counsel to intervene or appear as amicus curiae on its behalf in four cases. None of these functions is—or should be—performed by the Department.

In essence, the Congress needs its own in-house counsel to provide professional representation for congressional interests in the same way the Department provides such representation to the executive branch. Congressional litigation requires expertise on unique legal issues, entails wide-ranging consultations on the Hill, and has political ramifications to which congressional counsel must be sensitive. These factors make it inherently difficult for the Department to handle these cases. With the continuous advice of expert litigation counsel, both the executive branch and the public can expect that Congress will give more careful consideration to the litigation consequences of its actions.

Mr. President, S. 555 also contains financial disclosure requirements for high level members of all three branches of our Government. Although S. 495, the predecessor bill to S. 555 contained a comprehensive financial disclosure provision, it was determined earlier this year that the newly created Special Committee on Official Conduct—the "Nelson committee"—of which I was a member—would resolve financial disclosure and other issues in its proposed "code of conduct."

On March 24 the Senate adopted an amendment which was offered by the distinguished Senator from New Mexico (Mr. SCHMITT) and which I cosponsored during consideration of Senate Resolution 110, legislation to establish a Code of Official Conduct for Members, officers, and employees of the U.S. Senate and for other purposes. The purpose of that amendment which was adopted by an overwhelming vote of 93 to 1 was to protect the basic individual rights of spouses and dependents in reporting assets and income, while at the same time preventing abuse by the transfer of assets through which a Member might receive financial or economic benefit.

The language which we adopted was chosen because it utilized the concept of constructive control used in the code of conduct adopted by the House of Representatives while also incorporating the interpretation given to the term "constructive control" by the House. There was extensive debate on this issue in the Senate during its sessions on March 23 and 24 and may be found at pages S4756 through S4779.

In considering S. 555 the Governmental Affairs Committee voted 7 to 4 to delete two separate provisions which go to the questions of reporting spouses interests and the definition of knowledge for reporting purposes. The amendment Senator SCHMITT and I introduce today would restore the language which the Senate agreed to when it adopted the code of ethics.

Mr. BAKER. Mr. President, although I generally sympathize with the goals of S. 555, I am troubled by the probable effect of many of its provisions. I should like to list those concerns briefly.

Beginning with title II of the bill which creates an Office of Congressional Legal Counsel, I question the basic necessity for such an office as described. During the hearings of the so-called Senate Watergate Committee, I became abundantly aware of the potential value of a Congressional Legal Counsel to represent the Congress, either House, or a particular committee thereof in disputes with the executive branch. Clearly, the Justice Department had a conflict of interest in attempting to serve two branches. However, nowhere among the functions listed for the proposed Office of Congressional Legal Counsel is a provision for representing the Congress in controversies between the executive and legislative branches. Indeed, it is specifically excluded, and I am at a loss to understand why.

A second source of concern is the potential cost of the Office. Were that cost to be equal to or less than what we now spend for representation, it might be well worth forsaking use of private counsel or the Department of Justice. And yet, my understanding is that there is no guarantee of it costing the same or less and it quite possibly could cost much more. I am hopeful that in creating this new office, we are not spawning a new bureaucracy which will vastly increase congressional involvement in litigation across the country. It is not difficult to imagine an activist legal counsel staff which perceives article I, section 8 issues in lawsuits throughout the Nation and seeks the authority to intervene or submit amicus curiae briefs repeatedly. I hope that will not be the case, and I commend the sponsors' effort to prevent it by requiring various forms of approval in advance. Nevertheless, I wanted to make note of my concern.

A further problem I have with the proposed Office relates to its third function which is to bring civil actions against individual or corporations to enforce a subpena or other orders issues by a House of Congress. This troubles me because of the effect it may have upon the rights of individual witnesses. I am fearful that congressional investigatory proceedings exhibit a determination to ferret out the facts even if the investigative process may grievously injure the protected rights of individuals who are, or may become, defendants in judicial proceedings. For that reason, I believe that the Congress should give careful consideration to the codification of rules of legislative hearing procedure so as to provide assurance that individual constitutional rights are not impaired by legislative hearings.

Finally, with respect to title II of the bill, I strongly believe that if there is to be an Office, it should be a Joint Office between the Senate and House. Otherwise, the probable expense and duplication increases immeasurably and the en-

tire notion of a single in-house legal capacity that is more familiar with the law in this general area loses its impact.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

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

The PRESIDING OFFICER. Has all time been yielded back?

Mr. RIBICOFF. I yield back all time.

The PRESIDING OFFICER. All time having been yielded back, the question is, Shall the bill pass? 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 Delaware (Mr. BIDEN), the Senator from California (Mr. CRANSTON), the Senator from Kentucky (Mr. FORD), the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. LONG), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Montana (Mr. METCALF) are necessarily absent.

I further announce that the Senator from Iowa (Mr. CULVER) and the Senator from Mississippi (Mr. STENNIS) are absent on official business.

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

Mr. STEVENS. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Utah (Mr. GARN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Nevada (Mr. LAXALT), the Senator from Texas (Mr. TOWER), the Senator from Wyoming (Mr. WALLOP), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Oklahoma (Mr. BARTLETT) is absent due to illness.

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

On this vote, the Senator from Texas (Mr. TOWER) is paired with the Senator from Arizona (Mr. GOLDWATER). If present and voting, the Senator from Texas would vote "yea" and the Senator from Arizona would vote "nay."

The result was announced—yeas 74, nays 5, as follows:

[Rollcall Vote No. 245 Leg.]

YEAS—74

Allen	DeConcini	Jackson
Anderson	Dole	Javits
Baker	Domenici	Johnston
Bayh	Durkin	Kennedy
Bellmon	Eagleton	Leahy
Bentsen	Eastland	Lugar
Bumpers	Glenn	Magnuson
Burdick	Hart	Mathias
Byrd, Harry F., Jr.	Haskell	Matsunaga
	Hatch	McClure
Byrd, Robert C.	Hatfield	McGovern
Cannon	Hathaway	McIntyre
Case	Heinz	Melcher
Chiles	Helms	Metzenbaum
Church	Hollings	Morgan
Clark	Huddleston	Moynihan
Danforth	Humphrey	Muskie
Nelson	Ribicoff	Stevens
Nunn	Riegle	Stevenson
Packwood	Roth	Stone
Pearson	Sarbanes	Talmadge
Pell	Sasser	Thurmond
Percy	Schweiker	Weicker
Proxmire	Sparkman	Williams
Randolph	Stafford	Zorinsky

NAYS—5

Curtis	Hayakawa	Scott
Hansen	Schmitt	

NOT VOTING—21

Abourezk	Ford	Long
Bartlett	Garn	McClellan
Biden	Goldwater	Metcalf
Brooke	Gravel	Stennis
Chafee	Griffin	Tower
Cranston	Inouye	Wallop
Culver	Laxalt	Young

So the bill (S. 555) was passed, as follows:

S. 555

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited at the "Public Officials Integrity Act of 1977".

TITLE I—AMENDMENTS TO TITLE 28, UNITED STATES CODE

SPECIAL PROSECUTOR

SEC. 101. (a) Title 28 of the United States Code is amended by inserting immediately after chapter 37 the following new chapters:

"Chapter 39.—SPECIAL PROSECUTOR

"Sec.
"591. Applicability of provisions of this chapter.
"592. Application for appointed of a special prosecutor.
"593. Duties of the division of the court.
"594. Authority and duties of a special prosecutor.
"595. Reporting and congressional oversight.
"596. Removal of a special prosecutor; termination of office.
"597. Relationship with Department of Justice.
"598. Termination of effect of chapter.

"§ 591. Applicability of provisions of this chapter

"(a) The Attorney General shall conduct an investigation pursuant to the provisions of this chapter whenever the Attorney General receives specific information that any of the persons described in subsection (b) of this section may have violated any Federal criminal law other than a violation constituting a petty offense.

"(b) The persons referred to in subsection (a) of this section are—

"(1) The President or Vice President.

"(2) Any individual serving in a position listed in section 5313 of title 5.

"(3) Any individual working in the Executive Office of the President and compensated at a rate not less than the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

"(4) Any individual working in the Department of Justice and compensated at a rate not less than the rate provided for level III of the Executive Schedule under section 5314 of title 5; any assistant attorney general involved in criminal law enforcement; the Director of Central Intelligence; the Deputy Director of Central Intelligence; and the Commissioner of Internal Revenue.

"(5) Any individual who held any office or position described in any of paragraphs (1) through (4) of this subsection during the term of the President in office on the date the Attorney General receives the information under subsection (a) (hereafter in this subsection referred to as the 'incumbent President') or during the period during which the President immediately preceding such incumbent President held office, if such preceding President was of the same political party as the incumbent President.

"(6) A national campaign manager or chairman of any national campaign committee seeking the election or reelection of the President.

"(7) For the purposes of section 592(h) of this title, a representative or Senator in the Congress of the United States.

"§ 592. Application for appointment of a special prosecutor

"(a) The Attorney General, upon receiving specific information that any of the individuals described in section 591(b) may have violated any Federal criminal law other than a violation constituting a petty offense, shall conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deems appropriate. The Attorney General, upon notifying in writing the division of the court specified in section 593(a) (hereinafter referred to as the 'division of the court') of the need for additional time to complete a preliminary investigation and the reasons why additional time is needed, shall have thirty days to complete such preliminary investigation.

"(b)(1) If the Attorney General, upon completion of the preliminary investigation, finds that the matter is so unsubstantiated that no further investigation or prosecution is warranted, the Attorney General shall so notify the division of the court and the division of the court shall have no power to appoint a special prosecutor.

"(2) The notification by the Attorney General of the division of the court shall be by memorandum containing a summary of the information received and a summary of the results of any preliminary investigation.

"(3) Such memorandum shall not be revealed to any individual outside the court or the Department of Justice without leave of the division of the court.

"(c)(1) If the Attorney General, upon completion of the preliminary investigation, finds that the matter warrants further investigation or prosecution, or if ninety days (one hundred and twenty days in the case of an extension) elapse from the receipt of the information without a determination by the Attorney General that the matter is so unsubstantiated as to not warrant further investigation or prosecution, then the Attorney General shall apply to the division of the court for the appointment of a special prosecutor.

"(2) Each application for the appointment of a special prosecutor shall contain sufficient information to enable the division of the court to select a special prosecutor and to define that special prosecutor's prosecutorial jurisdiction.

"(3) Such application shall not be revealed to any individual outside the court or the Department of Justice without leave of the division of the court.

"(d)(1) If—

"(A) after the filing of a memorandum under subsection (b) of this section, the Attorney General receives additional specific information about the matter to which such memorandum related; and

"(B) the Attorney General determines, after such additional investigation as the Attorney General deems appropriate, that such information warrants further investigation or prosecution;

then the Attorney General shall, not later than ninety days after receiving such additional information, apply to the division of the court for the appointment of a special prosecutor.

"(2) Each application for the appointment of a special prosecutor shall contain sufficient information to enable the division of the court to select a special prosecutor and to define that special prosecutor's prosecutorial jurisdiction.

"(3) Such application shall not be revealed

to any individual outside the court or the Department of Justice without leave of the division of the court.

"(e)(1) For the purpose of this section, a conflict of interest or the appearance thereof is deemed to exist whenever the continuation of an investigation or the outcome thereof may directly and substantially affect the partisan political or personal interests of the President, the Attorney General, or the interests of the President's political party.

"(2) Whenever it reasonably appears that a conflict of interest, as defined in paragraph (1), exists, with respect to an investigation of specific information that an individual may have violated any Federal criminal law other than a violation constituting a petty offense, the Attorney General shall conduct a preliminary investigation as required by subsection (a).

"(3)(A) If the Attorney General, upon completion of the preliminary investigation, finds that the matter is so unsubstantiated that no further investigation or prosecution is warranted, the Attorney General shall so notify the division of the court pursuant to subsection (b).

"(B) If the Attorney General, upon completion of the preliminary investigation, finds that the matter warrants further investigation or prosecution or if ninety days (one hundred and twenty days in the case of an extension) have elapsed from the time of the Attorney General's finding in paragraph (2) without a determination by the Attorney General that the matter is so unsubstantiated as not to warrant further investigation or prosecution, then the Attorney General shall—

"(i) apply to the division of the court for the appointment of a special prosecutor pursuant to subsection (c); or

"(ii) submit a memorandum to the division of the court setting forth the reasons why a special prosecutor is not required under the standard set forth in paragraph (1) of this subsection.

"(C) If the Attorney General concludes that appointment of a special prosecutor is not required under the standard set forth in paragraph (1) of this subsection, the division of the court shall review the information provided by the Attorney General with respect to whether a conflict, as described in paragraph (1), exists. Upon request of the division of the court, the Attorney General shall make available to the division all documents, materials, and memorandums as the division finds necessary to carry out its duties under this subsection. If the division finds that continuing the investigation by the Department of Justice would create a conflict of interest, or the appearance thereof, as defined in paragraph (1), the division shall appoint a special prosecutor.

"(f) Any determinations or applications required to be made under this section by the Attorney General shall be made by the Director of the Office of Government Crimes if the information or allegations involve the Attorney General.

"(g) The Attorney General's determination under subsection (c), (d), or (e) to apply to the division of the court for the appointment of a special prosecutor shall not be reviewable in any court.

"(h) Documents, materials, and memorandums supplied to the court by the Department of Justice under this subsection shall not be revealed to any individual outside the court or the Department of Justice without leave of the division of the court.

"(i)(1) Notwithstanding any other provision of this title, the Attorney General shall, upon enactment of this title, conduct for a period not to exceed ninety days, a preliminary investigation into whether there has been since 1970 improper or illegal conduct on the part of any Representative or Senator in the Congress of the United States with respect to the receipt or acceptance of any valuable consideration from representatives of any foreign government in order to influence legislation or other Government action.

"(2)(A) If the Attorney General, upon completion of the preliminary investigation, finds that the matter is so unsubstantiated that no further investigation or prosecution is warranted, the Attorney General shall so notify the division of the court pursuant to subsection (b).

"(B) If the Attorney General, upon completion of the preliminary investigation, finds that the matter warrants further investigation or prosecution or if ninety days has elapsed from the time of enactment of this title without a finding by the Attorney General that the matter is so unsubstantiated as not to warrant further investigation or prosecution, then the Attorney General shall apply to the division of the court for the appointment of a special prosecutor pursuant to subsection (c).

"§ 593. Duties of the division of the court

"(a) The division of the court which is referred to in this chapter, and to which functions are given by this chapter, is the division established under section 49 of this title.

"(b) Upon receipt of an application under subsection (c), (d), or (f) of section 592, the division of the court shall appoint an appropriate special prosecutor and shall define the jurisdiction of that special prosecutor. The court may define such jurisdiction to extend to related matters. A special prosecutor's identity and prosecutorial jurisdiction shall be made public upon request of the Attorney General or upon the determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of such special prosecutor would be in the best interest of justice. In any event the identity and prosecutorial jurisdiction of such prosecutor shall be made public when any indictment is returned.

"(c) The division of the court, upon request of the Attorney General, may assign new matters to an existing special prosecutor or may expand the prosecutorial jurisdiction of an existing special prosecutor to include related matters. Such request may be incorporated in an application for the appointment of a special prosecutor under this chapter.

"(d) The division of the court may not appoint as a special prosecutor any person who holds or recently held any office of profit or trust under the United States.

§ 594. Authority and duties of a special prosecutor

"(a) Notwithstanding any other provision of law, a special prosecutor appointed under this chapter shall have, with respect to all matters in such special prosecutor's prosecutorial jurisdiction established under this chapter, full power, and independent authority—

"(1) to conduct proceedings before grand juries and other investigations;

"(2) to participate in court proceedings and engage in any litigation, including civil and criminal matters, as he deems necessary;

"(3) to appeal any decision of a court in any case or proceeding in which such special prosecutor participates in an official capacity;

"(4) to review all documentary evidence available from any source;

"(5) to determine whether to contest the assertion of any testimonial privilege;

"(6) to receive appropriate national security clearances and, if necessary, contest in court, including, where appropriate, participation in camera proceedings, any claim of privilege or attempt to withhold evidence on grounds of national security;

"(7) to make applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpenas, or other court orders, and for purposes of sections 6003, 6004, and 6005, of title 18, a special prosecutor may exercise the authority vested in a United States Attorney or the Attorney General;

"(8) to inspect, obtain, or use the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and for purposes of section 6103 of title 26, and the regulations issued thereunder, a special prosecutor may exercise the powers vested in a United States Attorney or the Attorney General;

"(9) to initiate and conduct prosecutions in any court of competent jurisdiction, frame and sign indictments, file informations, and handle all aspects of any case in the name of the United States; and

"(10) to exercise all other investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18.

"(b) A special prosecutor appointed under this chapter shall receive compensation at a per diem rate equal to the rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5.

"(c) For the purposes of carrying out the duties of the office of special prosecutor, a special prosecutor shall have power to appoint, fix the compensation, and assign the duties of such employees as such special prosecutor deems necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate provided for GS–18 of the General Schedule under section 5332 of title 5.

"(d) If requested by a special prosecutor, the Department of Justice shall provide to such special prosecutor assistance which shall include full access to any records, files, or other materials relevant to matters within his prosecutorial jurisdiction, and providing to such special prosecutor the resources and personnel required to perform such special prosecutor's duties.

"(e) A special prosecutor may ask the Attorney General or the division of the court to refer matters related to the special prosecutor's prosecutorial jurisdiction. A special prosecutor may accept referral of a matter by the Attorney General, if the matter relates to a matter within such special prosecutor's prosecutorial jurisdiction as established by the division of the court. If such a referral is accepted, the special prosecutor shall notify the division of the court.

"(f) To the maximum extent practicable, a special prosecutor shall comply with the written policies of the Department of Justice respecting enforcement of the criminal laws which have been promulgated prior to the special prosecutor's appointment.

"§ Reporting and congressional oversight

"(a) A special prosecutor appointed under this chapter may from time to time make public, or send to the Congress, statements or reports on the activities of such special prosecutor. These statements and reports shall contain such information as that special prosecutor deems appropriate.

"(b)(1) In addition to any reports made under subsection (a) of this section, a special prosecutor appointed under this chapter shall, at the conclusion of such special prosecutor's duties, submit to the division of the court a report under this subsection.

"(2) Such report shall set forth fully and completely a description of the work of the special prosecutor, including the disposition

of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such special prosecutor which was not prosecuted. The report shall be in sufficient detail to allow determination of whether the special prosecutor's investigation was thoroughly and fairly completed.

"(3) The division of the court may release to the Congress, the public, or to any appropriate person, without comment on the contents of the report, such portions of a report made under this subsection as the division deems appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and prevent undue interference with any pending prosecution. The division of the court may make any portion of such report available to any individual named in such report for the purposes of receiving, within a time limit set by the division of the court, any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may, in the discretion of such division, be included as an appendix to such report.

"(c) A special prosecutor may advise the House of Representatives of any substantial and credible information which such special prosecutor receives that may constitute grounds for an impeachment of the President, Vice President, or a justice or judge of the United States. Nothing in this chapter or section 49 of this title shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

"(d) A majority of majority party members or a majority of all nonmajority party members of the judiciary committee of either House of the Congress may request in writing that the Attorney General apply for the appointment of a special prosecutor under section 592(e) of this chapter. Not later than thirty days after the receipt of such a request, or not later than thirty days after the completion of the preliminary investigation conducted pursuant to section 592(e), whichever is later, the Attorney General shall provide written notification of any action he has taken under this chapter in response to such request. If no application for the appointment of a special prosecutor has been made to the division of the court, the Attorney General shall explain the specific reasons why a special prosecutor is not required under the standard set forth in section 592 (e). Such written notification shall be sent to the committee on which the persons making the request serve, and shall not be revealed to any third party, except that such committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such notification as will not in the committee's judgment prejudice the rights of any individual.

"§ 596. Removal of a special prosecutor; termination of office

"(a) A special prosecutor may be removed from office, other than by impeachment and conviction, by the personal action of the Attorney General only for extraordinary improprieties, for malfeasance in office, for willful neglect of duty, for permanent incapacitation, or for any conduct constituting a felony. An action may be brought in the division of the court to challenge the action of the Attorney General under this subsection by seeking reinstatement or other appropriate relief. The division of the court shall cause such an action in every way to be expedited. If a special prosecutor is removed from office, the Attorney General shall promptly submit to the judiciary committees of the Senate and the House of Representatives a report describing with particularity the grounds for such action. The committees shall make available to the public such report, except that each committee may, if necessary to avoid prejudicing the legal rights of any individual, delete or postpone publishing such portions of the report, or the whole report, or any name or other identifying details.

"(b) (1) An office of special prosecutor shall terminate upon the submission by the special prosecutor of written notification to the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such special prosecutor, or accepted by such special prosecutor under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. No such submission shall be effective to terminate such office until after the completion and filing of the report required under section 595(b) of this title.

"(2) The division of the court, either on its own motion or upon the personal recommendation of the Attorney General, may terminate an office of special prosecutor at any time on the ground that the investigation of all matters within the prosecutorial jurisdiction of the special prosecutor, or accepted by such special prosecutor under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of termination, the special prosecutor shall file the report required by section 595(b) of this title.

"§ 597. Relationship with Department of Justice

"(a) Whenever a matter is in the prosecutorial jurisdiction of a special prosecutor or has been accepted by a special prosecutor under section 594(e), the Department of Justice,the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except as otherwise required by section 594(d) of this title, and except insofar as the special prosecutor agrees in writing that such investigations or proceedings may be continued by the Department of Justice.

"(b) The Attorney General or the Solicitor General may, to the extent provided under existing law, make a presentation to any court as to issues of law raised by any case or proceeding in which a special prosecutor participates in an official capacity, or any appeal of such a case or proceeding.

"§ 598. Termination of effect of chapter

"This chapter shall cease to have effect five years after the date on which it takes effect, except as to the completion of then-pending matters, which in the judgment of the division of the court require this chapter's continuance in effect, with respect to which matters this chapter shall continue in effect until such division determines that such matters have been completed.".

(b) The tables of chapters for title 28 of the United States Code and for part II of such title 28 are each amended by inserting immediately after the item relating to chapter 37 the following new item:

"39. Special prosecutor.".

(c) There are authorized to be appropriated for each fiscal year such sums as may be necessary, to be held by the Department of Justice as a contingent fund for the use of any special prosecutors appointed under chapter 39 (relating to special prosecutor) of title 28 of the United States Code in carrying out of functions under such chapter.

ASSIGNMENT OF JUDGES TO DIVISION TO APPOINT SPECIAL PROSECUTORS

SEC. 102. (a) Chapter 3 of title 28 of the United States Code is amended by adding at the end of the following new section:

"§ 49. Assignment of judges to divisions to appoint special prosecutors

"(a) Beginning with the two-year period commencing on the date chapter 39 of this title takes effect, five judges or justices shall be assigned for each successive two-year period to a division of the United States Court of Appeals for the District of Columbia to be the special panel of the court for the purposes of chapter 39 of this title.

"(b) Except as provided in subsection (f) of this section, assignment to the division established in subsection (a) of this section shall not be a bar to other judicial assignments during the term of such division.

"(c) In assigning judges or justices to sit on the division established in subsection (a) of this section, priority shall be given to senior retired circuit judges and senior retired justices.

"(d) The chief judge of the United States Court of Appeals for the District of Columbia shall make a request to the Chief Justice of the United States, without presenting a certificate of necessity, to designate and assign, in accordance with section 294 of this title, five circuit court judges or justices, one of which shall be a judge of the United States Court of Appeals for the District of Columbia, to the division established under subsection (a) of this section. Not more than one judge or justice or retired judge or justice may be named to the panel from a particular court.

"(e) Any vacancy in the division established under subsection (a) of this section shall be filled only for the remainder of the two-year period in which such vacancy occurs and in the same manner as initial assignments to the division were made.

"(f) No judge or justice who, as a member of the division established in subsection (a) of this section, participated in a function conferred on the division under chapter 39 of this title involving a special prosecutor shall be eligible to participate in any judicial proceeding concerning a matter which involves such special prosecutor while such special prosecutor is serving in that office or which involves the exercise of such special prosecutor's official duties, regardless of whether such special prosecutor is still serving in that office.".

(b) The table of sections for chapter 3 of title 28 of the United States Code is amended by adding at the end the following item:

"49. Assignment of judges to division to appoint special prosecutors.".

DISQUALIFICATION OF OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF JUSTICE AND OFFICE OF GOVERNMENT CRIMES

SEC. 103. Chapter 31 of title 28 of the United States Code is amended by adding at the end the following:

"§ 528. Disqualification of officers and employees of the Department of Justice

"The Attorney General shall promulgate rules and regulations which require any officer or employee of the Department of Justice, including a United States Attorney or a member of his staff, to disqualify himself from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

"§ 529. Office of Government Crimes

"(a) (1) There is established within the Department of Justice an Office of Government Crimes, which shall be headed by a director. The Director of the Office of Government Crimes shall be appointed by the President with the advice and consent of the Senate. The Attorney General shall determine the organizational placement of the

office within the Department and shall be kept periodically informed of its activities.

"(2) A person shall not be appointed director of the Office of Government Crimes if he has at any time during the five years preceding such appointment held a high-level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of, a candidate for any elective Federal office.

"(b)(1) The Attorney General shall, except as provided in paragraph (2) and except as to matters referred to a special prosecutor pursuant to chapter 39 of this title, delegate to the Office of Government Crimes jurisdiction of (1) criminal violations of Federal law by any individual who holds or who at the time of such possible violation held a position, whether or not elective, as a Federal Government officer, employee, or special employee, which alleged violation related directly or indirectly to such individual's Government position, employment, or compensation; (2) criminal violations of Federal laws relating to lobbying, conflicts of interest, campaigns, and election to public office committed by any person except insofar as such violations relate to matters involving discrimination or intimidation on the grounds of race, color, religion or national origin; (3) the supervision of investigations and prosecutions of criminal violations of Federal law by any individual who holds or who at the time of such possible violation held a position, whether or not elective, as a State or local government officer or employee, which alleged violation related directly or indirectly to his government position, employment or compensation; and (4) such other matters as the Attorney General may deem appropriate.

"(2) A matter described in paragraph (1) of this subsection may be delegated by the Attorney General exclusively or concurrently to the United States Attorneys or other units of the Department of Justice. The Director shall be kept apprised of the progress of any investigation or prosecution so delegated. This section shall not limit any authority conferred upon the Attorney General, the Federal Bureau of Investigation, or any other department or agency of government to investigate any matter.

"(c)(1) At the beginning of each regular session of the Congress, the Attorney General shall report to the Congress on the activities and operation of the Office of Government Crimes for the preceding fiscal year.

"(2) Such report shall specify the number and type of investigations and prosecutions subject to the jurisdiction of such unit and the disposition thereof, but shall not include any information which would impair an ongoing investigation, prosecution, or proceeding, or which the Attorney General determines would constitute an improper invasion of personal privacy.".

(b) The table of sections for chapter 31 of title 28 of the United States Code is amended by adding at the end the following:

"528. Disqualification of officers and employees of the Department of Justice.
"529. Office of Government Crimes.".

(c) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(114) Director, Office of Government Crimes, Department of Justice.".

SEPARABILITY

SEC. 104. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance, is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

TITLE II—CONGRESSIONAL LEGAL COUNSEL

ESTABLISHMENT OF OFFICE OF CONGRESSIONAL LEGAL COUNSEL

SEC. 201. (a)(1) There is established, as an office of the Congress, the Office of Congressional Legal Counsel (hereinafter referred to as the "Office"), which shall be headed by a Congressional Legal Counsel (hereinafter referred to as the "Counsel"); and there shall be a Deputy Congressional Legal Counsel (hereinafter referred to as the "Deputy Counsel") who shall perform such duties as may be assigned to him by the Counsel and who, during any absence, disability, or vacancy in the position of the Counsel, shall serve as Acting Congressional Legal Counsel.

(2)(A) The Counsel and the Deputy Counsel each shall be appointed by the President pro tempore of the Senate and the Speaker of the House of Representatives from among recommendations submitted by the majority and minority leaders of the Senate and the House of Representatives. Any appointment made under this paragraph shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position and shall be subject to the provisions of subparagraph (B). Any person appointed as Counsel or Deputy Counsel shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during the term of such appointment.

(B) No person shall be appointed under subparagraph (A) if, within the five-year period immediately preceding the appointment, such person—

(i) was a Member of Congress (as defined in section 309(10) of this Act) or a candidate (as defined in section 309(2) of this Act) seeking nomination for election, or election to, the office of Member of Congress,

(ii) actively participated in the management or conduct of any campaign of any individual, including a Member of Congress, for nomination for election, or election to, the office of Member of Congress, or

(iii) was an officer or employee of the Senate or the House of Representatives (as defined in section 309(12) of this Act).

(3)(A) Any appointment made under paragraph (2) shall become effective upon approval, by concurrent resolution, of the Senate and the House of Representatives. The Counsel and the Deputy Counsel shall each be appointed for a term of service which shall expire at the end of the Congress following the Congress during which the Counsel or Deputy Counsel, respectively, is appointed except that the Congress may, by concurrent resolution, remove either the Counsel or the Deputy Counsel prior to the termination of any term of service. The Counsel and the Deputy Counsel may be reappointed at the termination of any term of service.

(B) The first Counsel and the first Deputy Counsel shall be appointed, approved, and begin service within ninety days after the date of the enactment of this Act and thereafter the Counsel and Deputy Counsel shall be appointed, approved, and begin service within thirty days after the beginning of the session of Congress immediately following the termination of a Counsel's or Deputy Counsel's term of service or within sixty days after a vacancy occurs in either position.

(4) The Counsel shall receive compensation at a per annum gross rate equal to the rate of basic pay for level III of the Executive Schedule under section 5314 of title 5, United States Code. The Deputy Counsel shall receive compensation at a per annum gross rate equal to the rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b)(1)(A) The Counsel shall select and fix the compensation of such Assistant Congressional Legal Counsels (hereinafter referred to as "Assistant Counsels") and of such other personnel, within the limits of available appropriations, as may be necessary to carry out the provisions of this title and may prescribe the duties and responsibilities of such personnel. The compensation fixed for Assistant Counsels shall not be in excess of a per annum gross rate equal to the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code. Any selection made under this paragraph shall be subject to the provisions of subparagraph (B) and shall be made without regard to political affiliation and solely on the basic of fitness to perform the duties of the position. Any individual selected as an Assistant Counsel shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during his term of service. The Counsel may remove any individual appointed under this paragraph.

(B) No person shall be appointed under subparagraph (A), if, within the five-year period immediately preceding the appointment, such person—

(i) was a Member of Congress (as defined in section 309(10) of this Act) or a candidate (as defined in section 309(2) of this Act) seeking nomination for election, or election to, the office of Member of Congress,

(ii) actively participated in the management or conduct of any campaign of any individual, including a Member of Congress, for nomination for election, or election to, the office of Member of Congress, or

(iii) was an officer or employee of the Senate or the House of Representatives (as defined in section 309(12) of this Act).

(2) For purposes of pay (other than the rate of pay of the Counsel and Deputy Counsel) and employment benefits, rights, and privileges, all personnel of the Office shall be treated as if they were employees of the Senate.

(c) In carrying out the functions of the Office, the Counsel may procure the temporary (not to exceed one year) or intermittent services of individual consultants (including outside counsel), or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i)).

(d) The Office shall have the same privilege of free transmission of official mail as other offices of the United States Government.

(e) The Counsel may establish such policies and procedures as may be necessary to carry out the provisions of this title.

(f) The Counsel may delegate authority for the performance of any function imposed by this title except any function imposed upon the Counsel under section 206(b) of this title.

(g) The Counsel and other employees of the Office shall maintain the attorney-client relationship with respect to all communications between them and any Member, officer, or employee of Congress.

ACCOUNTABILITY OF OFFICE

SEC. 202. (a) The Office shall be directly accountable to the Joint Leadership Group in the performance of the duties of the Office.

(b) For purposes of this title, the Joint Leadership Group shall consist of the following Members:

(1) The Speaker of the House and the President pro tempore (or if he so designates, the Deputy President pro tempore) of the Senate;

(2) the majority and minority leaders of both Houses of Congress;

(3) the Chairman and ranking minority member of the judiciary committees of both Houses of Congress; and

(4) the Chairman and ranking minority Member of the committee of the Senate and of the House, which has jurisdiction over the contingent fund of that body.

(c) The Joint Leadership Group shall be assisted in the performance of its duties by the Secretary of the Senate and the Clerk of the House.

REQUIREMENTS FOR AUTHORIZING REPRESENTATION ACTIVITY

SEC. 203. (a) The Counsel shall defend—

(1) a House of Congress or a committee, subcommittee, Member, officer, or employee of a House of Congress under section 204 only when directed to do so by two-thirds of the Members of that House serving on the Joint Leadership Group or by the adoption of a resolution by such House; and

(2) the Congress or a joint committee, office or agency of Congress, or an officer or employee of such an office or agency, under section 204 only when directed to do so by two-thirds of the Joint Leadership Group or by the adoption of a concurrent resolution by both Houses.

(b) The Counsel shall bring a civil action to enforce a subpena of—

(1) a House of Congress, or a committee or subcommittee of a House of Congress, under section 205 only when directed to do so by the adoption of a resolution by the appropriate House of Congress; and

(2) a joint committee of Congress or the Technology Assessment Board under section 205 only when directed to do so by the adoption of a concurrent resolution of both Houses.

(c) The Counsel shall intervene or appear as amicus curiae under section 206 only when directed to do so—

(1) by a resolution adopted by a House of Congress when such intervention or appearance is to be made in the name of that House;

(2) by a resolution adopted by the appropriate House when such intervention or appearance is to be made in the name of an officer, committee, subcommittee, or chairman of a committee or subcommittee of that House; or

(3) by a concurrent resolution adopted by both Houses when such intervention or appearance is to be made in the name of Congress or a joint committee, a chairman of a joint committee, an office, or an agency of Congress.

(d) The Counsel shall serve as the duly authorized representative in obtaining an order granting immunity under section 207 of—

(1) a House of Congress when directed to do so by an affirmative vote of a majority of the Members present of that House, or

(2) a committee or subcommittee of a House of Congress, or a joint committee of Congress, when directed to do so by an affirmative vote of two-thirds of the members of the full committee.

(e) The Office shall make no recommendation with respect to the consideration of a resolution or concurrent resolution under this section.

DEFENDING CONGRESS, A HOUSE, COMMITTEE, MEMBER, OFFICER, AGENCY, OR EMPLOYEE OF CONGRESS

SEC. 204. (a) Except as otherwise provided in subsection (b), when directed to do so pursuant to section 203(a), the Counsel shall—

(1) defend Congress, a House of Congress, an office or agency of Congress, a committee, subcommittee, Member, officer, or employee of a House of Congress, or an officer or employee of an office or agency of Congress in any civil action pending in any court of the United States or of a State or political subdivision thereof in which Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency is made a party defendant and in which there is placed in issue the validity of any proceeding of, or action, including issuance of any subpena or order, taken by Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency in its or his official or representative capacity; or

(2) defend Congress, a House of Congress, an office or agency of Congress, a committee, subcommittee, Member, officer, or employee of a House of Congress or an officer or employee of an office or agency of Congress in any proceeding with respect to any subpena or order directed to Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency in its or his official or representative capacity.

(b) Representation of a Member, officer, or employee under subsection (a) shall be undertaken by the Counsel only upon the consent of such Member, officer, or employee.

INSTITUTING A CIVIL ACTION TO ENFORCE A SUBPENA

SEC. 205. (a) When directed to do so pursuant to section 203(b), the Counsel shall bring a civil action under any statute conferring jurisdiction on any court of the United States (including section 1364 of title 28, United States Code, as added by subsection (f)(1)), to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened failure or refusal to comply with, any subpena or order issued by a House of Congress or a committee, or a subcommittee of a committee, of a House of Congress or of Congress authorized to issue a subpena or order.

(b) Any directive to the Counsel to bring a civil action pursuant to subsection (a) of this section in the name of a committee or subcommittee of a House of Congress or of Congress shall constitute authorization for such committee or subcommittee to bring such action within the meaning of any statute conferring jurisdiction on any court of the United States.

(c) It shall not be in order in the Senate or House of Representatives to consider a resolution to direct the Congressional Legal Counsel to bring a civil action pursuant to subsection (a) in the name of a committee or subcommittee unless—

(1) such resolution is reported by a majority of the members voting, a majority being present, of such committee or committee of which such subcommittee is a subcommittee, and

(2) the report filed by such committee or committee of which such subcommittee is a subcommittee contains a statement of—

(A) the procedure followed in issuing such subpena;

(B) the extent to which the party subpenaed has complied with such subpena;

(C) any objections or privileges raised by the subpenaed party; and

(D) the comparative effectiveness of bringing a civil action under this section, certification of a criminal action for contempt of Congress, and initiating a contempt proceeding before a House of Congress.

(d) The provisions of subsection (c) are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and, as such, they shall be considered as part of the rules of each House, respectively, and such rules shall supersede any other rule of each House only to the extent that rule is inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(e) The extent to which a report filed pursuant to subsection (c)(2) is in compliance with such subsection shall not be reviewable in any court of law.

(f)(1) Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1364. Congressional actions

"(a) The District Court for the District of Columbia shall have original jurisdiction, without regard to the sum or value of the matter in controversy, over any civil action brought by a House of Congress, or any authorized committee or joint committee of a House of Congress or of Congress, or any subcommittee thereof, to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal or failure to comply with, any subpena or order issued by such House, committee, subcommittee, or joint committee to any entity acting or purporting to act under color or authority of State law, or to any natural person to secure the production of documents or other materials of any kind or the answering of any deposition or interrogatory or to secure testimony or any combination thereof. This section shall not apply to an action to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal to comply with, any subpena or order issued to an officer or employee of the Federal Government acting within his official capacity.

"(b) Upon application by a House of Congress, or any authorized committee or joint committee, or any subcommittee thereof, the District Court shall issue an order to a person refusing or failing, or threatening to refuse or not to comply, with a subpena or order of such House, committee, joint committee, or subcommittee requiring such person to comply forthwith. Any refusal or failure to obey a lawful order of the District Court issued pursuant to this section may be held by such court to be a contempt thereof. A contempt proceeding shall be commenced by an order to show cause before the court why the party refusing or failing to obey the court order should not be held in contempt of court. Such contempt proceeding shall be tried by the court and shall be summary in manner. The purpose of sanctions imposed as a result of such contempt proceeding shall be to compel obedience to the order of the court. Process in any such action or contempt proceeding may be served in any judicial district wherein the party refusing or failing, or threatening to refuse or not to comply, resides, transacts business, or may be found, and subpenas for witnesses who are required to attend such proceeding may run into any other district. Nothing in this section shall confer upon such court jurisdiction to affect by injunction or otherwise the issuance or effect of any subpena or order of a House of Congress, or a committee, joint committee, or subcommittee, or to review, modify, suspend, terminate or set aside any such subpena or order. An action, contempt proceeding, or sanction brought or imposed pursuant to this section shall not abate upon adjournment sine die at the end of a Congress if the party which issued the subpena or order certifies to the court that it maintains its interest in securing the documents, answers, or testimony during such adjournment.

"(c) In any civil action or contempt proceeding brought pursuant to this section, the court shall assign the case or proceeding for hearing at the earliest practicable date and cause the case or proceeding in every way to be expedited. Any appeal or petition for review from any order or judgment in

such case or proceeding shall be expedited in the same manner.

"(d) Either House of Congress, any committee, subcommittee, or joint committee commencing and prosecuting a civil action or contempt proceeding under this section may be represented in such action by such attorneys as it may designate.

"(e) A civil action commenced or prosecuted under this section may not be authorized pursuant to the Standing Order of the Senate 'authorizing suits by Senate Committees' (S. Jour. 572, 70–1, May 28, 1928).

"(f) For the purposes of this section, when referred to herein, the term 'committee' shall include standing, select, or special committees established by law or resolution and the term 'joint committee' shall include the Technology Assessment Board.".

(2) The analysis of such chapter 85 is amended by adding at the end thereof the following new item:

"1364. Congressional actions.".

(g) Nothing in this section shall limit the discretion of—

(1) the President pro tempore of the Senate or the Speaker of the House of Representatives in certifying to the United States Attorney for the District of Columbia any matter pursuant to section 104 of the Revised Statutes (2 U.S.C. 194); or

(2) either House of Congress to hold any individual or entity in contempt of such House of Congress.

INTERVENTION OR APPEARANCE

SEC. 206. (a) When directed to do so pursuant to section 203(c), the Counsel shall intervene or appear as amicus curiae in the name of Congress, a House of Congress, or an officer, office, agency, committee, subcommittee or chairman of a committee or subcommittee of a House of Congress or of Congress in any legal action pending in any court of the United States or of a State or political subdivision thereof in which the powers and responsibilities of Congress under the Constitution of the United States are placed in issue. The Counsel shall be authorized to intervene only if standing to intervene exists under section 2 of article III of the Constitution of the United States.

(b) The Counsel shall notify the Joint Leadership Group of any legal action in which the Counsel is of the opinion that intervention or appearance as amicus curiae under subsection (a) is in the interest of Congress or of a House of Congress. Such notification shall contain a description of the legal proceeding together with the reasons that the Counsel is of the opinion that intervention or appearance as amicus curiae is in the interest of Congress or of a House of Congress. The Joint Leadership Group shall cause said notification to be published in the Congressional Record for the appropriate House or Houses.

(c) The Counsel shall limit any intervention or appearance as amicus curiae in an action to issues relating to the powers and responsibilities of Congress.

IMMUNITY PROCEEDINGS

SEC. 207. When directed to do so pursuant to section 203(d), the Counsel shall serve as the duly authorized representative of a House of Congress or a committee or subcommittee in requesting a United States district court to issue an order granting immunity pursuant to section 201(a) of the Organized Crime Control Act of 1970 (18 U.S.C. 6005).

ADVISORY AND OTHER FUNCTIONS

SEC. 208. (a) The Congressional Legal Counsel shall advise, consult, and cooperate with—

(1) the United States Attorney for the District of Columbia with respect to any criminal proceeding for contempt of Congress certified pursuant to section 104 of the Revised Statutes (2 U.S.C. 194);

(2) the committees with the responsibility to identify any court proceeding or action which is of vital interest to Congress or to either House of Congress;

(3) the Comptroller General, General Accounting Office, the Office of Legislative Counsel of the Senate, the Office of the Legislative Council of the House of Representatives, and the Congressional Research Service, except that none of the responsibilities and authority granted by this title to the Congressional Legal Counsel shall be construed to affect or infringe upon any functions, powers, or duties of the aforementioned;

(4) any Member, officer, or employee of Congress not represented under section 204 with regard to obtaining private legal counsel for such Member, officer, or employee;

(5) the President pro tempore of the Senate, the Speaker of the House of Representatives, the Secretary of the Senate, the Clerk of the House, the Sergeant-at-Arms of the Senate and House, and the Parliamentarians of the Senate and House regarding any subpena, order, or request for withdrawal of papers presented to the Senate and House of Representatives or which raises a question of the privileges of the Senate or House of Representatives; and

(6) any committee or subcommittee in promulgating and revising their rules and procedures for the use of congressional investigative powers and with respect to questions which may arise in the course of any investigation.

(b) The Counsel shall compile and maintain legal research files of materials from court proceedings which have involved Congress, a House of Congress, an office or agency of Congress, or any committee, subcommittee, Member, officer, or employee of Congress. Public court papers and other research memoranda which do not contain information of a confidential or privileged nature shall be made available to the public consistent with any applicable procedures set forth in such rules of the Senate and House of Representatives as may apply and the interests of Congress.

(c) The Counsel shall perform such other duties consistent with the purposes and limitations of this title as the Congress or a House of Congress may direct.

DEFENSE OF CERTAIN CONSTITUTIONAL POWERS

SEC. 209. In performing any function under this title, the Counsel shall defend vigorously when placed in issue—

(1) the constitutional privilege from arrest or from being questioned in any other place for any speech or debate under section 6 of article I of the Constitution of the United States;

(2) the constitutional power of each House of Congress to be judge of the elections, returns, and qualifications of its own Members and to punish or expel a Member under section 5 of article I of the Constitution of the United States;

(3) the constitutional power of each House of Congress to except from publication such parts of its journal as in its judgment may require secrecy;

(4) the constitutional power of each House of Congress to determine the rules of its proceedings;

(5) the constitutional power of Congress to make all laws as shall be necessary and proper for carrying into execution the constitutional powers of Congress and all other powers vested by the Constitution in the Government of the United States, or in any department or office thereof;

(6) all other constitutional powers and responsibilities of Congress; and

(7) the constitutionality of Acts of Congress.

CONFLICT OR INCONSISTENCY

SEC. 210. (a) In the carrying out of the provisions of this title, the Counsel shall notify the Joint Leadership Group, and any party represented or person affected, of the existence and nature of any conflict or inconsistency between the representation of such party or person and the carrying out of any other provision of this title or compliance with professional standards and responsibilities.

(b) Upon receipt of such notification, the members of the House or Houses affected serving on the Joint Leadership Group shall recommend the action to be taken to avoid or resolve the conflict or inconsistency. If such recommendation is made by a two-thirds vote, the Counsel shall take such steps as may be necessary to resolve the conflict or inconsistency as recommended. If not, the Members of the House or House affected serving on the Joint Leadership Group shall cause the notification or conflict or inconsistency and recommendation with respect to resolution thereof to be published in the Congressional Record of the appropriate House or Houses of Congress. If Congress or the appropriate House of Congress does not direct the Counsel within fifteen days from the date of publication in the Record to resolve the conflict in another manner, the Counsel shall take such action as may be necessary to resolve the conflict or inconsistency as recommended. Any instruction or determination made pursuant to this subsection shall not be reviewable in any court of law.

(c) For purposes of the computation of time in subsection (b)—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a date certain are excluded in the computation of the period.

(d) The appropriate House of Congress may by resolution authorize the reimbursement of any Member, officer, or employee who is not represented by the Counsel for fees and costs, including attorneys' fees, reasonably incurred in obtaining representation. Such reimbursement shall be from funds appropriated to the contingent fund of the appropriate House.

PROCEDURE FOR CONSIDERATION OF RESOLUTIONS TO DIRECT THE COUNSEL

SEC. 211. (a)(1) A resolution or concurrent resolution introduced pursuant to section 203 shall not be referred to a committee, except as otherwise required under section 205(c). Upon introduction, or upon being reported if required under section 205(c), whichever is later, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution or concurrent resolution. A motion to proceed to the consideration of a resolution or concurrent resolution shall be highly privileged and not debatable. An amendment to such motion shall not be in order, and it shall not be in order to move to reconsider the vote by which such motion is agreed to.

(2) With respect to a resolution or concurrent resolution pursuant to section 203 (a)—

(A) If the motion to proceed to the consideration of a resolution or concurrent resolution is agreed to, debate thereon shall be limited to not more than ten hours, which shall be divided equally between, and controlled by, those favoring and those opposing the resolution or concurrent resolution. A motion further to limit debate shall not be debatable. No amendment to the resolution or concurrent resolution shall be in order. No motion to recommit the resolution or concurrent resolution shall be in order, and it shall not be in order to reconsider the vote by which the resolution or concurrent resolution is agreed to.

(B) Motions to postpone, made with respect to the consideration of the resolution or concurrent resolution, and motions to

proceed to the consideration of other business, shall be decided without debate.

(C) All appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to the resolution, or concurrent resolution shall be decided without debate.

(b) For purposes of this title, other than section 203, the term "committee" shall include standing, select, special, or joint committees established by law or resolution and the Technology Assessment Board.

(c) The provisions of this section are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and, as such, they shall be considered as part of the rules of each House, respectively, and such rules shall supersede any other rule of each House only to the extent that rule is inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

ATTORNEY GENERAL RELIEVED OF RESPONSIBILITY

SEC. 212. (a) Upon receipt of written notice that the Counsel has undertaken, pursuant to section 204(a) of this title to perform any representational service with respect to any designated party in any action or proceeding pending or to be instituted, the Attorney General shall—

(1) be relieved of any responsibility with respect to such representational service;

(2) have no authority to perform such service in such action or proceeding except at the request or with the approval of the Counsel or either House of Congress; and

(3) transfer all materials relevant to the representation authorized under section 204 (a) to the Counsel, except that nothing in this subsection shall limit any right of the Attorney General under existing law to intervene or appear as amicus curiae in such action or proceeding.

(b) The Attorney General shall notify the Counsel with respect to any proceeding in which the United States is a party of any determination by the Attorney General or Solicitor General not to appeal any court decision affecting the constitutionality of an Act of Congress within such time as will enable the Congress or a House of Congress to direct the Counsel to intervene in such proceeding pursuant to section 206.

PROCEDURAL PROVISIONS

SEC. 213. (a) Permission to intervene as a party or to file a brief amicus curiae under section 206 of this title shall be of right and may be denied by a court only upon an express finding that such intervention or filing is untimely and would significantly delay the pending action or that standing to intervene has not been established under section 2 of article III of the Constitution.

(b) The Counsel, the Deputy Counsel, or any designated Assistant Counsel shall be entitled, for the purpose of performing his functions under this title, to enter an appearance in any proceeding before any court of the United States without compliance with any requirement for admission to practice before such court, except that the authorization conferred by this subsection shall not apply with respect to the admission of any person to practice before the United States Supreme Court.

(c) Nothing in this title shall be construed to confer standing on any party seeking to bring, or jurisdiction on any court with respect to, any civil or criminal action against Congress, either House of Congress, a Member of Congress, a committee or subcommittee of a House of Congress, any office or agency of Congress, or any officer or employee of a House of Congress or any office or agency of Congress.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 214. (a) Section 3210 of title 39, United States Code, as amended—

(1) by striking out "and the Legislative Counsels of the House of Representatives and the Senate" in subsection (b)(1) and inserting in lieu thereof "the Legislative Counsels of the House of Representatives and the Senate, and the Congressional Legal Counsel"; and

(2) by striking out "or the Legislative Council of the House of Representatives or the Senate" in subsection (b)(2) and inserting in lieu thereof "the Legislative Counsel of the House of Representatives or the Senate, or the Congressional Legal Counsel".

(b) Section 3216(a)(1)(A) of such title is amended by striking out "and the Legislative Counsels of the House of Representatives and the Senate" and inserting in lieu thereof "the Legislative Counsels of the House of Representatives and the Senate, and the Congressional Legal Counsel".

(c) Section 3219 of such title is amended by striking out "or the Legislative Counsel of the House of Representatives or the Senate" and inserting in lieu thereof "the Legislative Counsel of the House of Representatives or the Senate, or the Congressional Legal Counsel".

(d) Section 8 of the Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and seventy-six, and for other purposes," approved March 3, 1875, as amended (2 U.S.C. 118), is repealed.

SEPARABILITY

SEC. 215. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 216. There are authorized to be appropriated to the Office for each fiscal year through September 30, 1982, such sums as may be necessary to enable it to carry out its duties and functions. Until sums are first appropriated pursuant to the preceding sentence, but for a period not exceeding twelve months following the effective date of this title, the expenses of the Office shall be paid from the contingent fund of the Senate, in accordance with the paragraph relating to the contingent fund of the Senate under the heading "UNDER LEGISLATIVE" in the Act of October 1, 1888 (28 Stat. 546; 2 U.S.C. 68), and upon vouchers approved by the Counsel.

TITLE III—GOVERNMENT PERSONNEL; FINANCIAL DISCLOSURE REQUIREMENTS

SEC. 301. (a) Any individual who is an officer or employee designated under subsection (b), and who performs the duties of his position or office for a period in excess of sixty days during a calendar year, shall file on or before May 15 of the succeeding year a report as required by section 302 containing a full and complete financial statement for that calendar year.

(b) The officers and employees referred to in subsection (a) are—

(1) the President;

(2) the Vice President;

(3) each Member of Congress;

(4) each justice or judge or other adjudicatory official of the judicial branch of the United States and of the judicial branch of the government of the District of Columbia;

(5) each officer or employee of an Executive agency, as defined in section 105 of title 5, United States Code, whose position is classified at a grade of GS–16 or above of the General Schedule prescribed by section 5332 of title 5, United States Code, or who is in a position at a comparable or higher level, and each officer or employee of the United States not employed by an Executive agency, as so defined, who is compensated at a rate equal to or in excess of the minimum rate prescribed for employees holding the grade of GS–16 of the General Schedule prescribed by section 5332 of title 5, United States Code; and

(6) each member of a uniform service whose pay grade is at or in excess of O–7 under section 1009 of title 37, United States Code.

(c) Within thirty days of assuming the position of an officer or employee designated under section (b), an individual shall file a report as required by section 303(f) unless such individual has left another position designated in subsection (b) within thirty days prior to assuming his new position.

(d) Within five days of the transmittal by the President to the Senate of the nomination of a Presidential nominee, as defined in section 309(13), but in any event prior to confirmation by either House of Congress, such nominee shall file a report as required by section 303(f). Nothing in this Act shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

(e) Within thirty days of becoming a candidate seeking nomination for election, or election, to the office of President, Vice President, or Member of Congress, or on or before May 15 of that calendar year, whichever is later, and on or before May 15 of each successive year the individual continues to be a candidate, an individual shall file a report for the preceding calendar year as required by section 302.

(f) Any individual who occupies an office or position designated in subsection (b) shall, within thirty days after leaving such position, file a report as required by section 302 (covering the portion of that calendar year up to the date the individual left such office or position) unless such individual has accepted employment in another position designated in subsection (b).

CONTENTS OF REPORT

SEC. 302. Each report filed under subsections 301 (a), (e), and (f) shall include a full and complete statement, in such manner and form as the supervising ethics office (as defined in section 304(a)) for the filing individual shall prescribe, which contains the following:

(a)(1) The amount and the identity of each source of earned income (exclusive of honoraria) received during such calendar year which exceeds $100 in amount or value.

(2) The identity of the source, the amount, and the date, of each honorarium received during such calendar year and an indication of which honoraria, if any, were donated to a charitable organization.

(3) The identity of each source of income (other than earned income) received during such calendar year which exceeds $100 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within—

(A) not more than $1,000,

(B) greater than $1,000 but not more than $2,500,

(C) greater than $2,500 but not more than $5,000,

(D) greater than $5,000 but not more than $15,000,

(E) greater than $15,000 but not more than $50,000,

(F) greater than $50,000 but not more than $100,000, or

(G) greater than $100,000.

(4) For purposes of paragraphs (1) and (3), any gift described in subsections (b) and (c) of this section shall not be considered as income.

(b) The identity of the source, a brief description of, and the value of any gifts of transportation, lodging, food, or entertainment aggregating $250 or more provided by any one source other than a relative during the calendar year except that any food, lodging, or entertainment received as part of the personal hospitality of any individual need not be reported.

(c) The identity of the source, a brief description of, and the value of all other gifts aggregating $100 or more from any one source other than a relative during the calendar year unless, in an unusual case, a waiver is granted by an individual's supervising ethics office.

(d)(1) Gifts with a fair market value of less than $35 need not be aggregated for the purposes of subsections (b) and (c) of this section.

(2) In aggregating gifts for purposes of subsections (b) and (c) of this section, the reporting individual may deduct from the total value of gifts received from any source during the calendar year the total value of gifts given by the reporting individual to that source during the calendar year, except that, if gifts with a fair market value of less than $35 received from that source are not aggregated, gifts with a fair market value of less than $35 given to that source may not be deducted.

(e)(1) The identity and category of value of each item of real property held, directly or indirectly, during such calendar year which has a fair market value in excess of $1,000 as of the close of such calendar year.

(2) The identity and category of value of each item of personal property held, directly or indirectly, during such calendar year in a trade or business or for investment or the production of income which as a fair market value in excess of $1,000 as of the close of such calendar year.

(f) The identity and category of value of each personal liability owed, directly or indirectly, other than to a relative, which exceeds $2,500 at any time during such calendar year.

(g) The identity, date, and category of value of any transaction, directly or indirectly, in securities or commodities futures during such calendar year exceeding $1,000, except that (1) the identity of the recipient of any gift to any tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code of 1954 involving such a transaction need not be reported, and (2) any transaction solely by and between the reporting individual, his spouse, and dependents need not be reported.

(h)(1) The identity, date, and category of value of any purchase, sale, or exchange, directly or indirectly, of any interest in real property during such calendar year if the value of the property involved in such purchase, sale, or exchange exceeds $1,000 as of the date of such purchase, sale, or exchange, except that (1) the identity of the recipient of any gift to any tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code of 1954 involving such a transaction need not be reported, and (2) any transaction solely by and between the reporting individual, his spouse, or dependents need not be reported.

(2) For the purposes of subsection (e)(1) of this section and paragraph (1) of this subsection, the identity of an item of real property shall include the number of acres of property, if there is more than one acre), the exact street address (except with respect to a personal residence of a reporting individual), the town, county, and State in which the property is located, and if there are substantial improvements on the land, a brief description of the improvements (such as "office building").

(i) The identity of and a description of the nature of any interest in an option, mineral lease, copyright, or patent right held during such calendar year.

(j) The identity of all positions held as an officer, director, trustee, partner, proprietor, agent, employee, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, and any educational or other institution, except that this subsection shall not require the reporting of positions held in any religious, social, fraternal, or political entity.

(k) A description of, the parties to, and the terms of any contract, promise, or other agreement between such individual and any person with respect to his employment after such individual ceases to occupy an office or position described in section 301, including any agreement under which such individual is taking a leave of absence from an office or position outside of the United States Government in order to occupy an office or position described in section 301(b), and a description of and the parties to any agreement providing for continuation of payments or benefits from a prior employer other than the United States Government.

(l) If any person, other than the United States Government, paid the reporting individual compensation in excess of $5,000 in any of the two calendar years prior to such calendar year, the individual shall include in the report—

(1) the name and address of each source of such compensation;

(2) the period during which the reporting individual was receiving such compensation from each such source;

(3) the title of each position or relationship the reporting individual held with each compensating source; and

(4) a brief description of the duties performed or services rendered by the reporting individual in each such position.

The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

SEC. 303. (a) For purposes of subsections (e) through (h) of section 302, an individual need not specify the actual amount or value of each item required to be reported under such subsections, but such individual shall indicate which of the following categories such amount or value is within:

(1) not more than $5,000,

(2) greater than $5,000 but not more than $15,000,

(3) greater than $15,000 but not more than $50,000,

(4) greater than $50,000 but not more than $100,000,

(5) greater than $100,000 but not more than $250,000,

(6) greater than $250,000 but not more than $500,000,

(7) greater than $500,000 but not more than $1,000,000.

(8) greater than $1,000,000 but not more than $2,000,000,

(9) greater than $2,000,000 but not more than $5,000,000, or

(10) greater than $5,000,000.

(b) For the purposes of subsection (e) of section 32, if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (i) the date of purchase and the purchase price of the interest in the real property, or (ii) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to subsection (a) of this section. If the current value of any other item required to be reported under subsection (e) of section 302 is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(c)(1) For the purposes of subsection (a) through (c) of section 302, the individual shall report the source, but need not report the amount, of any earned income over $1,000 or gifts over $100 ($250 in the case of transportation, lodging, food, or entertainment) received by a spouse or minor dependent, and of gifts of over $500 received by an adult dependent, but with respect to earned income, if his spouse or any minor dependent is self-employed in his or her own business or profession, only the nature of such business or profession need be reported.

(2) For the purposes of subsection (a)(3) and subsections (e) through (i) of section 302, a reporting individual shall also report the interests of the spouse or dependents of that individual: *Provided*, That a reporting individual shall not be required to report any specific information concerning interest of a spouse or dependent if the reporting individual certifies to the supervising ethics office that: (A) he or she has no knowledge of such information; (B) he or she has made every reasonable effort to obtain the required information from his or her spouse or dependent; (C) he or she derives and expects to derive no benefit from such interests; (D) and that such interests were not derived directly or indirectly from interests or income formerly owned or controlled by the reporting individual.

(3) No report shall be required with respect to the interests of a spouse living separate and apart from the reporting individual.

(d)(1) Except as provided in paragraph (2), each reporting individual shall report, in accordance with the provisions of section 302, the identity of the holdings of and the identity of the source of income from a trust or other financial arrangement from which income is received by, or with respect to which an equity interest is held by, such individual, his spouse, or any of his dependents.

(2) A reporting individual other than a judge or justice of the United States need not report the holdings of or the source of income from any of the holdings of—

(A) any qualified blind trust (as defined in paragraph (3)); or

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any of his dependents,

(ii) with respect to which such individual, his spouse, and any of his dependents have

no knowledge of the holdings or sources of income of the trust, and

(iii) with respect to which such individual has requested the trustee to provide information with respect to the holdings and sources of income of the trust and the trustee refuses to disclose the information,

but such individual shall report the category of the amount of income received by him, his spouse, or his dependents from the trust under section 302(a)(3).

(3) For purposes of this subsection, the term "qualified blind trust" includes any trust, in which a reporting individual, his spouse, or any of his dependents has a beneficial interest in the principal or income, and which meets the following requirements:

(A) The trustee of the trust is a financial institution, an attorney, a certified public accountant, or a broker, who (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust who)—

(i) is independent of any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party,

(ii) is not an employee of any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and

(iii) is not a relative (as defined in section 309(14)) of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in clause (B), the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or less of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by section 302(a)(3) of this title, but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset and which notification directs that the assets not be held by the trust, (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee shall be approved by the reporting individual's supervising ethics office. For purposes of this paragraph, "interested parties" means a reporting individual, his spouse, and dependents if the reporting individual, his spouse, or dependent has a beneficial interest in the principal or income of a qualified blind trust. The term "broker" is used as defined in section 78 of title 15, United States Code.

(4) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of section 208 of title 28, United States Code, and any other conflict of interest statutes or regulations of the Federal Government, until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

(5)(A) The reporting individual shall file within 30 days after a qualified blind trust is approved by his supervising ethics office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under section 303(a),

with each office, agency, committee, or individual with whom such reporting individual is required to file a report under section 304.

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under section 303(a).

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such dissolution, and

(ii) file a copy of a list of the assets of the trust at the time of such dissolution and the category of value under section 303(a) of each such asset with each office, agency, committee, or individual with whom such individual is required to file a report under section 304.

(D) Documents filed under clauses (A), (B), and (C) of this paragraph shall be made available to the public in the same manner as a report is made available under section 3C5 and the provisions of section 305, as appropriate, shall apply.

(E) A copy of each written communication with respect to the trust under paragraph (4)(C)(iv) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6)(A) A trustee of a qualified blind trust shall not knowingly or negligently (i) disclose any information to an interested party with respect to such trust that may not be disclosed under this subsection; (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by this subsection or the trust agreement; or (vi) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly or negligently (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under this subsection, or (ii) fail to file any document required by this subsection.

(C)(i) Any individual who knowingly and wilifully violates the provisions of subparagraph (A) or (B) shall be fined in any amount not exceeding $5,000, or imprisoned for not more than one year, or both.

(ii) Any individual who negligently violates the provisions of subparagraph (A) or (B) shall be fined in any amount not exceeding $5,000.

(7) Any trust which is in existence prior to the date of the enactment of this Act shall be considered a qualified blind trust if—

(A) the supervising ethics office determines that the trust was a good faith effort to establish a blind trust;

(B) the previous trust instrument is amended or, if such trust instrument does not by its terms permit amendment, all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered in accordance with the requirements of paragraph (3)(c) and a trustee is (or has been) appointed who meets the requirements of paragraph (3); and

(C) a copy of the trust instrument (except testamentary provisions), a list of the assets previously transferred to the trust by an interested party, and the category of value of each such asset at the time it was placed in the trust is filed and made available to the public as provided under paragraph 5.

(e) The President, the Judicial Conference of the United States, the House of Representatives, or the Senate may require the reporting and disclosure of information with respect to gifts received by reporting individuals under their supervision, as designated in section 304(a), and their spouses and dependents, in addition to that required by section 302 if it is determined that such information is necessary for the effective enforcement of the conflict of interest laws or regulations.

(f) Each report filed under subsection 301 (c) and (d) shall include a full and complete statement, in such manner and form as the individual's supervising eithics office shall prescribe, with respect to information required by subsections (e), (f), (i), (j), (k), and (l) of section 302, as of the date of filing, and the sources and amounts of any payments to date over and above normal salary (including but not limited to severance, bonus or buy-out payments) from a prior employer or partner for the year of filing and the preceding calendar year.

FILING OF REPORTS

SEC. 304. (a) For purposes of this title, the term "supervising ethics office" means—

(1) a committee designated by the Senate of the United States in the case of Members, officers, and employees of the Senate, candidates seeking election to the Senate, and officers and employees of the General Accounting Office, the Cost Accounting Standards Board, the Office of Technology Assessment, and the Office of the Attending Physician;

(2) a committee designated by the House of Representatives in the case of Members, officers, and employees of the House of Representatives, candidates seeking election to the House of Representatives, and officers and employees of the Architect of the Capitol, the

Botanic Gardens, the Government Printing Office, and the Library of Congress;

(3) a committee designated by the Judicial Conference of the United States in the case of justices and judges of the United States, any officer or employee of the judicial branch of the Government or the District of Columbia government, and any Presidential nominee for any such position;

(4) the President in the case of any Commissioner of the Civil Service Commission and the Director of the Office of Government Ethics of the United States Civil Service Commission; and

(5) the Office of Government Ethics of the United States Civil Service Commission in the case of any other individual required to file a report under section 301; (b)(1) Each officer or employee whose supervising ethics office is the Office of Government Ethics of the United States Civil Service Commission (hereinafter referred to as the "Office of Government Ethics"), other than an individual excepted under paragraph (2), shall—

(A) file the report required by this title with the designated official of his agency; and

(B) file a copy of his report with the Office of Government Ethics if such officer or employee is the President, the Vice President, a Presidental appointee in the Executive Office of the President who is not subordinate to the head of an agency in that Office, a full-time member of a committee, board, or commission appointed by the President or an individual whose pay rate is specified in subchapter II of chapter 53 of title 5, United States Code.

(2) The President may exempt any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States from the requirement to file a report with his supervising ethics office if the President find that, due to the nature of the office or position occupied by such individual, public disclosure of such report would reveal the identity of an undercover agent of the Federal Government. Each individual exempted by the President from such requirements shall file such report with the head of the agency in which he occupies an office or position and said report shall not be made public.

(c) Each Commissioner of the Civil Service Commission and the Director of the Office of Government Ethics of the Civil Service Commission shall file the report required by this title with the President and a copy with the Office of Government Ethics.

(d)(1) Each individual identified in subsection 301(d) who is nominated for a position the supervising ethics office for which is the Office of Government Ethics shall file the report required by this title with the Senate committee (in the case of a nominee for Vice President, the Senate and House committees) considering his nomination and a copy of such report with the agency in which he is nominated to serve and the Office of Government Ethics.

(2) Each individual identified in subsection 301(d) who is not referred to in paragraph (1) of this subsection shall file the report required by this title with the Senate committee considering his nomination and a copy of such report with the supervising ethics office for the position for which he is nominated.

(e) Each individual identified in subsection 301(e) shall file the report required by this title with the supervising ethics office for the position for which he is a candidate.

(f)(1) Each Member, officer, employee or candidate whose supervising ethics office is a committee designated by the Senate or House of Representatives shall file the report required by this title with the Secretary of the Senate or the Clerk of the House of Representatives, respectively.

(2) Each Member of the House of Representatives or the Senate or a candidate for such a position shall also file a copy of such report as a public document with the Secretary of State (or, if there is no office of Secretary of State, the equivalent state officer) in the State which the individual represents or in which he is a candidate.

(g)(1) Each justice, judge, adjudicatory official, officer, or employee of the judicial branch or the judicial branch of the District of Columbia shall file the report required by this title with his supervising ethics office.

(2) In addition, each justice or judge or other adjudicatory official of the judicial branch of the United States shall file a copy of such report as a public document with the clerk of the court on which he sits.

(h) The individual's supervising ethics office may grant one or more reasonable extensions of time for filing any report (other than a report required by subsection 301(d)) but the total of such extensions shall not exceed ninety days. The congressional committee considering a nomination may grant one or more reasonable extensions of time for filing any report required to be filed under subsection 301(d) but in no event shall such extension extend beyond the time such nominee is confirmed.

CUSTODY OF AND PUBLIC ACCESS TO REPORTS

SEC. 305. (a) The Secretary of the Senate, the Clerk of the House of Representatives, each Secretary of State, the committee designated by the Judicial Conference, and each clerk of court shall make each report filed under section 304 available to the public within fifteen days after the receipt of such report from any individual and provide a copy of such report to any person upon a written request.

(b) Each executive agency, as defined in section 105 of title 5, United States Code, and the Office of Government Ethics of the Civil Service Commission shall—

(1) make each report filed under section 304 available to the public within forty-five days after the receipt of such report from any individual and provide a copy of such report to any person upon a written request and

(2) prior to making such reports available to the public, cause each such report to be reviewed to assure compliance with applicable laws and regulations and indicate on the financial disclosure report the name of the person who conducted such review and the fact that no conflicts exist or a description of the action taken to eliminate any conflicts which do exist.

(c) Any person receiving a copy of a report or inspecting a report pursuant to subsection (a) or (b) shall be required to supply his name and address and the name of the person or organization, if any, on whose behalf he is requesting a report and may be required to pay a reasonable fee in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest. The names and addresses of persons or organizations inspecting or receiving a copy of a report shall be made available to the reporting individual and to the public.

(d)(1) It shall be unlawful for any person to inspect or obtain a report—

(A) for any unlawful purpose;

(B) for any commercial purpose;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who inspects or obtains a report for any purpose prohibited in paragraph (1). The court in which such action is brought may assess against such person a penalty in any amount not to exceed $5,000.

(e) Any report received under this title by the offices referred to in subsections (a) and (b) shall be held and kept available to the public for a period of six years after its receipt. After such six year period, any such report shall be destroyed.

AUDITS OF REPORTS

SEC. 306. (a) The Office of Government Ethics shall, under such regulations as are prescribed by that Office in order to monitor the accuracy and completeness of such reports—

(1) conduct, on a random basis, a sufficient number of audits, as deemed necessary and appropriate, of the reports filed with that Office (other than the reports filed by the President, Vice President, a Commissioner of the Civil Service Commission or the Director of the Office of Government Ethics); and

(2) audit at least one report filed by an individual holding the office of President, Vice President, or Civil Service Commissioner during the term of such person, and at least once every four years audit one report filed by the Director of the Office of Government Ethics, except that no such audit shall take place during the calendar year and any such individual is up for reelection.

(b) The Comptroller General shall, under such regulations as may be prescribed by him, in consultation with the respective supervising ethics office of the Senate or the House of Representatives, in order to monitor the accuracy and completeness of such reports—

(1) conduct on a random basis, a sufficient number of audits, as determined by the respective supervising ethics office, of the reports filed with such offices (other than those filed by a Member of the Senate or House of Representatives or an officer or employee of the General Accounting Office); and

(2) during each six-year period beginning after December 31, 1977, audit at least one report filed by each Member of the Senate and House of Representatives, except that no such audit shall take place during the calendar year such Member is up for reelection and the report of any Member not reelected or who does not serve out the term of his office shall not be subject to audit after he has left office.

(c) The supervising ethics office for the judicial branch of the United States and the District of Columbia shall, under such regulations as are prescribed by that office, conduct, on a random basis, a sufficient number of audits of the reports filed with that office in order to monitor the accuracy and completeness of such reports.

(d) The supervising ethics office of the Senate shall, under the regulations prescribed by the Comptroller General under subsection (c), conduct on a random basis, a sufficient number of audits of the reports filed with said office by officers and employees of the General Accounting Office in order to monitor the accuracy and completeness of such reports.

(e) The findings of each audit conducted pursuant to this section shall be transmitted to the individual being audited and that individual's supervising ethics office.

(f) Nothing in this section shall affect the authority of a supervising ethics office to conduct an audit of a report filed under this

title in the course of an investigation of allegations of wrongdoing.

FAILURE TO FILE, FALSIFYING REPORTS; PROCEDURE

SEC. 307. (a) (1) Any individual who knowingly and willfully falsifies or omits to report any material information such individual is required to report under section 302 shall be fined in any amount not exceeding $5,000, or imprisoned for not more than one year, or both.

(2) The Attorney General may bring a civil action in any district court of the United States against any individual who fails to file a report which such individual is required to file under section 301 or who fails to report or inaccurately reports any information which such individual is required to report under section 302. The court in which such action is brought may assess against such individual a penalty in any amount not to exceed $5,000.

(b) The supervising ethics office shall refer to the Attorney General the name of any individual such office has reasonable cause to believe has failed to file a report, has falsified or failed to file information required to be reported, or has violated any law relating to conflicts of interest of officers and employees of the Government, and in the case of the President, Vice President, or any justice or judge of the United States, shall also refer such matter to the Committee on the Judiciary of the House of Representatives.

(c) The supervising ethics office for the judicial branch shall, subject to such procedures and regulations as the office shall prescribe—

(1) review the reports filed with it under this title to insure that the reports are filed in a timely manner, and are complete and in proper form;

(2) arrange for the audits required by section 306(c) of this title;

(3) investigate complaints with respect to alleged violations of this title;

(4) take appropriate administrative action against employees of the judicial branch who violate this title;

(5) refer matters to the Attorney General and the Committee on the Judiciary of the House of Representatives pursuant to section 307(b); and

(6) report at least annually to the Congress on the activities of the Judicial Conference of the United States pursuant to this title and the effectiveness of the judicial branch system for the prevention of conflicts of interest, with recommendations for changes or additions to applicable laws as necessary.

ADVISORY COMMISSION ON ETHICS

SEC. 308. (a) There is established an independent advisory commission to be known as the National Advisory Commission on Ethics in Government (hereinafter in this section referred to as the "Commission").

(b) (1) The Commission shall be composed of nine members who shall be appointed from private life, as follows:

(A) three appointed by the President of the United States, no more than two of whom shall be affiliated with the same political party;

(B) two appointed by the President of the Senate: *Provided*, That such appointees shall not be affiliated with the same political party;

(C) two appointed by the Speaker of the House of Representatives: *Provided*, That such appointees shall not be affiliated with the same political party; and

(D) two appointed by the Chief Justice of the United States: *Provided*, That such appointees shall not be affiliated with the same political party.

(2) The Commission shall elect a Chairman and a Vice Chairman from among its members. The Chairman and the Vice Chairman shall not be affiliated with the same political party. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman.

(3) The terms of office of persons first appointed as members of the Commission shall be for the period of the 1979 calander year.

(4) After the close of the 1979 calendar year, persons shall be appointed as members of the Commission with respect to the 1983 calendar year. The terms of office of persons so appointed shall be for the period of the 1983 calendar year.

(5) A vacancy in the membership of the Commission shall be filled in the manner in which the original appointment was made.

(6) Each member of the Commission shall be paid at the rate of $100 for each day such member is engaged upon the work of the Commission, and shall be allowed travel expenses, including a per diem allowance, in accordance with section 5703(b) of title 5 of the United States Code, when engaged in performance of services for the Commission.

(c) (1) Without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates, and on a temporary basis for periods covering all or part of any calendar year referred to in subsection (b) of this section—

(A) the Commission shall appoint an Executive Director and General Counsel and fix their basic pay at the rate provided for level V of the Executive Schedule by section 5316 of title 5 of the United States Code; and

(B) with the approval of the Commission, the Executive Director is authorized to appoint and fix the basic pay (at respective rates not in excess of the maximum rate of the General Schedule in section 5332 of title 5 of the United States Code) of such additional personnel as may be necessary to carry out the function of the Commission.

(2) Upon the request of the Commission, the head of any department, agency, or establishment of any branch of the Federal Government is authorized to detail, on a reimbursable basis, for periods covering all or part of any calendar year referred to in subsection (b) of this section, any personnel of such department, agency, or establishment in carrying out its functions.

(d) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(e) The Administrator of General Services shall provide administrative support services for the Commission on a reimbursable basis.

(f) The Commission shall conduct, in each of the respective calendar years referred to in subsection (b) of this section, a review of—

(1) the effectiveness in avoiding conflicts of interest and the efficiency of the operation of the financial disclosure system established by this title, and a summary of actions taken under Section 307 for—

(A) Members of Congress, Congressional candidates, legislative branch employees;

(B) the Judiciary, and

(C) executive branch officials and employees,

(2) the effectiveness and frequency of use of remedies for conflicts of interest, including but not limited to, divestiture and disqualification and blind trusts;

(3) the effectiveness of the enforcement systems established to insure compliance with financial disclosure and other requirements designed to minimize conflicts of interest.

(4) the effectiveness of post-employment restrictions established by this title in eliminating the interchange of personnel between government and industry, and whether the preemployment reporting requirements established by this title reveal any need for additional legislation to avoid conflicts of interest arising from previous employment.

(5) any other matters relating to the financial conflicts of interest of public officials.

(g) The Commission shall submit to the President of the United States, the President of the Senate, the Speaker of the House of Representatives and the Chief Justice of the United States a report of the results of each review conducted by the Commission under subsection (f) of this section, together with its recommendations. Each such report shall be submitted not later than January 1 next following the close of any calendar year in which the review is conducted by the Commission.

DEFINITIONS

SEC. 309. As used in this title—

(1) the term "agency" means each authority of the Government of the United States;

(2) the term "candidate" has the meaning set forth in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431);

(3) the term "commodity future" means commodity future as defined in section 2 and 5 of the Commodity Exchange Act, as amended (7 U.S.C. 2 and 5);

(4) the term "Comptroller General" means the Comptroller General of the United States;

(5) the term "dependent" has the meaning set forth in section 152 of the Internal Revenue Code of 1954;

(6) the term "earned income" means any income earned by an individual which is compensation received as a result of personal services actually rendered;

(7) the term "employee" includes any employee designated under section 2105 of title 5, United States Code, and any employee of the United States Postal Service or of the Postal Rate Commission;

(8) the term "gift" means a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, including food, lodging, transportation, or entertainment, and reimbursement for other than necessary expenses, unless consideration of equal or greater value is received, but does not include (A) a political contribution otherwise reported as required by law, (B) a loan made in a commercially reasonable manner (including requirements that the loan be repaid and that a reasonable rate of interest be paid, (C) a bequest, inheritance, or other transfer at death, or (D) anything of value given to a spouse or dependent of a reporting individual by the employer of such spouse or dependent in recognition of the service provided by such spouse or dependent;

(9) the term "income" means gross income as defined in section 61 of the Internal Revenue Code of 1954;

(10) the term "Member of Congress" means a Senator, a Representative, a Resident Commissioner, or a Delegate;

(11) the term "officer" includes any officer designated under section 2104 of title 5, United States Code, and any officer of the United States Postal Service or of the Postal Rate Commission;

(12) the term "officer or employee of the Senate or the House of Representatives" includes any individual whose salary is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives except the Vice President;

(13) the term "Presidential nominee" means an individual appointed by the President to an office for which confirmation, by

and with the advice and consent of the Senate, is required, or an individual nominated by the President to serve as Vice President pursuant to the twenty-fifth article of amendment to the Constitution of the United States;

(14) the term "relative" means, with respect to a person required to file a report under this rule, an individual who is related to the person as father, mother, son, daughter, brother, sister, uncle, aunt, great uncle, great aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, fiancé, fiancée, or who is the grandfather or grandmother of the spouse of the person reporting;

(15) the term "security" has the meaning set forth in section 2 of the Securities Act of 1933, as amended (15 U.S.C. 77b);

(16) the term "transactions in securities and commodities futures" means any acquisition, transfer, or other disposition involving any security or commodity future;

(17) the term "uniformed services" means any of the Armed Forces, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration.

APPLICABILITY TO PER DIEM EMPLOYEES

SEC. 310. Notwithstanding any other provision of this title, in exceptional circumstances, the supervising ethics office of an individual who is an employee hired on a per diem basis or a consultant retained on a contractual basis, may waive the applicability of the provisions of this title to such individual, except section 307.

SEPARABILITY

SEC. 311. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance, is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 312. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this ttile.

EFFECTIVE DATE

SEC. 313. This title shall take effect on January 1, 1978, and the first reports under section 301(a) shall be filed on or before May 15, 1978, and shall only include the information required by paragraphs (e), (f), (i), (j), (k), and (l) of section 302 as of January 1, 1978.

TITLE IV—OFFICE OF GOVERNMENT ETHICS

OFFICE OF GOVERNMENT ETHICS

SEC. 401. (a) There is established in the United States Civil Service Commission (hereinafter referred to as the "Commission") an office to be known as the Office of Government Ethics (hereinafter referred to as the "Office").

(b) There shall be at the head of the Office a Director (hereinafter referred to as the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate.

AUTHORITY AND FUNCTIONS

SEC. 402. (a) The Director shall provide, under the general supervision of the Commission, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency, as defined in section 105 of title 5, United States Code, except the General Accounting Office.

(b) The responsibilities of the Director shall include—

(1) developing and recommending to the Commission, in consultation with the Attorney General, rules and regulations to be promulgated by the President or the Commission pertaining to conflicts of interest and ethics in the executive branch, including rules and regulations establishing procedures for the filing, review, and public availability of financial statements filed by officers and employees in the executive branch as required by title III of this Act;

(2) developing and recommending to the Commission, in consultation with the Attorney General, rules and regulations to be promulgated by the President or the Commission pertaining to the identification and resolution of conflicts of interest;

(3) monitoring and investigation compliance with the public financial disclosure requirements of title III of this Act by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available such statements;

(4) establishing a system whereby each financial disclosure statement filed, whether public or confidential, is promptly reviewed by the Director, an ethics counselor, or a reviewing official under the supervision thereof, and that the individual conducting the review signs and dates the financial disclosure statement and indicates on the statement that it has been reviewed and that no conflicts exist or indicates the action taken to elimnate any conflicts which do exist;

(5) conducting the random audits required by title III of this Act of financial disclosure statements to determine whether such statements are complete and accurate;

(6) conducting a random annual review of not less than five per centum of the financial statements filed by officers and employees in the executive branch as required by title III of this Act to determine whether such statements reveal possible violations of applicable conflict of interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such review;

(7) monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch;

(8) interpreting rules and regulations issued by the President or the Commission governing conflict of interest and ethical problems and the filing of financial statements;

(9) consulting, when requested, with agency ethics counselors and other responsible officials regarding the resolution of conflict of interest problems in individual cases;

(10) establishing a formal advisory opinion service whereby advisory opinions which the Director renders on matters of general applicability or on important matters of first impression are rendered after, to the extent practicable, providing interested parties with an opportunity to transmit written comments to the Director with respect to the request for such advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public;

(11) ordering corrective action on the part of agencies and employees which the Director deems necessary;

(12) requiring such reports from executive agencies as the Director deems necessary;

(13) assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending appropriate legislative action;

(14) evaluating, with the assistance of the Attorney General, the need for changes in rules and regulations issued by the Commission and the agencies regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws;

(15) cooperating with the Attorney General in developing an effective system for reporting allegations of violations of conflict of interest laws to the Attorney General, as required by section 535 of title 28, United States Code;

(16) providing information on and promoting understanding of ethical standards in executive agencies;

(17) reporting to the Commission recommendations which shall be submitted to the Congress no later than February 1, 1979, as to which additional executive branch employees, if any, should be covered by the requirements for public financial discolsure and a report on which executive branch officials are required to file confidential financial disclosure statements under any Executive order, rules, or regulations; and

(18) reporting to the Commission, which report shall be submitted to the President and the Congress at least annually, on the activities of the Office and the effectiveness of the executive branch system for the prevention of conflicts of interest, with recommendations for changes or additions to applicable laws as necessary. Such report shall include the number of financial disclosure statements annually audited by the Office pursuant to title III of this Act.

(c) In the development of policies, rules, regulations, procedures, and forms to be recommended, authorized, or prescribed by him, the Director shall consult, when appropriate, with the executive agencies affected and the Attorney General.

ADMINISTRATIVE PROVISIONS

SEC. 403. (a) Upon the request of the Director, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Director to the greatest practicable extent for the performance of functions under this Act; and

(2) except when prohibited by law, furnish to the Director all information and records in its possession which the Director may determine to be necessary for the performance of his duties.

(b) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following:

"(141) Director, Office of Government Ethics, Civil Service Commission".

AUTHORIZATION OF APPROPRIATIONS

SEC. 404. There are authorized to be appropriated to carry out the provisions of this title—

(1) not to exceed $3,000,000 for the fiscal year ending September 30, 1978;

(2) not to exceed $3,000,000 for each of the fiscal years 1979, 1980, 1981, and 1982.

SEPARABILITY

SEC. 405. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance, is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

TITLE V—GOVERNMENT PERSONNEL; RESTRICTIONS ON POST SERVICE ACTIVITIES

SEC. 501. Title 18 of the United States Code is amended by deleting section 207 and inserting in lieu thereof the following:

"§ 207. Disqualification of former officers and employees; disqualification of partners of current officers and employees

"(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independ-

ent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly aids, assists, or represents any one other than the United States, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

"(b) Whoever, having been so employed, within two years after his employment has ceased, knowingly—

"(1) acts as agent or attorney for or otherwise represents anyone other than the United States in any formal or informal appearance before, or

"(2) makes any written or oral communication on behalf of anyone other than the United States to, and with the intent to influence the action of,

any court or development or agency, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest and which was under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or,

"(c) Whoever, other than a special Government employee, having been so employed—

"(1) at a rate of pay specified in subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater pay rate under another authority; or

"(ii) in a position classified at GS–16, GS–17, or GS–18 of the General Schedule prescribed by section 5332 to title 5, United States Code; in a position classified at O–7 or above under section 1009 of title 37, United States Code; or in a comparable executive branch position under another authority, as defined by the Director of the Office of Government Ethics, Civil Service Commission,

within one year after his employment with the department or agency has ceased, knowingly—

"(1) makes any appearance or attendance before, or

"(2) makes any written or oral communication to, and with the intent to influence the action of,

the department or agency in which he served, or any officer or employee thereof, if such appearance or communication relates to any particular matter which is pending before such department or agency: *Provided*, That the prohibition of this subsection shall not apply to appearances or communication by the former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits: *Provided further*, That for the purposes of this subsection, whenever the Director of the Office of Government Ethics of the Civil Service Commission determines that a separate statutory agency or bureau within a department exercises functions which are distinct and separate from the remaining functions of the department, the Director shall by rule designate such agency or bureau as a separate department or agency', except that this shall not apply to former officers and employees of the department whose official responsibilities included supervision of said agency or bureau—

"Shall be fined not more than $10,000 or imprisoned for not more than two years, or both. In addition, if the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that said former officer or employee violated subsection (a), (b), or (c) of this section, he may prohibit that person from making any appearance or attendance before that department or agency for a period not to exceed five years, or may take other appropriate disciplinary action: *Provided*, That nothing in subsection (a), (b), or (c) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from making any appearance, attendance, or written or oral communication in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the Federal Register, that the national interest would be served by such action or appearance by the former officer or employee.

"(d) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission, of the United States or of the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility—

"Shall be fined not more than $5,000, or imprisoned for not more than one year, or both.".

LEADING PARTISAN ROLE IN THE ELECTION OF A PRESIDENT

SEC. 502. An individual who has played a leading partisan role in the election of a President shall not be appointed Attorney General or Deputy Attorney General. Individuals holding the position of national campaign manager, national chairman of the finance committee, chairman of the national political party, or other comparable high level campaign role involved in electing the President should be those considered to have played a leading partisan role.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 555.

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

Mr. ROBERT C. BYRD. Mr. President, I again congratulate Mr. RIBICOFF and Mr. PERCY on their fine display of teamwork and cooperation, as we have seen demonstrated so often. They have piloted a difficult and important bill through the Senate and have done an excellent job. They are entitled to our admiration and the respect of the Senate for their good work.

Mr. BAKER. I wish to join the majority leader in expressing my appreciation to the distinguished ranking minority member of the Governmental Affairs Committee for his participation in the presentation and management of this bill, to compliment him and the distinguished Senator from Connecticut, the chairman of the committee, for their efforts in bringing this matter to the Senate and bringing it to final passage. They did an outstanding job in dealing fairly and equitably with a range of issues, many of which were highly controversial.

I would pay my compliments as well to the capable and diligent staff who assisted them in both sides of the aisle.

DEPARTMENTS OF LABOR, AND HEALTH, EDUCATION, AND WELFARE APPROPRIATIONS ACT, 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the HEW appropriation bill.

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed with the consideration of H.R. 7555, which the clerk will state by title.

The second assistant legislative clerk read as follows:

A bill (H.R. 7555) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending September 30, 1978, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations with amendments.

ORDER FOR RECESS UNTIL 9:45 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business tonight it stand in recess until the hour of 9:45 a.m. tomorrow.

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

ORDER FOR RESUMPTION OF CONSIDERATION OF H.R. 7555 AT 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the hour of 10 a.m. tomorrow the Senate resume consideration of H.R. 7555, the HEW appropriation bill.

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

ORDER FOR A PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent after the two leaders or their designees have been recognized under the standing order on tomorrow, if there be any time remaining prior to the hour of 10 a.m., such time be utilized for morning business

with statements limited therein to 2 minutes each.

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

ORDER FOR THE RECOGNITION OF SENATOR HATCH AND SENATOR BAKER ON WEDNESDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Wednesday, after the two leaders or their designees have been recognized under the standing order, Mr. HATCH and Mr. BAKER be recognized for 15 minutes.

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

ORDER FOR REFERRAL OF S. 957 TO THE COMMITTEE ON THE JUDICIARY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that calendar order 184, S. 957, the consumer controversies bill, be referred to the Committee on the Judiciary with instructions to report the bill to the Senate in not less than 45 days nor more than 60 days, with the bill to be placed on the Senate calendar at such time as it is reported. This request has been cleared by both the Commerce Committee and the Judiciary Committee and the leadership on both sides of the aisle.

Mr. BAKER. Mr. President, if the Senator will yield, I will say that he and I know this has been the subject of some controversy since it came to the calendar. I am happy to note that an agreement has been worked out on a referral on this basis.

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

TIME-LIMITATION AGREEMENT—H.R. 7558

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as the bill making appropriations for the Department of Agriculture, H.R. 7558, is called up and made the pending business before the Senate, there be a time limitation of 1 hour to be equally divided between Mr. BELLMON and Mr. EAGLETON; that there be a time limitation on any amendment of 30 minutes, a time limitation on any debatable motion, appeal, or point of order, if the Chair submits such to the Senate for its discussion, of 2 minutes, and that the agreement with respect to the control and division of time be in the usual form.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes

Mr. BAKER. Is there provision or would the majority leader consider a provision, with respect to an exception in the case that the saccharin amendment might be offered?

Mr. ROBERT C. BYRD. That is correct. I am glad the distinguished minority leader called that to my attention. It is in the note in front of me. With the further proviso that should a saccharin amendment be offered to the bill that there be no time limit thereon on such amendment or amendments to the amendment.

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

The text of the agreement is as follows:

Ordered, That when the Senate proceeds to the consideration of H.R. 7558 (Order No. 274) an Act making appropriations for Agriculture and related agencies programs for the fiscal year ending Sept. 30, 1978, and for other purposes debate on any amendment (except an amendment dealing with saccharin and any amendments thereto on which there shall be no time limit) shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill, and that debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 20 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: Provided, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

Ordered further, That on the question of final passage of the said bill, debate shall be limited to 1 hour, to be equally divided and controlled, respectively, by the Senator from Missouri (Mr. EAGLETON) and the Senator from Oklahoma (Mr. BELLMON):

Provided, That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Now, Mr. President, we have had morning business already today?

The PRESIDING OFFICER. The Senator is correct.

PROGRAM

Mr. ROBERT C. BYRD. The Senate will come in tomorrow morning at 9:45 a.m. At the hour of 10 a.m. the Senate will resume consideration of the Labor, HEW appropriations bill. It will be a long day and, hopefully, the Senate will complete action thereon tomorrow. There will be rollcall votes throughout the day on the bill.

I hope the leadership will work out some agreement with Members of the Senate during the day on the bill and amendments thereto or at least on most of the amendments thereto so as to expedite the action on the bill.

RECESS UNTIL 9:45 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 9:45 a.m. tomorrow.

The motion was agreed to; and at 8:05 p.m., the Senate recessed until Tuesday, June 28, 1977, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate June 27, 1977:

DEPARTMENT OF DEFENSE

Walter Barber LaBerge, of Virginia, to be Under Secretary of the Army, vice Norman R. Augustine, resigned.

DEPARTMENT OF JUSTICE

Kenneth J. Mighell, of Texas, to be U.S. attorney for the northern district of Texas for the term of 4 years vice Michael P. Carnes, resigned.

NATIONAL COMMISSION ON EMPLOYMENT AND UNEMPLOYMENT STATISTICS

Sar A. Levitan, of the District of Columbia, to be a member of the National Commission on Employment and Unemployment Statistics (new position).

CONFIRMATIONS

Executive nominations confirmed by the Senate June 27, 1977:

DEPARTMENT OF JUSTICE

Joseph J. Harvey, of Washington, to be United States Marshal for the Western District of Washington for the term of four years.

J. Jerome Bullock, of Georgia, to be United States Marshall for the District of Columbia for the term of four years.

Lee A. Limbs, Jr., of Arizona, to be United States Marshal for the District of Arizona for the term of four years.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duty constituted committee of the Senate.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

(Statements in connection with bills and joint resolutions introduced today are as follows:)

By Mr. CHURCH:

S. 1762. A bill to amend the Social Security Act to permit a grandchild who has been placed in legal custody of his grandparent to qualify for benefits as a child of his grandparent; to the Committee on Finance.

SOCIAL SECURITY BENEFITS FOR A DEPENDENT GRANDCHILD PLACED IN THE CUSTODY OF A GRANDPARENT

Mr. CHURCH. Mr. President, I introduce for appropriate reference a bill to permit dependent grandchildren who are placed in the custody of their grandparents to receive social security benefits under certain circumstances.

Under existing law, a dependent grandchild living with a grandparent may qualify for social security benefits if his parents are deceased or disabled when the grandparent dies or becomes entitled to disability or retirement benefits.

In addition, the grandchild is eligible for social security if adopted by his widowed grandmother, provided he is not living with his parents nor receiving support from them at the time of the grandfather's death.

These requirements are designed to prevent collusive agreements for the purpose of obtaining social security benefits. To my way of thinking, these are appropirate and reasonable considerations.

However, there are still compelling instances when some grandchildren may not qualify for social security, although they are dependent upon their grandparent for support. Some of my constituents in Idaho have brought this to my attention. The bill that I introduce today is designed to close one of these gaps. It would provide social security for a grandchild living with and supported by a grandparent, provided a court order is in effect for at least 1 year when the grandparent applies for old-age disability benefits.

A court awarding a grandparent custody of a grandchild usually takes this action because it is in the interest of the youngster's well-being. Yet, this purpose can be undermined if the grandchild is denied social security when the grandparent dies, retires, or becomes disabled.

Social security is a social insurance program. It is designed to protect workers and their families from loss of earnings because of three contingencies: death, retirement, or disability. A dependent grandchild placed in the custody of a grandparent suffers a similar loss of earnings if the grandfather dies, retires, or becomes disabled. In my opinion, the grandchild should be entitled to protection under these circumstances.

Some persons, I am aware, will say that adoption is available. However, this may not be a feasible alternative. A grandparent—quite understandably—may be reluctant to take this action, if there is any possibility at all that the grandchild may be reunited with the parents.

Social security now affects almost every American family. It is important that it continue to be perfected to insure that the program is equitable for all concerned.

My bill would help to implement that objective.

For these reasons, I urge prompt approval of this legislation.

Mr. President, I also ask unanimous consent that the text of this bill be printed at this point in the RECORD.

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

S. 1762

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 216(e) of the Social Security Act is amended—

(1) by striking out "and" before clause (3), and

(2) by inserting before the period at the end thereof ", and (4) a person who is the grandchild of an individual or his spouse and who has been placed in the custody of such individual or his spouse by an order of a court of competent jurisdiction within the United States which is in effect on the day on which such individual's application for old-age insurance benefits or disability insurance benefits is filed and has been in effect for at least one year before such day".

SEC. 2. Section 202(d)(9)(A) of such Act is amended by inserting after "such first sentence" the following: ", or who is a child of an individual under clause (4) of such first sentence and is not a child of such individual under clause (1), (2), or (3) of such first sentence.".

SEC. 3. The amendments made by this Act shall apply with respect to monthly benefits payable under title II of the Social Security Act for months after the month in which this Act is enacted on the basis of applications for such benefits filed in or after the month in which this Act is enacted.

By Mr. MCINTYRE (for himself, Mr. ABOUREZK, Mr. ANDERSON, Mr. BAYH, Mr. BROOKE, Mr. CASE, Mr. CRANSTON, Mr. DURKIN, Mr. EAGLETON, Mr. GRAVEL, Mr. HART, Mr. HATFIELD, Mr. HATHAWAY, Mr. HOLLINGS, Mr. HUMPHREY, Mr. LEAHY, Mr. MATSUNAGA, Mr. MCGOVERN, Mr. RIBICOFF, and Mr. THURMOND):

S. 1763. A bill entitled "The Civilian Secretaries Information Act"; to the Committee on Armed Services.

THE CIVILIAN SECRETARIES INFORMATION ACT

Mr. MCINTYRE. Mr. President, when we reflect upon the deception, the abuses of purpose and power, the violation of the public trust we have seen in recent years, we find that the problem arose in almost every instance when a select few made an arbitrary capricious or a self-serving determination of what constituted the national interest, and when that determination then transcended established principle or the law itself.

The secret bombing of Cambodia, for example, was secret only to the American people and their duly elected representatives in the Congress. The President knew about it, the Secretary of Defense knew about it, the Joint Chiefs of Staff knew about it, the Cambodians, the North Vietnamese, the Chinese and the Russians knew about it, but to our chagrin and resentment, we did not know about it—nor did the Secretary of the Air Force—the civilian ostensibly in charge of the service branch that carried on the secret bombings!

Mr. President, I recognize the legitimate need for some secrecy, some standards of confidentiality, some room for sensitive departments and agencies to operate at their own discretion. But surely, evidence abounds that in instance after instance those bounds have been exceeded, and our system has suffered humiliating, even dangerous consequences.

"All the ills of democracy," someone once said, "can be cured by more democracy," so today I intend to propose a modest dose of more democracy for one specific malady. I intend to suggest legislative reaffirmation of one long-established democratic and constitutional principle—civilian control of the military.

Mr. President, I introduce for appropriate reference, a bill to require that the civilian Secretaries of our military departments be kept fully and currently informed of matters considered by the Joint Chiefs of Staff. It may seem absured to some that legislation is necessary to require that process of communication between, for example, the Chief of Naval Operations and the Secretary of the Navy. But statements by former Secretary of the Army, Howard Callaway, and the disturbing fact that then Air Force Secretary Robert Seamans, was not apprised of secret U.S. bombing of Cambodia in 1969 and 1970, show this is not always the case. Still earlier, former Secretary of the Army, Elvis Stahr, did not know of the decision to support the Bay of Pigs invasion.

Let me underscore Mr. Callaway's observation by referring to passages in the Senate Armed Services Committee transcript of the "Bombing in Cambodia" hearings, conducted in July and August of 1973.

At one point in the hearing—page 148—Gen. Earle G. Wheeler, Chairman of the Joint Chiefs of Staff at the time of the secret Cambodia bombings, is questioned by the former senior Senator from Missouri, the Honorable Stuart Symington.

Senator Symington asks: "If you were on the golf course, at some informal time and the Secretary of the Air Force had said to you, 'Somebody told me that we were bombing in Cambodia; is that correct?' What would you have said?"

General Wheeler answers: "I'm afraid I would have said, 'I don't know anything about it, Mr. Secretary.'"

And Senator Symington says, "Even thought you did know all about it?"

"Yes sir," said General Wheeler.

Now, Mr. President, why did General Wheeler feel he could mislead the Secretary of the Air Force in such a crucial matter?

I think we can find the answer in the same hearing report by examining Dr. Seaman's opening statement in his testimony. On page 90 of the report, the former Air Force Secretary has this to say:

Before addressing these matters (his relationship to certain air operations activities in South Asia prior to May, 1970), I wish to note the role of a Service Secretary with respect to military operations, including air operations in Southeast Asia. As you know, in consonance with the Reorganization Act of 1958, and applicable Department of Defense directives, the operational chain of command for the conduct of military operations runs from the Commander-in-Chief to the Secretary of Defense, through the Joint Chiefs of Staff, or for time-sensitive operations, through the Chairman, Joint Chiefs of Staff, representing the Joint Chiefs of Staff to the commanders of the unified and specific commands, and to the operational units.

Consequently a service Secretary is not in the operational chain of command in any

legal or practical sense. During my tenure as Secretary, of course, I made it a point to remain abreast of overall Air Force operations in the interest of fulfilling my basic responsibilities for managing Air Force Personnel and materiel resources and for acting as an advisor to the Secretary of Defense. However, not being in the chain of command, I was not made aware of certain special military operations, even long after they occurred. Such was the case with bombing missions carried out in Cambodia prior to May, 1970. Consequently, I had no personal knowledge of the particular missions, nor would I have expected to, at the time they were occurring.

Now, Mr. President, it seems clear from these two passages that both General Wheeler and Dr. Seamans chose to believe that the Reorganization Act of 1958 that removed the service Secretaries from the chain of command also eliminated them from the "need to know" category when it came to military strategy decisions made by the Commander-in-Chief and the Joint Chiefs of Staff or specific military operations.

Mr. President, I contend that no service Secretary could possibly fulfill his administrative and advisory responsibilities without full knowledge of the military operations being conducted by his branch of service. While a Secretary's duties may not include military strategy and strategic planning, he must be fully aware of strategic plans and decisions for these will undoubtedly affect his decisions on training, logistics, preparedness and research and development.

Moreover, the advice the Secretary is charged with providing the Secretary of Defense can be only two-dimensional advice at best when he is ignorant of those factors creating a third dimension—in the instance, military operations of crucial political as well as strategic significance.

In the absence of this multi-dimensional advice from a civilian, the advisory input is monopolized by the Joint Chiefs of Staff. Without impugning the integrity or the objectivity of the Joint Chiefs, I must say such a situation does not enhance the principle of civilian control of the military.

But if I am disturbed by the consequences of interpreting the elimination of service Secretaries from the chain of command to mean that service Secretaries need not be told of strategy decisions and military actions, I am also astonished by the interpretation, itself. For it is, indeed, an astonishing misrepresentation.

Mr. President, the Joint Chiefs of Staff are, by law, the principal military advisors to the President, the National Security Council, and the Secretary of Defense. Their input is vital to our defense posture and the readiness of our forces.

The Defense Department has recognized the importance and necessity of full communications between the Joint Chiefs and the service Secretaries. This was clearly spelled out in Department of Defense Directive 5100, of December 31, 1958. That directive states:

(2) The Joint Chiefs of Staff, as a group, are directly responsible to the Secretary of Defense for the functions assigned to them. *Each member of the Joint Chiefs of Staff, other than the Chairman, is responsible for keeping the Secretary of his military department fully informed on matters considered or acted upon by the Joint Chiefs of Staff.*

Now, Mr. President, I fail to see any ambiguity in this directive. I think it makes it absolutely clear that service Secretaries not only have a need to know about all matters—including military strategy—considered by the Joint Chiefs of Staff. They have a right to know.

If this directive is so clear in intent, why then is it necessary to make it part of our laws? One must remember that this directive has no permanence. It can be changed at the direction of any Secretary of Defense. Thus, the basis for this important principle of civilian control over the military is fragile indeed.

Beyond its impermanence, this directive has no mechanism for implementation or enforcement. Neither does it specify any time within which the information is to be imparted to the service Secretary. This loophole would be closed by the bill I propose, for the bill specifies that the service Secretary be "fully and currently informed on all matters considered and on matters acted upon by our Joint Chiefs of Staff."

Now, Mr. President, I do not want to appear harsh in these judgments. Perhaps we have only ourselves to blame for the misinterpretations and omissions of the past. In truth, Congress has not gone on record to require this communication between the military and the civilian leadership of our Armed Forces. The bill I introduce today will put the Congress on record, for it would have the effect of codifying the 1958 Department of Defense directive. In short, it would be a clear statement of congressional intent that service Secretaries have a right to information on matters before the Joint Chiefs of Staff.

Mr. President, civilian control over the military is a time honored and vital part of our constitutional framework. This control can only be effective when the flow of information on decisions and planning is complete and unobstructed. I believe this bill is a necessary step in that direction.

By Mr. RIEGLE (for himself and Mr. GRIFFIN):

S. 1765. A bill for the relief of the Federal Life and Casualty Co. of Battle Creek, Mich.; to the Committee on the Judiciary.

Mr. RIEGLE. Mr. President, today Senator GRIFFIN and I are introducing Senate bill 1765, for the relief of the Federal Life and Casualty Co. of Battle Creek, Mich.

Our reason for seeking this legislation is to remedy a grievous injustice which would occur should this very prominent Michigan corporation lose the right to use the name "Federal" if it merges with an affiliate insurer.

Mr. President, Federal Life and Casualty Co., a licensed Michigan insurer which has used the word "Federal" for 70 years, proposes to merge into an existing affiliate, the Peoples Home Life Insurance Co. of Indiana. Both of the foregoing insurers are now and will be at the time of the merger wholly owned subsidiaries of The Home Insurance Co. of New York.

The merger contemplated that the surviving insurer would use the name "Federal Home Life Insurance Co.," in order to reflect its origins and to utilize its valuable proprietary interest in the name "Federal," dating back to 1906.

In 1906, the Congress passed an act (18 U.S.C. 709) prohibiting the use of the word "Federal" as a portion of any corporate or trade name. The act contained a grandfather clause, which currently provides that:

This section shall not make unlawful the use of any name or title which was lawful on the date of enactment of this title.

Section 709 also prohibits the use of the word "United States" and "reserve", except under the same grandfather clause circumstances.

Until now, the Justice Department has issued letters under similar merger type circumstances indicating that it would not prosecute a further use of a name otherwise prohibited by section 709. In this instance, the Department has opted to reverse its longstanding policy of issuing "no-action" letters. In doing so, the Department made no attempt to distinguish the current facts from those in its other "no-action" cases. Rather, it admits the case is well within the precedents, but it merely asserts that it has changed its mind as to what the law provides.

Neither compelling public policy reasons nor evidence of past Department abuse of its authority in applying the grandfather clause exist, and the company and its officers should not be forced to choose between criminal prosecution or the loss of a valuable property right. The merger is predicated on sound business judgments, and is subject to state insurance department regulatory approvals, and the company has every right to retain use of a name which it has used for 70 years, and which, based on consistent Department interpretation of a criminal code provision, it had every reason to expect to be able to utilize.

Mr. President, the proposed bill, which is carefully limited to the particular facts of this case, would merely permit the surviving insurer to continue to use the word "Federal" in its new name. The proposed legislation in no way authorizes the use of the word "Federal" in more than one corporate name, and there can be no proliferation of the word "Federal." Thus, the proposed bill is entirely consistent with the original legislation.

Likewise, Mr. President, time is of the essence in this matter. For the last eight months, since it sought the "no-action" letter in October 1976, this company has been in limbo on its proposed merger plans because of the delay of the Justice Department in deciding this matter until April of this year, and then because of the precipitous reversal by the Depart-

ment of its long standing application of the grandfather clause. The merger is imminent and unless the bill becomes law within the next 90 days, the Company will lose its right to the use of a name which it has used honorably since 1906.

By Mr. RIBICOFF (for himself, Mr. PERCY, Mr. JACKSON, Mr. METCALF, Mr. KENNEDY, Mr. THURMOND, Mr. GRIFFIN, Mr. DOMENICI, and Mr. HEINZ):

S. 1766. A bill to amend title 18, United States Code, to make a crime the use, for fraudulent or other illegal purposes, of any computer owned or operated by the United States, certain financial institutions, and entities affecting interstate commerce; to the Committee on the Judiciary.

Mr. RIBICOFF. Mr. President, I am today introducing the Federal Computer Systems Protection Act of 1977.

The legislation would impose heavy prison terms and stiff fines for electronic burglars who use computers and computer technology to steal or manipulate information, financial instruments, and other property.

Also sponsoring the legislation are Senator CHARLES H. PERCY of Illinois, Senator HENRY M. JACKSON of Washington, Senator LEE METCALF of Montana, Senator EDWARD M. KENNEDY of Massachusetts, Senator STROM THURMOND of South Carolina, Senator ROBERT P. GRIFFIN of Michigan, Senator PETE V. DOMENICI of New Mexico, and Senator H. JOHN HEINZ III of Pennsylvania.

The bill would make it a crime to misuse the computer systems of the Federal Government, certain financial institutions, and other entities involved in interstate commerce.

Because of a growing national dependence on computers, the opportunities for white collar crime in this area are becoming great with little chance for prosecution under existing law.

If adopted, this bill would be the first law enacted by the Congress aimed directly at controlling crime by computer or computer-related crime. Present Federal criminal law, as reflected in title 18 of the United States Code, contains some 40 sections which the Government can use to combat commuter-related crime. But all 40 of the statutes were written to combat abuses other than computer crimes and, as such, Federal prosecutors have been handicapped because they have had to construct their cases on laws that did not envision the technical aspects of computer crime.

The measure is a result of a year-long inquiry, begun May 10, 1976, conducted by the Senate Government Affairs Committee.

As chairman, and with the concurrence of Senator PERCY, the ranking minority member, I directed the release on February 2, 1977 of a staff report, "Computer Security in Federal Programs," a 130,000 word document that demonstrated evidence of:

First. The Government's inability to adequately secure its 10,000 computers against fraud, compromise, and physical assault. This lack of adequate security is especially evident in those Government computers which handle the distribution of public funds and those which hold economically valuable and privacy data.

Second. Weaknesses in Government procedures for predicting the integrity of its computer personnel; and

Third. A concern on the part of Federal law enforcement and prosecutorial officials that the U.S. Code, title 18, should be amended to strengthen the Government's ability to prosecute computer crime.

It was noted in the committee staff report, for example, that a major computer crime conviction had been won in one well-known case only because the perpetrator had used a telephone line to penetrate the computer system of a Federal contractor across State lines. Had the telephone been used intrastate rather than interstate, Federal prosecutors said, the Wire Fraud Statute (18 U.S.C. 1343) under which the indictment was brought may have been inadequate. In the same case, a part of the indictment was dismissed because electromagnetic impulses which transmitted valuable data were determined not to be "property" as defined in the Interstate Transportation of Stolen Property Statute (18 U.S.C. 2314).

In another attempted prosecution, the Government lost the case because of definitional difficulties in establishing whether checks issued by a computer on the basis of fraudulent or manipulated data were forgeries.

The bill we are introducing today would amend title 18 of the U.S. Code in such a way as to make virtually all unauthorized use of Federal computers and computers used in interstate commerce a Federal offense punishable by as much as 15 years in prison or $50,000 fine, or both.

There would be no requirement that telephones or other forms of illicit computer penetration across State lines be used in order to qualify the act as a Federal crime. The bill is further intended to ease the jurisdictional and evidentiary burdens posed by computer technology on Federal prosecutors and law enforcement personnel.

This bill represents an important step forward in combating crime by computers.

The computer has meant progress in our society almost everywhere—from our ability to predict weather to our ability to detect potential health problems.

But the computer, because it has become such an essential aspect of our financial world—both in the private sector and in Government—has also become vulnerable to criminal penetration. Another serious threat is the potential compromise and misuse of vast quantities of data on the private lives of individuals currently stored in the computer systems of the Federal Government and private industry.

Crime by computer is relatively new. But when it strikes it is not shy. Violators, with even a limited amount of technical knowledge, can literally steal hundreds of thousands of dollars, either from computer check-writing systems or by directing the computer to divert valuable data or costly equipment.

Our committee investigation revealed that the Government has been hampered in its ability to prosecute computer crime. The reason is that our laws, primarily as embodied in title 18, have not kept current with the rapidly growing and changing computer technology.

Consequently, while prosecutors could, and often did, win convictions in crime by computer cases, they were forced to base their charges on laws that were written for purposes other than computer crime.

Prosecutors are forced to "shoe horn" their cases into already existing laws—when it is more appropriate for them to have a statute relating directly to computer abuses.

This bill will provide the needed corrective action. My committee staff, consulting with Justice Department officials, computer security scientists, and persons expert and actively involved in the criminal justice system, concluded that this measure, if adopted by the Congress, will have applicability in virtually every computer crime case not already adequately covered by an existing law.

This bill is specifically designed to give Federal prosecutors a weapon against the four main categories of computer crime. They are:

First, the introduction of fraudulent records or data into the computer system;

Second, the unauthorized use of computer-related facilities;

Third, the alteration or destruction of information or files, and

Fourth, the stealing, whether by electronic means or otherwise, of money, financial instruments, property, services, or valuable data.

Computer technology, which has produced enormous benefits for mankind, has also produced great potential for the sophisticated white collar criminal. The simple fact as demonstrated in the staff report is that computer technology has created vulnerability to white collar crime. This bill is designed to provide criminal sanctions at all points where computer operations are targets for criminals.

There are five key stages in a sophisticated computer system, and each stage of operation is vulnerable to a particular method of criminal attack. The first and most important stage is translation of data into computer language or input, where the data is placed on card readers or magnetic tapes. At this stage criminals can introduce false data into the computer so that key documents could be removed and fraudulent records inserted. A criminal or a criminal group with access to this stage of operation could manipulate the computer with introduction of false data, and it might be years before anyone discovers the fraud.

Computer programing is the second stage of operation and occurs when the

computer is supplied with a logical sequence of instructions for the solution of problems. The computer then responds in a manner dictated by the program. Programs are easily modified, destroyed, or stolen and sold to a competitor.

The third stage involves the computer's brain, known as the central processing unit—CPU. The CPU, which contains the operating system software, guides the computer and directs it to perform the necessary functions following the instructions in the program and is susceptible to various forms of electronic penetration and manipulation. Destruction of the CPU could stop computer operation and be disastrous to a government agency, industry, or company with most of its records computerized.

Once data is received from the CPU, it is translated into an intelligible form called output—the fourth stage of the operation. Output is vulnerable to thefts. Criminals at this stage could steal confidential data, such as privacy information or trade secrets. The computer systems of Government agencies, financial institutions, and others contain voluminous confidential data on firms and individuals; theft of such data could easily lead to blackmail or even be sold on a black market.

The final stage of the operation, communication, involves the transmission of output to other computers and/or users. The computer is vulnerable at this stage to electronic penetration. Initially, the information will be transmitted by telephone circuits, which can be tapped.

The main section of this bill makes it a federal crime to "access" a computer for the purpose of perpetrating fraud or obtaining money, property or service under false or fraudulent pretenses. It should be made clear that the term "access" specifically includes within its meaning as defined in the bill all forms of unauthorized or clandestine penetration of a computer, computer system or computer networks. These penetrations include but are not necessarily limited to:

a. Wiretapping which is gaining access to a system via direct connection to a communication line or part of the central system.

b. Radiation which is passive eavesdropping without direct connection. It siphons data from a system by detecting acoustic or electromagnetic signals emanating from a computer or component.

c. Artifice or "trapdoor entry" which is the intentional introduction of a clandestine code into a system to be used later for subversion from within. It is created by unscrupulous programmers and designers. An artifice can be implanted at the time the system is implemented or during subsequent modification; it can also be implanted by a successful penetration.

d. Impersonation which is unauthorized activity carried out by performing as a legitimate user or device such as using someone else's user identification, code and/or password to gain access to the system.

All phases of computer operations need to be made more secure from criminal penetration but all the physical security precautions in the world will be of little use if they are not accompanied by adequate personnel procedures to reduce the possibility of employment of dishonest persons. Dishonest employees who themselves engage in computer crime or engage in collusion with criminals on the outside pose the biggest threat to government and business. Computer criminals are the most sophisticated of all white collar criminals. They currently operate in an environment and under conditions in which the successful detection and prosecution of their crimes is very difficult. When they are apprehended and convicted, all too often the sentences they receive are extraordinarily light. It is for this reason that I attach great importance to the penalty provisions of this bill.

Under terms of this bill, a Federal judge may, in his discretion, depending on the severity of the crime, impose jail terms of 15 years and fines up to $50,000 on computer thieves.

It is my hope that these increased penalties, unprecedented in federal criminal law for white collar crime, will deter the potential computer thief and at the same time pose a warning to all white collar criminals that the Congress of the United States sees white collar crime as a threat to our society which should be dealt with in a manner befitting the crime.

It is time to tell criminals who use computer terminals, fountain pens and phony stock certificates to rob millions of dollars, that their corrosive activities will not be tolerated.

This bill also places particular emphasis on the prosecution of crimes against the computer systems of banks and other financial institutions which are insured or regulated by the federal government. Today, financial intitutions are heavily dependent on computers which process and record billions of dollars in financial transactions daily. If present trends continue, however, banks and other financial institutions will become more dependent on computers in the future. As Electronic Funds Transfer Systems are perfected and implemented, more computers, terminals, wires, data banks, and operators will be employed to operate these intricate and complex sytems of recordkeeping. Electronic fund transfer systems involve the use of communication and computer networks to relay, process, and store fund transfer information. They may involve transferring funds from a buyer's account to the account of a seller or from an employer to an employee.

A national electronic fund transfer system could supplant the present paper exchange system so that paper currency or stock certificates as we now know them would play an insignificant role in transactions or even become obsolete.

The beginnings of a national EFTS can be witnessed today. Computers with multiprocessing capability and high speed mass memory are in operation, providing a basis for at least a regional EFTS. Taking advantage of this technology, several automated clearinghouses appeared in the early 1970's. Under the present system, banks maintain clearing balances on one another or a common bank such as the Federal Reserve Bank. Because transactions are processed electronically, the cumbersome process of hand-sorting and paper and pen work has been eliminated; in addition, the automated clearinghouse rapidly adjusts balances. Automated clearinghouses are a logical starting point for the development of a national EFTS.

The "point-of-sale" system represents a more sophisticated step in the development of an EFTS. Under a point of sale the buyer can pay for his purchase without the intervention of currency. As in an EFTS the buyer gives the store clerk an identification card to insert in a terminal liked to a bank's computer; the purchase price is then transferred from the buyer's account to the store account. If the store does not maintain an account at the bank, the transfer process takes place as it presently does through some form of clearinghouse.

The automated clearinghouse and the point of sale systems are rudimentary compared to the sophisticated and elaborate technology required to link up a national EFTS. A national system will rely on thousands of computers, millions of terminals and millions of miles of wire with thousands of technicians and computer operators needed to man it. It can totaly displace ink. The workhorse of EFTS is the computer, and the technology which makes the system possible also makes it vulnerable to criminal attack.

These are at least four areas where the protective criminal law sanctions of the bill I am introducing today will apply to EFTS. They are:

First, unauthorized access to a customer's account by means of the theft or reproduction on an access "key," such as the plastic card, given the customer;

Second, unauthorized access to accounts by personnel manning access terminals, such as the store employees operating the supermarket remote deposit-withdrawal system;

Third, unauthorized access to communication lines between remote terminals and information storage areas, such as a financial institution's central processing unit, in short, wiretapping; and

Fourth, unauthorized access at the central processing unit site by employees or outsiders.

In addition, I wish to make it clear that nothing in this legislation is intended to reduce, restrict or supersede existing statutes and nothing in this

legislation reduces existing investigative authority of any law enforcement or national security agency under existing law or duly authorized practices.

The Senate Governmental Affairs Committee investigation, which led to the staff report, "Computer Security in Federal Programs," and this bill have been studied by the Office of Management and Budget (OMB). Issues raised in the staff report have been examined by OMB, which has overall fiscal and policy control of all automatic data processing (ADP) operations in the executive branch.

As a result of the attention focused on computer security by the committee inquiry, OMB is in the process of revising its government-wide regulations affecting computer security. These regulations, which are contained in OMB Circular A–71, are being strengthened and upon completion of their revision, will be made available to the public.

Not affected by the revised OMB A–71 Circular, or by this bill, is another problem raised by the Senate committee's investigation—that problem being the growing and widespread multiple-filer schemes in which violators create bogus tax forms, file them with the Internal Revenue Service and are then sent by computers sizeable refunds, ranging in amounts from $500 to $500,000.

Such schemes are already clearly against the law and neither IRS nor the Justice Department needs a new statute to control them. What is required, IRS officials have indicated to the committee, is an improved system for detection and such a system is being implemented, IRS officials say.

Finally, I wish to note that Senator PERCY, as ranking minority member of the Senate Governmental Affairs Committee, has worked closely with me and the staff for the past year as this examination of computer security and computer crime progressed. Owing to his personal knowledge of how computers fill a great need in financial transactions, Senator PERCY has offered encouragement and advice and the benefit of his long and time-tested expertise in this complicated area.

The committee investigation was conducted at the staff level by Philip R. Manuel and Fred Asselin.

Mr. President, I ask unanimous consent that the text of the bill be inserted in the RECORD at this point.

There being no ob'ection, the bill was ordered to be printed in the RECORD, as follows:

S. 1766

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Computer Systems Protection Act of 1977".

SEC. 2. The Congress finds that—

(1) computer related crime is a growing problem in the Government and in the private sector;

(2) such crime occurs at great cost to the public since losses for each incident of computer crime tend to be far greater than the losses associated with each incident of other white collar crime;

(3) the opportunities for computer related crimes in Federal programs, in financial institutions, and in other entities which operate in interstate commerce through the introduction of fraudulent records into a computer system, unauthorized use of computer facilities, alteration or destruction of computerized information files, and stealing of financial instruments, data, or other assets, are great;

(4) computer related crime directed at institutions operating in interstate commerce has a direct effect on interstate commerce; and

(5) the prosecution of persons engaged in computer related crime is difficult under current Federal criminal statutes.

SEC. 3.(a) Chapter 47 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1028. Computer fraud

"(a) Whoever directly or indirectly accesses or causes to be accessed any computer, computer system, computer network, or any part thereof which, in whole or in part, operates in interstate commerce or is owned by, under contract to, or operated for, on behalf of, or in conjunction with, any financial institution, the United States Government, or any branch, department, or agency thereof, or any entity operating in or affecting interstate commerce, for the purpose of (1) devising or executing any scheme or artifice to defraud, or (2) obtaining money, property, or services by means of false or fraudulent pretenses, representations, or promises, shall be fined not more than $50,000, or imprisoned not more than 15 years, or both.

"(b) Whoever, intentionally and without authorization, directly or indirectly accesses, alters, damages, or destroys any computer, computer system, or computer network described in subsection (a), or any computer software, program, or data contained in such computer, computer system, or computer network, shall be fined not more than $50,000, or imprisoned not more than 15 years, or both.

"(c) For purposes of this section, the term—

"(1) 'access' means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of, a computer, computer system, or computer network;

"(2) 'computer' means an electronic device which performs logical, arithmetic, and memory functions by the manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, software, or communication facilities which are connected or related to such a device in a system or network;

"(3) 'computer system' means a set of related, connected or unconnected, computer equipment, devices, and software;

"(4) 'computer network' means the interconnection of communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers;

"(5) 'property' includes, but is not limited to, financial instruments, information, including electronically produced data, and computer software and programs in either machine or human readable form, and any other tangible or intangible item of value;

"(6) 'services' includes, but is not limited to, computer time, data processing, and storage functions;

"(7) 'financial instrument' means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, or marketable security;

"(8) 'computer program' means a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer ssytem;

"(9) 'computer software' means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system;

"(10) 'financial situation' means—

"(A) a bank with deposits insured by the Federal Deposit Insurance Corporation;

"(B) a member of the Federal Reserve including any Federal Reserve Bank;

"(C) an institution with accounts insured by the Federal Savings and Loan Insurance Corporation;

"(D) a credit union with accounts insured by the National Credit Union Administration;

"(E) a member of the Federal Home Loan Bank Systems and any Home Loan Bank;

"(F) a member or business insured by the Securities Investor Protection Corporation; and

"(G) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities and Exchange Act of 1934.".

(c) The table of sections of chapter 47 of title 18, United States Code, is amended by adding at the end thereof the following:

"1028 ---------- Computer fraud.".

By Mr. SCOTT (for himself, Mr. ALLEN, Mr. BELLMON, Mr. EASTLAND, Mr. GARN, Mr. GRAVEL, Mr. HELMS, Mr. HANSEN, Mr. HAYAKAWA, Mr. HATCH, Mr. LONG, Mr. LAXALT, and Mr. MCCLURE):

S. 1767. A bill entitled "The Federal Officials' Anti-Defamation Act of 1977"; to the Committee on the Judiciary.

FEDERAL OFFICIALS' ANTIDEFAMATION ACT OF 1977

Mr. SCOTT. Mr. President, I send to the desk a bill entitled "Federal Officials' Anti-Defamation Act of 1977" and ask that it be printed and referred to the appropriate committee. The purpose of the measure is to provide Federal officials with adequate legal redress when false and defamatory statements are made against them. The bill, if enacted, would also encourage broader participation in the affairs of Government by citizens with qualifications and talents to contribute without fear of being unjustly victimized by malicious, false, and defamatory statements.

The Senator from Alabama, Mr. ALLEN; the Senator from Oklahoma, Mr. BELLMON; the distinguished chairman of the Judiciary Committee, Mr. EASTLAND; the Senator from Alaska, Mr. GRAVEL; the Senator from North Carolina, Mr. HELMS; the Senator from Wyoming, Mr. HANSEN; the Senator from California, Mr. HAYAKAWA; both Senators from Utah, Mr. GARN, and Mr. HATCH; the distinguished chairman of the Finance Committee, Mr. LONG; the Senator from Nevada, Mr. LAXALT, and the Senator from Idaho, Mr. MCCLURE have joined in cosponsoring the proposal.

While our office has conferred with the Library of Congress and the legislative

counsel regarding the preparation of the bill, I hope the committee will use it as a vehicle to strike a balance between the constitutional right of freedom of expression and the right of public officials to represent citizens of the country without unwarranted maliciously false and defamatory accusations being made against them.

The measure does establish a new chapter in the judicial code that would provide redress against malicious, false, and defamatory communications. It changes the degree of proof the plaintiff must assume from clear and convincing evidence to a preponderance of the evidence. It also gives a statutory definition of malice by providing that malice is the communication of a false and defamatory statement, knowing it to be false or without making a reasonable effort to determine the truth or falsity of the statement.

While none of us would want to interfere, nor would the Constitution permit us to curtail by legislation the constitutional guarantees of free speech, no one should have the right with impunity to maliciously make false and defamatory statements against a public official. I would hope Senators will review the measure in its entirety, and that the Judiciary Committee will hold hearings so that consideration can be given to appropriate amendments and thereafter the matter can be reported to the full Senate for consideration.

By Mr. KENNEDY:

S. 1768. A bill to amend the Age Discrimination in Employment Act of 1967 to protect older workers from involuntary retirement; to the Committee on Human Resources.

Mr. KENNEDY. Mr. President, I am today introducing the Voluntary Retirement Act of 1977. The purpose of this act is to amend the Age Discrimination in Employment Act to clarify the congressional intent behind the exception which allows lesser benefits to be given to older workers in pension, retirement, and insurance plans.

The exception is contained in section 4(f)(2) of the act, which says that it shall not be unlawful for employers to observe the terms of a bona fide employee benefit plan if such observance is not a subterfuge to avoid the purposes of the act.

The purpose of this provision was to ease the way for employment of older workers by allowing some differentiation in the fringe benefits that they would get. Many retirement and insurance plans require payment for a particular benefit to be based on the age of the worker, rather than the length of employment. It would have been extremely difficult for older people to find work if the fringe benefit costs were very much higher than those for younger workers, even if the salaries were the same. Thus workers first hired when older could be given a smaller fringe benefit if pension or insurance plans for them would be more costly, in order to keep down fringe benefit costs for late arrivals.

Mr. President, I think that our intent is clear from an examination of the language of the act itself and from the legislative history surrounding it. First, note that in section 4 the act mandates:

It shall be unlawful for an employer—(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

Furthermore the exception in section 4(f)(2) itself says that it shall not be unlawful

(2) to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, *except that no such employee benefit plan shall excuse the failure to hire any individual*; . . ." § 4(f)(2), 29 U.S.C. § 623(f)(2) (emphasis added).

Of course, we were not saying that age could be considered as a factor for termination, but could not be considered as a factor for employment. Otherwise we would simply be setting up a never ending revolving door.

This interpretation is reinforced by the debate on the floor. For instance, the manager of the bill, the distinguished former Senator from Texas, Senator Yarborough said:

. . . when it [Sec. 4(f)(2)] refers to retirement, pension, or insurance plan, it means that a man who would not have been employed except for this law does not have to receive the benefits of the plan. Say an applicant for employment is 55, comes in and seeks employment, and the company has bargained for a plan with its labor union that provides that certain moneys will be put up for a pension plan for anyone who worked for the employer for 20 years so that a 55-year-old employee would not be employed past 10 years. This means he cannot be denied employment because he is 55, but he will not be able to participate in that pension plan because unlike a man hired at 44, he has no chance to earn 20 years retirement. In other words, this will not disrupt the bargained-for pension plan. This will not deny an individual employment or prospective employment but will limit his rights to obtain full consideration in the pension, retirement, or insurance plan. 113 Cong. Rec. 31255 (November 6, 1967).

Mr. President, the legislative history on this, however, can be read the wrong way—although this takes resort to language plucked from the testimony rather than the debate. But this has led a couple of courts to read the exemption far more expansively than I believe we intended. In the case of *Zinger* v. *Blanchette*, 549 F.2d 901 (3d Cir. 1977), for instance, the plaintiff was forced to give up his job and salary to take retirement with a pension before the age of 65.

The court held that the forced retirement did not violate the Age Discrimination in Employment Act, because the worker was given a pension. It then noted that workers who have a pension are better off than those that do not, and quoted language in hearings, and one Department of Labor interpretative bulletin to the effect that forced pre-65 retirement was acceptable. The court went on to note:

There are many cogent, persuasive arguments why involuntary retirement, even with an adequate pension, should not be permitted before age 65. Logically, allowing such a broad exemption may be inconsistent with the prohibition against discrimination in hiring and produce the anomaly that a person who has been involuntarily retired by one company before 65 may not be discriminated against if applying for employment at another company. Similarly, as the Secretary suggests, there may be serious objections to allowing retirement to be at the company's option . . .

But, it still held against the worker who is not yet 65.

The issue of how the exemption should be read is now coming to a head, since the Supreme Court has granted certiorari on one of the cases intepreting this provision. The case it took—*McMann* v. *United Airlines*, 542 F.2d 217 (4th Cir. 1976), cert. granted, No. 76-906 (1977)—interpreted the exception narrowly; it held that a plan which forced retirement before the age of 65 did not fit under the exception.

It is possible that the Supreme Court could interpret the exception to have far more general application than was intended when we passed the act. Many companies, which might prefer to retire workers before the age of 65, could then do so. The exception could eat up the act.

It is therefore important for us to clear up our meaning. We should not wait until the Supreme Court acts. If the Court happens to give an expansive interpretation before we have clarified our meaning many thousands of workers could lose their jobs. At worse, if the clarification has no retroactive effect, these people will be the victims of a simple error in timing. They will have been pushed out in the months following a Court decision and before we could mandate the narrow interpretation. At best, their people will be left to initiate legal action to try to get their jobs back. This is not a satisfactory situation at all.

Mr. President, there are many changes which might be made in the Age Discrimination in Employment Act. It may be, for instance, that a good case can be made for "uncapping"—for removing the jurisdictional limit of 65. Changes of this sort should be given full consideration. But there is no need to wait for a clarification of the section 4(f)(2) exception until these innovations can be considered. We have already seen that workers below the age of 65 are generally fit and able to perform their jobs—it was the very basis of our jurisdictional decision when we passed the act. It would be unforgivable lapse on the part of Congress if we did not take measures now to insure that—regardless of an untoward Court opinion—workers who are fit to do their jobs are not tossed aside.

Mr. President, I especially urge quick action on this piece of legislation.

ADDITIONAL STATEMENTS

WHEAT

Mr. ZORINSKY. Mr. President, it will not be long before the farmers in Nebraska begin their annual wheat harvest. This event is already in progress in the great States of Oklahoma and Kansas as the combing crews make their way north to the Canadian border. However, while we may think that this bumper-crop harvest is a tribute to the ingenuity of the modern American farmer and his ability to produce food in abundance, there is a very sad corollary to this event and that is the prices our farmers are receiving for their efforts to put food on the tables of the American people. The price of wheat today is $1.75 a bushel in many parts of this country. It costs our wheat farmers, at the very least, $3 a bushel to produce it. Should our farmers continue to receive less than the cost of production for their crops, it would not be long before those family farms will belong only to the history books of this Nation.

Mr. President, the U.S. Senate, in passing S. 275, the Food and Agriculture Act of 1977, has taken the necessary steps toward insuring survival of the American farmer yet the present administration has indicated its opposition to this measure. I can only hope that the President will see the severity of the current market-price crunch and support the price support levels adopted by the Senate in S. 275.

Mr. President, I received a very telling letter relating to this crisis from Mr. H. L. Tinley, executive vice president of the Farmers National Co. of Omaha, Nebr. I ask unanimous consent that the entire text of this correspondence be printed in the RECORD.

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

FARMERS NATIONAL CO.,
Omaha, Nebr., June 20, 1977.

Senator EDWARD ZORINSKY,
U.S. Senate,
Washington, D.C.

DEAR ED: We are now in the midst of harvesting a crop that has been a staple for as far back as we can go in recorded history. The crop is wheat and the food made from it is bread. Wheat and bread have influenced history and been the cause of an untold number of wars through much of man's long and turbulent history. Herbert Hoover put it well when he said "The first word in war is spoken by the guns but the last word almost inevitable is spoken by bread"—and how true this has been.

Bread has become a religious symbol of life—for the Christians we have the Lord's Prayer, "Give us this day our daily bread". In the Hebrew we hear "Praise be Thou, O Lord our God, King of the Universe who brings forth bread from the Earth".

Today as you read this, Ed, the combines are rolling and when they are finished we will have on hand more wheat than ever before in our history—an incredible 3 billion bushels. This astronomical bounty that we take so much for granted simply dumbfounds the Russians. Russia is barely able to produce enough wheat to meet its own needs, and some years even that isn't possible.

While the world is rapidly depleting its supply of oil, natural gas and other raw materials we, in this country, continue to harvest year after year an almost inexhaustible supply of food—and this creates problems—problems of over production.

This year farmers are experiencing the agonizing frustrations that go with selling wheat at $1.75 a bushel—wheat that costs them $3.00 a bushel to produce. The bankruptcies these prices create are milestones on the road agriculture has traveled to reach its present level of efficiency. Because of this efficiency, our American people today spend less of their income for food than do any other people in the world. Though this legacy of plenty is taking its toll among farmers, it is farmers who have championed this country's "Policy of Plenty"—with food, too much is still preferred to too little.

Sincerely yours,

H. L. TINLEY,
Executive Vice President.

NUTRITION

Mr. BROOKE. Mr. President, I would like to call the attention of my colleagues to a timely article in the Washington Post on June 23, 1977, by Dr. Jean Mayer, now president of Tufts University, chairman of the White House Conference on Food Nutrition and Health in 1969, the leading nutritionist in America and one of the acknowledged specialists in nutrition in the world. In this article, Dr. Mayer expertly discusses the objections to school food vending machines being allowed to sell junk food to our school children. With good reason, Dr. Mayer calls for Senate support of an amendment which the distinguished Senator from New Jersey, Senator CASE, will be offering to S. 1420, the school nutrition bill which we will act upon this week. This amendment would give the Secretary of Agriculture the power to regulate the contents of school vending machines. I ask unanimous consent that this article be printed in the RECORD.

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

NUTRITION

(By Dr. Jean Mayer and Dr. Johanna Dwyer)

A bill coming up in the Senate soon should interest every parent of school-age children—or anyone who is interested in good nutrition for our young people. The bill, S1420, contains an amendment that would give the Secretary of Agriculture the power to regulate the contents of school food vending machines—a step New Jersey Sen. Clifford Case has been urging for the last four years.

As every parent knows, these machines have proliferated in the last few years, and now can be found in school corridors, locker rooms, gyms and even some study halls. Until about four years ago, the Secretary of Agriculture had the authority to regulate the use of school vending machines. Then Congress removed this power giving it to the states and local school districts.

There's nothing wrong in having food vending machines in schools, particularly if the school does not offer breakfasts or midmorning snacks. Children do get hungry, and if the machines contain things like milk, fruit juice, apples or other fruits or sandwiches, they can appease a child's hunger and may make the difference between learning at peak ability and inattention during late-morning class periods. This was Congress' original intention when it gave local authorities greater flexibility in providing food sources for schoolchildren.

In many cases, however, that is not what happened. Instead, the junk food industry, with its wealth of funds and powerful lobbyists, moved in, and the types of food offered were such things as candies, packaged cakes, cookies and a variety of cola drinks. Local efforts to substitute good foods encountered resistance from some state legislatures, school boards, principals and even the PTA.

Why? Because the vending machines represent money not only for the suppliers but for hard-pressed schools, which need the funds to pay for such extras as band uniforms and sports. These extras also mean a lot to students, and people argue that there can't be any harm in making money for these supplies by selling snacks the youngsters can always buy at the corner newsstand or drugstore.

But we think, and we've heard from a number of parents who feel, that there are a number of things wrong with allowing junk-food vending machines in the schools. For one, it is the job of a school to educate, and the teaching of good nutrition, particularly by example, is part of education. Also, poor nutrition can have a direct economic impact in increased dental bills for the child who yields to the continuous temptation of vending machine candy and other sweets.

Good nutrition is an important part of good health, especially during the growing years. But if youngsters can easily obtain tasty, high-calorie, low-nutrient snacks whenever they feel hungry, they may ignore the nutritious but less tempting fare offered by the school lunchroom.

Surveys by the Dallas school board, which banned school vending machines in 1975, bear this out. In the year after the machines were removed, the same number of pupils bought 3,721,438 lunches, a gain of 365,000 over the previous year, when they had had access to the vending machines. Even more important was the gain in the number of children from economically deprived families who took advantage of free lunches. In 1975–76, these children consumed 621,682 more free lunches than they had in the previous year.

The Federal government has committed $3 billion a year to programs designed to improve child nutrition. Surely it would be inconsistent to allow these programs to be undermined by permitting the open use of vending machines for junk foods, which would compete with school meal programs.

Sen. Robert Dole of Kansas, the ranking Republican member of the Senate Select Committee on Nutrition and Human Needs, is sponsor of the bill now before Congress. He points out that under the best of circumstances, there is waste of foods in an institutional setting. (It has been estimated that 40 percent of the food bought for the armed forces is wasted, and 30 to 40 percent of the food in school lunch programs may wind up in the garbage.) Dole contends that the increase of vending machines in schools is directly related to an increase in food waste, which is also a waste of the tax money that funds these programs. (Not to mention the waste of allowance money that every parent hopes will be well spent.)

Obviously, it is short-sighted to allow the sale of junk foods in our schools as a means of funding other activities. We all lose far more than we gain.

In a recent interview, Secretary of Agriculture Robert Bergland said, "Many of these vending machines dispense items that I don't allow my kids to have before they eat their

lunch, and there are some who say that's undemocratic. But, in fact, our children are not permitted to have a candy bar before dinner because we don't think it's good for them."

The Secretary adds, "I have no problem with machines dispensing fruits."

We agree. If you do, too, we hope you will let your senators know your views.

AN INTERVIEW WITH INTERIOR SECRETARY ANDRUS

Mr. CHURCH. Mr. President, the current issue of U.S. News & World Report carries a fine interview with Secretary of Interior Cecil Andrus.

It is a wide-ranging interview, covering energy, water projects in the West, policy with regard to American Indians, and the future direction of the Department of the Interior.

I commend the interview to my colleagues, Mr. President, and ask unanimous consent that it be printed in the RECORD.

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

ENERGY, WATER, ENVIRONMENT—A TOP OFFICIAL LOOKS AHEAD

Q. Mr. Secretary, will natural-gas supplies run short again next winter—and if so, what can the Government do to insure that no gas is held back by producers?

A. Frankly, it depends on the weather. I think we'll have adequate supplies if we don't have as severe weather as we experienced this past winter. But if that happens, then the Government will once again find itself in a position of having to allocate the energy resources to the priority users. We're prepared to do that—and with a little more finesse and experience.

We've been working in a persuasive manner with the producers to have more gas on line. I think we've been successful, because last month we had considerably more gas go into storage then we had a year ago, when we were building our reserves.

I have also met with some of the major companies who have fields that they planned to bring on line in 1980 and 1981 in shallow water in the Gulf of Mexico. They think now that, in some instances, they can have those producing sometime next year.

Q. Can you say that some are not holding back gas supplies intentionally?

A. I'm not prepared to say anyone has intentionally kept a valve closed that should have been open. We have, through the National Academy of Sciences, a group that is coming together now to start evaluating all of these fields to determine whether there is gas that should be in production but is not.

Q. Are there indications that any natural-gas producers are waiting for price increases, rather than drilling now?

A. The economic incentive for waiting is certainly there. But no one has violated a lease in this manner to the point where I could exercise my right of cancellation. You see, a company has five years to develop an offshore lease.

Q. Is five years a reasonable time?

A. It depends upon the area. Five years is not long enough in a deep-water, faulty-bottom area. But five years is more than one needs in a close-to-shore or shallow-water area.

Q. Why haven't there been any sales of offshore leases since you took office?

A. I was given a schedule that had been presented to the American public on January 12 by my predecessor—a proposed lease schedule that, in the privacy of my office, industry said couldn't be met. About three weeks ago, I published our list of sales for the next 18 months. I think it's a more realistic schedule, one that we will try our darnedest not to let lag.

Q. How much oil and gas are left in the U.S., on land and offshore?

A. That argument ranges from the conservative to the wild and imaginary. I don't think that we even know. But the projections are that, by 1985—if our normal rate of energy growth usage continues—our demands will exceed the known world reserves. Then one gets into the speculative area of what we actually know as opposed to what we suspect—and what we do not know.

Admittedly, there are more hydrocarbons, in my opinion, now available in the world than what some project as possible reserves, if one considers all of the small deposits, especially in inaccessible areas. But many of those reserves cannot be recovered because of extreme cost, both financial and environmental.

Q. Is there are reason not to push ahead at this time on all possible fronts in the search for more oil and gas?

A. Not if we can do it in a responsible manner, and that's what we plan to do. But to push ahead on all fronts without due consideration for the consequences would be irresponsible.

I'm talking about environmental consequences, and I'm also talking about the need for that energy over a longer time frame. Also, one has to take into consideration the capabilities of the production companies, so that you have a stable industry and not increase the capital-expenditure demands of those firms.

Q. President Carter has proposed a 50 per cent increase in the use of coal by 1985. Much of that new coal would have to come from the West. Is that possible?

A. It is very possible. We have to increase our production of oil and gas in the short term while we gear up and produce the coal for the long term.

There is no shortage of coal. We have vast amounts of it in areas that are minable. There's 25 to 26 billion tons of coal under lease or preferenced now. But one must have the market, and one has to have the incentive for the major utilities to change from oil and gas to coal.

If the President's energy package is passed so that we can give the financial motivation via tax incentives and other means, to change from oil and gas to coal, then the time frame is reasonable. Without that legislation, the transfer will not come about in a timely fashion.

Q. On balance, is a large-scale strip mining of coal a good thing for the residents of those States where it is done?

A. Yes, particularly with the new strip-mine bill that is in conference right now. One has to be able to make the determination, "No, we will not mine here, but we can mine over there." And that legislation gives us the capability not only to make the determination of where and when, but how. The reclamation provisions in that act will make those areas useful for another purposes. We look upon strip mining as a temporary use of the land, I might add.

Q. Have you seen reclaimed land that you're satisfied with?

A. Yes, I have. I visited Kentucky and West Virginia with regards to the reclamation program—current versus previous. I saw some areas that looked like the aftermath of what I envision World War III would be—where they had mined in the '50s and early '60s. I also saw some reclaimed land with mountaintop-removal techniques where the soil was not pushed over the side but brought back onto the top—and I was impressed.

Technology has come a long way, and I've seen some examples of what the companies can do if they want to. But one has to make them want to do it.

Q. Will reclaiming land, plus making the coal environmentally acceptable to burn, make new coal more costly than what we're paying now for oil or gas for an equivalent amount of energy?

A. Well, when you say "now," you're striking a bench mark. In the future, with inflation, with the increased cost of oil and gas, the answer is "No." It will be more expensive than what we've known in the past. But if we put a monetary value on clean air—and I think we have to—then the American consumers are going to pay that bill. And I think they've made it very clear that they're willing to pay that bill.

Q. Is there sufficient water in the West to reclaim land that is strip-mined?

A. That's part of determining where one mines. If one has an area with a very minimal average annual rainfall and one knows full well that he would never get vegetation to grow, he would be a fool to give a lease to mine it.

Q. But half of Montana and Wyoming are like that—

A. Those percentages are a little high—but the point's well made that there are significant portions. But we have vast amounts of coal in the West. And we're not talking about just Western coal; there's a large amount of coal in the East. If we can increase the market and demand, then we're going to increase the production in the East as well.

Q. Can more cutbacks in dam and water projects be expected?

A. The Administration is going to insist with every possible method at our command to see that we have water reform in America. We must recognize that water is a very valuable resource—a resource that we have to treat with better stewardship than what we have in the past, and that means water reform.

It also means that we'll be taking a harder look at projects that might be authorized in the future. You can certainly look for the Carter Administration to recognize the value of water and to be a little tougher when it comes to approving future projects.

We are not antidevelopment, but it's going to be *good* development, it's going to be *needed* development. And one can't balance the budget if one is going to continue to put billions of dollars into projects that are not economically feasible or do not have at least a 1-to-1 cost-benefit ratio.

Q. Will you recommend a veto if Congress insists on going ahead with water projects the Administration doesn't want?

A. I can't for certain until I see the finished product, but if Congress does not give consideration to our recommendations, I will recommend a veto. I would suspect that if the bill is vetoed, that veto would be sustained.

Q. Can the West support more growth, and is it desirable?

A. It depends on the given area. Let me speak of a State of which I'm very familiar—the State of Idaho, with approximately 53 million acres and about 830,000 to 840,000

people. Obviously it could stand more growth. But it can't stand a great amount of growth in that one little area of the Treasure Valley without destroying it.

In some areas of the West, there is adequate opportunity for growth, but one must make a determination of the public resources that'll be necessary—water, financing of schoolhouses, sewage systems, etc.

Q. You were Governor of Idaho when the Teton Dam collapsed. What is the Interior Department doing to insure the safety of other dams?

A. We are looking at all the dams in America because of the Teton. Most of them have been found safe within the limitations. We have some—for example, the American Falls Dam in Idaho—where storage has been reduced while they're rehabilitating the dam. But we have found none to date that is unsafe under present controls.

Q. Do you have plans to increase the size of national parks or to start new parks?

A. It's certainly true that park usage has become so heavy that we stand a danger of destroying the very thing that we're trying to protect. Now, in some national parks—Yosemite, Yellowstone, where one has the highway networks and the people are controlled—we can handle those heavy loads. But one cannot sustain the heavy loads in some of the areas that aren't controlled, such as the wilderness areas. Rules and regulations are needed which determine when people go and how many go; otherwise, you'll destroy it.

Another deficiency that we have is parks which are close to urban areas. We should have a study by the latter part of September which will make recommendations, but I think I can say that you'll see the Carter Administration move to make parks available to more people.

The demands indeed are there, but the resources control what we'll be able to do in acquisition and development. How much of your national budget can you earmark for that purpose? The President has increased the appropriation in the land-heritage program, the Land and Water Conservation Fund, and he has agreed to give us the additional employees in our national-parks system that are needed to do the maintenance that hasn't been done for some years.

Q. Will Indian tribes that are claiming millions of acres of federal land on the basis of old treaties be successful?

A. Some of them will.

Q. What proportion?

A. I can't answer that question. One of my problems is determining what is a legitimate claim and what is a frivolous claim, and that's why we have so many attorneys in the world. However, the Indian people of America have many, many legitimate claims to both land and resources which have been ignored, and they're just now making believers out of us. It's a trust responsibility that I have, and we haven't backed away from it. And we'll support them in those legitimate claims.

Q. Some Indian tribes have complained that they're too closely controlled by the Federal Government—

A. I suppose that maybe that's true in the past—probably is true today in the minds of some. But we're moving away from that position and supporting Indians involved in the self-determination aspect. But, yes, if you go back a few years, the old reservation superintendent was the kingpin.

Q. There has been talk of separating the Bureau of Indian Affairs from Interior. And your Department would lose some functions to a new Department of Energy. Do you have a feeling that Interior is being gutted?

A. They've been to our pantry many times in that last few years. They created FEA [Federal Energy Administration] and ERDA [Energy Research and Development Administration] and some others out of Interior. Part of the Department of Energy comes from Interior, but I concur with that because we have to get those energy components in one place to make them work.

Q. Is there really a need any longer for a separate Department of Interior?

A. Oh, yes. That's where the stewardship of natural resources and the public lands resides. If one gave that up, there would be no protection. Developers would be able to freewheel across the public domain. That's one of the reasons that I sit in the Cabinet meeting every Monday morning—to see that they do not. That's my responsibility, and I don't take it lightly.

Q. Could your stewardship of natural resources operate more efficiently if you had the Forest Service that is now part of the Department of Agriculture?

A. I have to be very careful that I don't get at cross purposes with any of my Cabinet colleagues. But when I was Governor of Idaho, long before I ever dreamed I'd be back here in Washington, I felt that the U.S. Forest Service could be better domiciled in Interior. I still feel that way, but that's a personal opinion.

And I don't speak for the President or the Secretary of Agriculture, but the Forest Service is a resource agency. Not only does it provide wood fiber for one of the major industries of America by holding timber sales, but it deals in parks and recreation areas, as we do.

There are cross purposes.

One of the greatest impacts upon the watersheds of America and the quality of water that's in our streams—not only for domestic and industrial purposes, but for recreational purposes—is controlled by what happens on U.S. Forest Service land. So, yes, I feel that the Forest Service could better be domiciled in Interior, but that decision will be made later.

Q. You're recommending that to the President—

A. I will when and if I'm asked. But I don't want to take on the image of wanting, because people have raided my pantry, to run around and raid everybody else's.

Keep in mind the Department of the Interior still has more than 60,000 employes, and the Federal Government controls more than one third of all of the surface of America in one form or another. Then, of course, the Department has all of the Bureau of Indian Affairs land and the outer-continental-shelf acreage.

Q. Does that put too much power in your hands?

A. Not from the chair I sit in. It might from the chair that some other people sit in—in particular some of the developmental types that say, "That Andrus's got too big a stick." Well, I don't think I have.

When I went to Plains, Ga., last December, the President said: "I want you to be the environmental voice of the Administration. I want you to use your experience in administration and natural resources to help improve America." And on that basis I said "Yes." So I'm not going to back away from that responsibility or let somebody run roughshod over me because he has a different opinion of what stewardship should be than I have.

I was hired by the President for my philosophy, not anyone else's philosophy. I recognize the tenure of a Secretary of the Interior around this city is not all that long. I'm going to call the shots the way I see them in consultation with the President—and when that no longer works, or the American people have different ideas, then I'll probably do what my family wants me to do when they say, "Hey, Dad, when are we going home?"

THE EFFECT WITHDRAWAL OF U.S. FORCES FROM KOREA WILL HAVE ON JAPAN

Mr. THURMOND. Mr. President, Gen. Ichiji Sugita (retired), Japanese Self-Defense Force, recently addressed a symposium on Northeast Asia security which was sponsored by the Strategic Studies Center, Stanford Research Institute, June 20–22, 1977.

His subject was entitled, "Japanese Perspectives on Security Concerns." The thrust of his address was an evaluation of the effect that the withdrawal of U.S. ground forces from Korea will have on the security of Northeast Asia and the national defense of Japan.

Mr. President, I had the pleasure and honor to meet General Sugita and briefly discuss his views and subsequently study his address. I was very much impressed with his keen intellect, objectivity, and extensive knowledge of the security problems in Northeast Asia.

His astute evaluation of the withdrawal of our ground forces in Korea reveals that this ill-advised decision will have a profound effect on the national life in Japan and the balance of power in Northeast Asia. In my opinion, the security anlaysis made by General Sugita indicates that the Carter administration probably has not fully evaluated the adverse impact of the withdrawal in regard to the stability of Northeast Asia and the security role responsibilities which the United States expects Japan to carry in the future. Japan's national security policies will have to undergo a complete reevaluation which might not result in the interest of our own national security.

Mr. President, on May 26, 1977, in this Chamber, I expressed my strong opposition to President Carter's withdrawal plan. In my judgment, the views expressed by General Sugita reinforce my strong opposition to the President's plan to withdraw our ground forces from Korea under present world security conditions.

Mr. President, I ask unanimous consent for Gen. Ichiji Sugita's address at the Strategic Studies Center symposium, Stanford Research Center, Menlo Park, Calif., June 20–22, 1977, be printed in the RECORD.

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

JAPANESE PERSPECTIVE

(By Gen. Ichiji Sugita, retired)

I am happy and highly honoured to be here and to have the opportunity and privilege to speak to you distinguished experts

on military affairs assembled here to-day from various parts of the Free World.

I have been asked to say a few words about national defense of Japan in general and I beg your indulgence if, in doing so, I present some factual information based on my own limited experience and knowledge but which, I hope, may contribute, however modestly, to the basic current thinking on this subject.

To begin with, I would like to draw your attention to the fact that President Carter, in his message to Congress at his inauguration, made reference to Japan as one of the partners of the United States of America and a nation of major importance in The Pacific.

Such a reference, . . . on such an occasion, . . . by such a man of eminence was more than enough to give us Japanese a profound impression and opportunity to introspect about our own country as it is now and to try and examine the country as it ought to be in its right perspective.

Admittedly, we have been aware of the U.S. expectation of Japan for the maintenance of world peace. But now, we feel the weight of it far heavily than we felt in the past. How Japan can respond to that expectation and contribute itself towards peace of the world at large and of Asia, in particular, is a big subject given us and Japan is now striving hard to grope about for the best possible way to perform its part.

Obviously to the United States, somewhat dubious behavior of Japan may be causing the feeling of impatience. But when viewed from the point of our national security, particularly from the point of military phase, it is quite clear that Japan's present status has in no way attained a stage where it can respond to that expectation. Therein lies a big problem which I hope to speak about to-day as best I can.

I am sure there must be number of members among you who have already discerned the points I am about to mention. I am equally sure there must be a great many in the world who are amazed at Japan's extraordinary rapid economic growth, but only few . . . surprisingly few who are aware as to the extent and substances of Japan's national defense structure and its military strength.

It is not confined to the people of foreign countries only, but, strange as it may sound to you, I know I am not exaggerating when I say that the most of my own countrymen know very little about these vital questions. Among them, there may be quite a number of politicians, businessmen and learned people, let alone the ordinary people which proves that national defense has not been taken by most of the people of Japan as important enough question to take seriously and it remains the same more or less to-day.

With regard to Korea, I myself have a great hope and expectation on the future of its national defense capabilities. Needless to say, Korea is an essential element for the defense of Japan as Japan is for Korea for that matter. On this particular point, we are just like the two wheels of a cart . . . we are bound to stand and fall together. The pity of it is that not all our people are conscious about it. I for one as a Japanese and a soldier note with deep gratitude in regard to a great effort being made by the U.S. and Korea for security of the region.

I am afraid the pressure of time does not permit me to refer to-day to the question of Taiwan, the Republic of China, but we must bear in mind when we think of the situation of North East Asia that we cannot consider Japan, Korea and Taiwan separately from one another not only because of natural geographical disposition allowing no artificial change but we are, after all, in the era of collective security of nations to-day.

Therefore, if unfortunately one of the three nations were to break down, the result is obvious. North East Asia would easily be thrown into a state of uncontrollable confusion . . . even with the help of the United States.

Even more so, as the Soviet, as a part of its ambitious global politics with power for a background, is carrying out a ceaseless reinforcement of armed forces and modernization of its Pacific Fleet, while its all-round positive and forceful action is decidedly on the increase ever more.

Only recently, we have seen a characteristic attitude of its own at the fishery conference held in Moscow between Japan and the Soviet. I am afraid it is not difficult to anticipate that Soviet will do its utmost to ensure collapse of Japan's defense foundation by any means, particularly by an indirect aggression.

Such being the case, both Korea and Taiwan are very much concerned about the trend of Japan in future and both are closely watching an extent of Japan's communization. I am often cautioned about this point by my friends of both countries.

However, in spite of all, both Korea and Taiwan as well as other Asia nations, while are all counting much on Japan's economic strength, nevertheless do not want to see it becoming a powerful nation both nominally and virtually which is understandable. Perhaps it can be said that expectation and precaution are stuck side by side in their minds so far as the present situation of Japan is concerned. On this point, I suppose both the U.S. and Australia, too, may be no exception. These incompatible phenomenons place us in a very difficult position in determining our defense problem.

There is another important matter from military viewpoint that must not be ignored and it is Japan's relations with various countries of South East Asia and Indian Ocean as well as Middle and Near East.

The formers, not only are they closely related to Japan historically, geographically, culturally and economically, but those countries are situated right along the trade routes of essential raw materials to Japan . . . imported from the latters, particularly, oil and minerals.

Therefore, the tendencies of various countries in those regions reverberate on our national security directly and acutely representing clearly how sensitively we have to react, how vitally important it is for Japan to shoulder a great portion of burden in protection of the sea transportation. In view of this fact and to discharge its task adequately, Japan is required to keep maintaining good relations with the U.S., Canada, Australia, New Zealand and South East Asia countries.

Such being the case, when emergency is taken into consideration, Japan ought just as well to make necessary preparation even in time of peace. It ought to equip itself with all necessary arrangements and mental attitude, also, to dispatch at least its naval vessels to those regions, when necessary.

Considering that Japan's national security is assured, thanks to the U.S.-Japan Security Pact, Japan, as a good partner of the U.S. ought to possess positiveness so much as to take charge of a portion of defense of the sea surrounding Japan, Korea and Taiwan and provides the U.S. 7th Fleet with the freedom of action.

This is very likely what the U.S. expects of Japan and whereabout of the sentiment of general public of America is not difficult to comprehend. However the actual circumstances of Japan as it is now is fairly away out of the point where it can comply with the requirement of the U.S.

So, in order to try and observe a probable development of Japan's future defense, I would like to reflect briefly on the recent history of national defense of my country for your information.

When 30 odd years of post-war Japan is divided into 3 periods from the point of national defense, not, of course, forgetting that the basis of it all rests with the post-war Constitution, I think it can summarily be said as follows:

(1) The 1st period . . . that is between the year 1945 to 1955 . . . there were several notable occurences such as the outbreak of Korean War, the reestablishment of Japan's independence and the organization of Police Reserve Force.

So far as Japan's national defense was concerned, it was entirely left in the hand of the U.S. Armed Forces. There was, therefore, no need at all for leaders of the country to give any sort of consideration to the problem of national defense nor to military affairs.

The propagation of Japan as a nation of militarism was then complete, while in the country the spirit of anti-war and anti-military run amuck, like a wild fire. Anything that had any connection with military was tabooed, resulting in total negligence of the matters pertaining to defense and military of the country. The prohibition of an overseas deployment of armed force was proclaimed from the beginning.

(2) Next, the 2nd period begins from the year 1956 to 1966.

During this period, the Self-Defense Force was organized, equipped with arms of the type of the 2nd World War and had gradually taken over duties of national defense from the U.S. forces. Strange as it may sound to you, but during this period the country was involved in fierce arguments as to whether the Self-Defense Force was a military force or not, whether there was or there was not an infringement of Constitutional Law. A construction of the foundation of national defense organization was as a matter of course totally disregarded.

It was during this period, too, a fierce struggle was taking place in the streets of Tokyo over the U.S.-Japan Security Pact. The concept of national defense was limited to 4 islands only that constitutes Japan.

However, towards the end of this period, that is in 1965, the normalization of Japan-Korea was materialized and with it, Japan began to consider its national defense as a part of the link of North East Asia. The fear for revival of Japan's militarism was still actively argued about among the 3rd powers during this period.

(3) The time between 1967 to 1977 is the 3rd period.

During this period, the return of Okinawa by the U.S. and Japan's recognition of Communist China came to be realized. It was then that Japan started to reconsider its national defense system and concept on the basis of North East Asia as a whole.

However, in spite of its broadened outlook on the matter of defense, equipment and military thought of its Self-Defense Force are no longer up-to-date and defense system of the country remains unchanged. In fact, the capacity as the armed force is deteriorating.

It stands to reason that the nation's defense system has no other way to tread than downward, especially when the very man, the Chief of Defense Agency . . . equivalent to the Secretary of Defense . . . says that 1 percent of Gross National Products would be enough for defense expenditure.

The nuclear allergy is very strongly permeated into the minds of the people of Japan. An overseas deployment of armed forces and export of arms are strictly prohibited. And while opposition parties loudly advocate cancellation of the U.S.-Japan Security Pact, no refutation, however, comes from the Government or the Ministerial party. The discussion on the national defense is still looked upon as something to be put under taboo.

Keeping step with an intensification of confrontation between Communist China and the Soviet, the argument in respect of the revival of Japan's militarism has since been calmed down. On the contrary, Communist China is now recommending Japan's strengthening of defense, also maintenance of Security Pact.

Nevertheless, our general public are still of opinion that not the people but the Self-Defense Force alone should take charge of the duty of national defense. This anachronistic concept is a legacy of bitter experiences of war. Indispensible though national defense is, it will be no easy task to convince them of futility of building it on the foundation of misconception.

In the meantime, the man until a short time ago was the Prime Minister concurrently the Commander-in-Chief of the armed forces was taken into custody on the ground of an implication in the Lockheed payoff scandal during his tenure of office. A bad effect given to the officers and men of the forces was far from small.

The 3 periods of Japan's national defense outlined just now is the course our country, as I see it, had to troden thus far during this past 3 decades. In the meantime, there has been a change of a generation . . . the new generation that has grown up practically, if not wholly, irrelevant to war came to wedge itself in forefront in every line of national life. During past few years, we have witnessed a gradual decrease of power of the Government Party, and now, a rumor has it that there might even be a possible reverse of power between conservatives and leftist parties in the coming election in July. Thus the year 1977 found the Fukuda Cabinet at the helm of state.

With the formation of the Carter Administration just then, came an announcement of an intended withdrawal of the U.S. Forces from Korea. The Prime Minister Fukuda evaded to intervene stating that it is a matter solely concerned between the U.S. and Korea. However, there is no doubt at all that it is a matter of vital importance upon the issue of which hangs the very fates of both Japan and Korea.

Last September, there was an incident of Mig-25 in which the Soviet Flight Lieutenant Berenco grounded his plane in north of Japan seeking refuge in the United States. And only recently, Japan had seen more than enough of a high-handed attitude of the Soviet toward us in connection with the fishery problem. There is no doubt that Japan, as the very other party to the power-politics of the Soviet has again been given a nutritious mental pabulum in which to appraise anew a true merit of the U.S.-Japan Security Pact, also the importance of national defense.

Hitherto, the leftist parties in the Diet have been loudly emphasizing a principle of demilitarized neutrality on the country and cancellation or abrogation of the Pact. But now, they look very much perplexed and are at a loss what to do.

The election of House of Councillors is going to be held in coming July. It is looked upon in the country as one of barometers to divine the future course of Japan. Indeed, Japan is about to face a very serious turning-point in its history in the near future.

What I have outlined so far, I hope, has given you some ideas to conceive the future of Japan's national defense. Now, I hope to end my report by stating my own opinion concerning the subject.

I believe there are 2 ways of looking at the course that Japan is likely to tread from now on. As the undercurrent, skeptic feeling seems to be flowing in the minds of the people as to whether the state prevailing in Japan today would serve as just and proper in carrying the country forward to the future or not.

(1) One way of looking at the future course is that Japan, in fear of external criticism on the possible revival of militarism, has spent this last 3 decades making very light of vital problems of national defense and military fairs. Now, that the political situation no longer is as stable as it used to be, not only will Japan's national defense be not improved but the probability of treading towards, the path of weakening is, I feel very sad to say, none too small. There is, I think, even a danger of weakening of ties between th U.S. and Japan resulting in invalidity of Security Pact.

(2) The 2nd outlook is that the nation that fought for nearly 4 years against Allied Forces in the 2nd Word War while achieving a surprising development in the post-war would, according to a change of situation, inevitably become a powerful nation militarily. For the nation such as this, Korea could not be a decisive factor. In fact, Japan can and ought to be able to defend itself whether Korea or no Korea.

The 1st outlook is that of the Soviet. There are quite a number of retired senior army and naval officers and a section of intellectuals in Japan who are in agreement with this outlook and think it necessary to strengthen defense of the country. Generally, those people are looked upon as if they were the rightists in Japan which, in the strict sense, is not correct as one can love one's own country without being a rightist oneself.

The 2nd outlook seems to me to be the one generally entertained in the U.S. and other democratic nations. It is also the outlook vaguely entertained among large numbers of our civilians mostly influenced by mass media . . . leaders of the country not excepted. I see Mr. Brzezinski of White House seems to be of the same opinion as the 2nd outlook if my interpretation of his book entitled "Fragil blossom" were correct. It seems to me that the basis of the decision to withdraw troops from Korea may also be found in the same thinking as that of the 2nd outlook.

The defense-conscious view of so-called rightists referred to in the 1st outlook are generally considered in Japan by those who entertain the 2nd outlook as a primary factor to create doubt and suspicion among the 3rd powers. But what West Germany did succeed in providing a means to dispel doubt and suspicion of friendly nations I don't see why Japan can not, especially if Japan really determined to respond to the U.S. expectation and amply discharge its responsibility as a good partner should.

However, in order to elevate the country to that capacity, there is, in my opinion, far more important issue than mere increase of armed strength and modernize equipment of our Self-Defense Forces . . . not that I am thinking lightly of those points . . . the pressing need of the hour among all needs now is to consolidate the foundation of our national defense . . . the foundation worked out as an independent country in substance and defense concept on the basis of Northeast Asia as a whole. So far, no attention has ever been given to it and not likely to be given in near future either, because the problem of national defense almost entirely under responsibilities of national leaders and politicians and hardly any room for the military to share it.

I would like to add a few more words before I finish my report. Japan is, as you are well aware, interposed between 3 great nuclear powers, the U.S., Communist China and the Soviet Union with an awkward North Korea nearby. Japan shall become neither a great nation militarily nor a nuclear power. This is out of the question as the people of Japan are thoroughly consistent in this point.

Therefore, the primary importance for us is to try and maintain a close alliance with the U.S. and in concert with Korea and other free countries of Asia make every effort to prevent occurrence of war in Asia, Northeast Asia, in particular.

In conclusion, I would like to repeat once again that the withdrawal of the U.S. Troops from Korea, if I may say so, without due consideration to the true state of national defense of Japan is bound to bring about a tremendous effect on the future of Asia. Already, the Soviet who seems to know correctly every inch of Japan's weakness is out to make full use of it in order to create a climate that would help to achieve its end. Frankly speaking, I can see no sign that makes me entertain an optimistic future for Asia in general.

Under the circumstances, I appeal to politicians and military authorities of the U.S., Australia, Korea and other democratic nations of Asia to inquire once again into the ways to establish and maintain peace and security of West Pacific by affirming the actual state of defense setup of Japan.

LOAN LEVELS FOR 1977 CROPS OF WHEAT AND FEED GRAINS

Mr. HASKELL. Mr. President, I was very pleased to see that the Senate Committee on Agriculture, Nutrition and Forestry reported Senate Resolution 193 last week, sponsored by Senator ZORINSKY, expressing the sense of the Senate that the Secretary of Agriculture should exercise his authority under existing law to increase the loan levels for the 1977 crops of wheat and feed grains.

I totally concur with this sentiment and wish to join by colleagues in cosponsoring the resolution. I think this action is desperately needed by our farmers at this time in order to help accommodate the mounting grain surpluses and to make additional funds available to our much-beleaguered agricultural producers. I have been urging this very action for some time.

Although the resolution very wisely, perhaps, does not recommend a loan level, I would hope that the Secretary will provide a substantial increase offering meaningful assistance. The present loan levels simply fall too short of meeting production expenses to be of useful price support assistance at this time.

In closing, Mr. President, I ask unanimous consent that a letter I wrote to President Carter February 4, 1977, explaining our producers' problems and urging this very action, be printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., February 4, 1977.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I respectfully call to your attention the severe plight of agricultural producers in the State of Colorado as the result of a continuing depression in the nation's agricultural economy. Although this is a nationwide problem, it is particularly acute in our state because virtually every major agricultural commodity produced in Colorado, wheat, corn, sugarbeets, pinto beans, cattle and other livestock, is presently selling at a price well below the cost of production. Massive losses in our sugarbeet industry have forced the closing of three sugar refineries with a fourth threatening to close. This is a severe blow to our beet growers and to hundreds of workers in those plants as well as the communities affected.

A deepening drought on the high plains has plagued Colorado for the past three years and is now reaching critical proportions. This places an even greater burden on our hard-pressed cattle and grain producers at a time when they are caught in an almost crippling cost-price squeeze. Our farmers and ranchers are extremely grateful for your timely emergency declaration of last week which extends federal emergency programs to producers in the Colorado counties most severely afflicted by drought. Welcome as this assistance is, however, it does not provide the comprehensive support which our entire agricultural community needs at this point to avoid collapse.

In light of the mounting crisis, I most respectfully and urgently appeal to you to use your existing administrative authority at the earliest possible time to raise price support loan levels on all eligible agriculture commodities to at least 80 percent of parity. This will not guarantee and adequate profit for most of our wheat growers who are selling their wheat today for just over $2 per bushel. But it will meet the cost of production and place a floor under prices so that producers can stay in business for the present, and look forward to planting another crop this year. Under present conditions of surplus and low prices to together with accumulating debt, farmers and ranchers are simply unable to obtain the necessary credit to stay in production. Our young farmers, who have exceptionally heavy debts and very limited operating capital, are especially hard hit.

I also respectfully request that you move as swiftly as possible to reduce the global import quota for sugar to a maximum of 3.9 million tons, or suspend the generalized preferences for developing countries which account for about 20 percent of our annual sugar imports, or to invoke quotas under the emergency provisions of Section 22 of the Agricultural Act of 1935. We had hoped that the recommendations of the U.S. International Trade Commission, which has been investigating economic injury to the domestic sugar industry from imports, would be available by now to support such action. But I understand that legal entanglements have stalled the investigation, so I would urge that you proceed on an emergency basis to sharply curb imports to assist our growers and producers until such time as a sound sugar program can be enacted. The boom and bust cycles of the past years have literally caused havoc with our state's sugar beet industry and immediate relief is necessary if our growers are to stay in production this year.

Meanwhile, because of continuing surpluses and low prices, Colorado's cattle industry is seriously foundering and requests your attention to the administration of the Meat Import Act of 1964. We understand that large quantities of essentially raw beef are entering the country outside of the import restrictions of the law, through an exemption for processed beef. Much of the meat currently entering as processed beef is actually uncooked and unprocessed in the true sense in that it has simply been cubed, flaked, ground or otherwise cut up, to evade the intent, if not the letter of the law. It competes directly with the grass-fed beef going to market in Colorado as a result of the currently-depressed market. To help stem the flow of imports during this extremely difficult time for our own producers, we ask that you reexamine the Treasury Department ruling classifying such cuts of beef as "processed" and then close this troublesome loophole. At this time, tight administration of the law is vital to our domestic producers.

We would also request that beef purchases for the school lunch program, military installations and federal institutions be sharply increased to help reduce the current beef surplus, and that government purchases of dry, edible beans be increased to assist our bean growers who are presently receiving prices below the cost of production.

I know that the above actions constitute a fairly comprehensive program, but the situation is acute and the need is very real. Colorado is the second-largest agricultural producer among 11 western states, topped only by California. In 1975, agricultural revenue contributed $2 billion to the state's economy and 65 percent of that came from cattle, calves and winter wheat. We are deeply concerned about the impact of the current problems on our state's entire economy. Although I appeal to you on behalf of Colorado's farmers and ranchers, the entire great plains region suffers from similar conditions. We know that you understand the problems of farmers firsthand as does the Secretary of Agriculture, Mr. Bergland, and we are therefore hopeful that you will consider this appeal favorably and offer adequate relief to our beleaguered farmers to sustain them until a new, comprehensive agricultural policy can be developed by your administration and Congress.

With very best regards,
Sincerely,

FLOYD K. HASKELL,
U.S. Senator.

ARE GLOBAL BUREAUCRATS OVERPAID?

Mr. HELMS. Mr. President, when the Omnibus Multilateral Development Institutions Act of 1977 was before the Senate on June 14, I offered an amendment which was adopted after being modified.

My amendment would have instructed the U.S. representatives to these various institutions to take all appropriate action to limit the staff salaries of these institutions to make them comparable to the salaries of the employees of the Federal Government.

The amendment was modified so as to instruct the U.S. representatives to these banks to take into account also the salaries in private business.

During the discussion of that amendment, I made specific criticism of the World Bank. In response, it was pointed out by Senator CASE that, "The Bank competes with other banks," in seeking personnel.

I agreed to a modification of my amendment to assure that international organizations can attract the best possible talent. I personally feel that the salaries of the U.S. Government are sufficient to do that, but I agreed to a change in my amendment to provide some degree of flexibility.

In an interview that appears in the June 24 edition of Christian Science Monitor, C. Fred Bergsten, Assistant Secretary of the Treasury, stated that he thought that my amendment indicated that Congress believed that salary levels "aren't to badly out of line."

I certainly do not agree with Mr. Bergsten's view. The salary levels are out of line. Otherwise, there would be no great difference between those of the U.S. Civil Service and the international financial institutions.

The U.S. General Accounting Office reported that the average professional salary adjusted for tax-free status and allowances of the World Bank was $35,286 as of January 1976. That is 56 percent higher than the average annual salary of the average U.S. Civil Service professional.

The GAO reported that 45 percent of the World Bank professional staff earn more than $36,000. The Chase Manhattan Bank in New York has reported to me that only 13.5 percent of its officers earn over $35,000.

The GAO reported that 20 percent of the World Bank professional staff earn over $44,000. Only 5 percent of the officers of the Chase Manhattan Bank earn more than $45,000. These figures are not directly parallel, but they point up the contrast.

Manufacturer's Hanover Trust reports the following figures: Approximately 13.6 percent of its officers earn over $36,000; approximately 6.8 percent earn over $44,000.

I construe my amendment this way: The international financial institutions are on notice. If the great disparity continues to exist, surely the Congress will not sit idly by. President Carter is reported to have seen a memo on World Bank salaries, on which he penned a note, "I agree with Congress—J.C."

Needless to say, Mr. President, I hope the conferees working on this bill next week will agree to keep my amendment in the bill. I ask unanimous consent, Mr. President, that the aforementioned article from the Christian Science Monitor of June 24 be printed in the RECORD.

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

ARE GLOBAL BUREAUCRATS OVERPAID?

(By John Dillin)

WASHINGTON.—High salaries at world organizations supported in part by U.S. taxpayers are causing growing concern in Congress and the White House.

Pay scales of the World Bank, the United Nations, and other organizations such as the Inter-American Development Bank far exceed those for similar jobs in the U.S. government.

For example, a U.S. federal employee with a GS–18 rank earns $47,500 as a result of this year's pay hike. But at the World Bank, pay for the same type of job is $74,100, and at the United Nations it is $85,500.

Bureaucrats drawing salaries of $40,000 and up have become commonplace. Figures compiled here show that at the World Bank, the average salary for more than 2,000 mem-

bers of the "professional" staff—administrators, educators, economists, agriculturalists, and others—is $48,050 a year.

Such salaries in world organizations often are supplemented by fringe benefits such as country club privileges, education allowances, subsidized cafeterias, and free trips around the world.

Salary levels run ahead of federal scales at every grade, but are most pronounced at the upper end.

This strikes some members of Congress as ironic. Speaking on the Senate floor, Sen. Jesse Helms (R) of North Carolina said:

"If these international organizations are truly set up to help the poor, as is so often proclaimed, let us at least see to it that the funds of the taxpayers of the United States going into these organizations in fact go to the poor, and not to line the pockets of international bureaucrats."

A report on international banks by the Committee on Appropriations put it bluntly:

"Our investigations have led us to the distressing conclusions that, rather than the rewards of a career of service, there is found in the banks a broad policy of personal enrichment. The personnel management practices of the banks are suggestive of an institutionalized granting of lifetime sinecures where extraordinarily high salaries are commonplace and the pursuit of fringe benefits has been raised to a form of art."

CARTER: "I AGREE"

President Carter shares some of these concerns. At a recent Cabinet meeting, the President is reported to have scrawled, "I agree with the Congress—JC," on a memo about World Banks salaries.

But there is some question about how hard the United States can push to change the salary structure—and how far U.S. officials will go in pushing for change.

In response to criticism, various world bodies defend themselves by observing that they must compete for the most talented professionals. That requires, they say, competitive salaries.

At the World Bank, most professionals are recruited when they are about 40 years of age, near the high point of their careers. Without adequate salaries, the quality of recruits for the bank could diminish, it is argued.

The U.S. Treasury, which oversees agencies such as the World Bank, has conducted a quiet effort to control salaries since the Ford administration. For example in 1976, former Treasury head William Simon won the title, "beast of the hour" from striking employees of the International Monetary Fund. Mr. Simon had lobbied successfully to block a 16 percent pay hike. He held it to 5.8 percent.

The New Assistant Secretary for International Affairs at the Treasury, C. Fred Bregsten, says: "We think we have made a lot of progress."

SOME SUCCESS NOTED

Mr. Bergsten cites successful efforts last month to kill a move by the Inter-American Development Bank to raise the $74,750 annual salaries of the executive directors. However, other staffers won a 6.8 percent rise.

The Treasury is making hold-the-line appeals to other nations to bring salaries of world bodies into line with civil service pay in member countries.

But chances for substantial change appear slim. For the most part, influential nations such as West Germany, Japan, and Brazil want even higher salaries.

For example, West Germans tell the U.S. Treasury that World Bank salaries are too low to attract their citizens away from high-paying jobs at home. Japan uses the same argument.

As a result, those two nations have very little representation among the staffs of key agencies.

Congress has acted, somewhat tentatively, to send the world organizations a message. Capitol Hill, of course, controls the purse strings.

In a vote June 14, the Senate adopted a proposal by Mr. Helms directing the President to take all appropriate action to keep salaries and benefits of world banking organizations comparable to those in "private business and the United States Government."

COMPARISON CITED

However, the note about "private business" confused some observers. They said that private industry often pays higher wages than government. Mr. Bergsten, noting that section, said:

"The inference would be that things aren't too badly out of line."

Senator Helms, however, retorts: "I certainly do not agree with Mr. Bergsten's view . . . I think they are out of line, or else there would be no great difference between U.S. Civil Service and the international financial institutions."

The notation about private industry was inserted only to give the banks some "flexibility," Mr. Helms notes. "I construe my amendment this way: the international financial institutions are on notice. If the great disparity continues to exist, surely Congress will not sit idly by."

A report by the General Accounting Office, Mr. Helms says, found that the average World Bank salary was 57 percent higher than U.S. Civil Service.

World Bank officials note that while they pay more than private industry for some lower-level positions, they still trail private industry badly at upper levels, where recruitment can be most difficult.

Similar jobs—different pay

U.S. Civil Service (GS–18)	$47,500
World Bank	74,100
United Nations	85,500
Organization for Economic Cooperation and Development (OECD)	86,450

NOTES.—Average figures, not adjusted for cost-of-living differences between Washington, New York, Paris, and Brussels.

WOMEN IN THE MILITARY

Mr. PROXMIRE. Mr. President, on May 17, I introduced an amendment to the military authorization bill which was designed to expand the number of jobs that could be held by women in the military. Since that time, a number of articles and a study by the Department of Defense have been published on this issue.

A Parade magazine article by Phil Stanford deals specifically with the issue of women in combat. He presents the "pro" side which is in favor of expanding the role of women, as espoused by Adm. Elmo Zumwalt, and the "con" side as taken by Gen. William Westmoreland. The article also refers to some of the studies that have been done by the services to examine this question, and the problems and advantages associated with increasing the utilization of women. This article, on the whole, presents a balanced and unemotional overview of this controversial question.

A second article, written by Vernon A. Guidry, Jr., appeared in the Washington Star, on June 26. Mr. Guidry refers to the study published by the Defense Department on the role of women in the military, and, more specifically, with the necessity for increasing the role of women in order to help assure the success of the All Volunteer Force. The article also mentions the trade-off between a high quality female recruit and a low quality male recruit. Mr. Guidry deals with the traditional problems associated with the increased utilization of women, as well as how the services have been, and could, overcome these.

The final item I would like to bring to the attention of my colleagues is the actual study published by the Department of Defense. Entitled "Use of Women in the Military," this study was published by the Office of the Assistant Secretary of Defense—Manpower, Reserve Affairs, and Logistics. It has been released for publication.

This report was compiled by each of the services for the Secretary of Defense. It consists of background analyses dealing with the number of women in each of the services, the overall performance of these women, retention rates, costs, and the advantages and potential problems associated with increasing the number and role of women. The study recommends, among other things, changing and/or repealing the laws and policies that now constrain the utilization of women in the military.

Because of the length of the study it would be impossible to enter it into the RECORD. However, I would like to alert my colleagues of the existence of the report.

Mr. President, I ask unanimous consent that the two articles be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Star, June 26, 1977]

PENTAGON SOS: WOMEN, SIGN UP

(By Vernon A. Guidry, Jr.)

A new Defense Department study suggests that the future of the all-volunteer force may depend on expanding the role of women in the military service.

The study is part of a "priority analysis" of manpower issues ordered by Defense Secretary Harold Brown and conducted in the office of the assistant secretary for manpower, reserve affairs and logistics.

The work focuses primarily on use of women to ease the problems and costs of recruiting which are expected to increase in the 1980s with the dwindling pool of eligible 18- to 20-year-old males.

"The success of the all-volunteer force may well depend on reducing the number of young male high school graduates the department needs to recruit each year," the study read. "This is potentially the major benefit of using more women, but it is not without costs."

The study said the choice department planners face in the current recruiting market is between a high-quality female recruit and a low-quality male recruit.

"The average woman available . . . is smaller, weighs less and is physically weaker than the vast majority of male recruits," according to the study.

"She is also much brighter, better educated (a high school graduate), scores much higher on the aptitude tests and is much less likely to become a disciplinary problem," it continued.

And "while lack of strength is raised by the service leaders as the most common prob-

lem . . . no positions were identified in the service submission as being closed to women for physiological reasons," the study noted, adding that the question needs more attention.

It pointed out that many of the problems arising in using women in nontraditional positions were also faced when adapting American equipment and procedures to the use of male Oriental allied troops who were also generally smaller than American men.

"The problems are not insurmountable, but the reality of these physiological differences should not be wished away in our efforts to avoid sexual discrimination or to substitute women for men in sustaining the all-volunteer force," the manpower specialists said.

Among the services, the Air Force has gone farthest in developing strength standards to classify positions without regard to gender.

"About 28 percent of the women tested by the Air Force could lift 70 pounds to a height of six feet, which was the most stringent test. Virtually all women tested could lift 40 pounds to elbow height (which) would meet the strength needs of most non-combat jobs in the military," the study reported.

Another serious concern is time lost due to pregnancy and childbearing. The services report that pregnancy did result in considerable loss of time.

According to Army figures, about 8 percent of its enlisted women members became pregnant each year with about two-thirds of those giving birth. The average pregnancy completed caused 105 days of lost time. Some 40 percent of women giving birth asked to be relieved from active duty following post-natal leave.

The Army said time lost for abortions approximated that for minor illnesses, averaging 10 to 12 days including just under five days of hospitalization.

The other services reported similar figures, but the Navy compared total lost time rates for enlisted men and women and found that male members lost more time. This was due generally to alcohol and drug use, unauthorized absence and desertion.

There was a catch to the comparison, however. "Both desertions and unauthorized absences may correlate with unpleasantness of an individual's job. Women are less likely to be in such jobs, especially in the Navy," the study pointed out.

The military-wide analysis found a vast difference between the services in the number of positions available for women after the exclusion of combat positions from which they are barred by law. For the Air Force the total available was 93 percent. The Army combat exclusion was 50 percent of its positions and the Navy, because of combat and shipboard prohibitions against service by women, excluded 60 percent of its positions. The Marine Corps had only 27 percent of its slots available to women.

The picture is further complicated by what manpower planners call the "rotation base problem." Men who fill combat, overseas or shipboard duty closed to women must have alternate assignments to which they can rotate when their tours have ended.

The Air Force says it doesn't need any such positions. The Army says it must reserve 8 percent of its non-combat jobs as rotation positions. The Navy and Marine Corps, with high shipboard and combat duty levels, experience the greatest problem. The Navy reports that it must keep open 55 percent of its non-combat jobs for rotation and the Marine Corps must hold open 75 percent of the positions remaining after combat.

[From Parade Magazine, June 26, 1977]

SHOULD WOMEN BE COMBAT SOLDIERS?

(By Phil Stanford)

Over the past five years, as a result of pressure from the women's movement and the Pentagon's own need to fill quotas for the all-volunteer army, women have taken an increasingly larger role in this country's armed forces. The number of women in uniform has nearly tripled, going from 45,000 in 1972 to about 120,000 now. At the same time, the number of military jobs open to women has taken a similar jump. Not long ago, women were confined to nursing or clerical duties. Today there are women truck drivers, airplane mechanics and drill sergeants; women are being trained as pilots and they attend the service academies.

There is, however, one important military duty especially that is still off limits to women—and that is combat. By law in some cases, and by long-standing policy in others, women are forbidden to serve in any position that might bring them in "direct combat" with an enemy. Whether this is as it should be is the subject of a highly emotional debate that we may be hearing for some time.

Within the military, the debate is particularly heated. On one side are the traditionalists like Gen. William C. Westmoreland, the former Army Chief of Staff. "Maybe you could find one woman in 10,000 who could lead in combat, but she would be a freak," Westmoreland has said. "I don't believe women can carry a pack, live in a foxhole, or go a week without a bath."

HE IS IN MINORITY

On the other side is Adm. Elmo R. Zumwalt, former Chief of Naval Operations. "Women," says Zumwalt, "should have the opportunity to have the capability to go into combat. . . . As far as women soldiers are concerned, when I was in Southeast Asia during the Vietnam War, I found that among the most vicious fighters were the Viet Cong women." Zumwalt's views, however, represent a decided minority among military leaders.

As the National Organization for Women sees it, the only question is whether the military has "the right to treat women, regardless of ability, as children who must have their decisions made by others."

To NOW, the only relevant consideration is equal rights. To others, the matter is more complicated. According to a study on "Women and the Military" by Martin Binkin and Shirley J. Bach, to be published next month by the Brookings Institution, there are at least two other vital questions. First, can women fight? And second, how would the presence of women in combat units affect the fighting ability of those units?

As the study points out, neither of these questions has an easy answer.

In a mechanized age, there are still many combat roles that require considerable physical strength. An infantry soldier must carry a backpack that weighs 50 pounds or more; a tank crew member must lift extremely heavy shells and load them into the tank's cannon.

A recent study by the General Accounting Office indicates that women have already experienced problems with physically demanding jobs. Of 97 women assigned to aircraft maintenance, two-thirds reported that they did not have the strength to perform many required tasks, such as changing aircraft tires and brakes and removing batteries and crew seats. In the Marine Corps, most of the women sent to school to be telephone linemen could not climb poles with heavy equipment. Several Army women trained as ammunition storage specialists had to be assigned clerical studies. The supervisors on Navy tugboats indicated that "women cannot physically do much of the work, which includes lifting and handling sandbags that weigh 100 pounds."

MAKING THE GRADE

Last year, however, the Army ran a test to see if women could pass the standard basic combat training program. Two training battalions, each consisting of two companies of men and two of women, were given the same training program—including tactical exercises, grenade throwing and weapons qualification. The overall performance of the two groups was virtually identical: 87 percent of the men and 85 percent of the women passed. The Army found that "female graduates met the standard in every area except the Physical Readiness Training Program, and that those events can be modified for the women without changing the content of the training or reducing the value of training received."

A factor to be considered is pregnancy. It is doubtful, says the Brookings study, that pregnant women could be expected to perform their duties in combat or at sea. However, concludes the study, "predictions concerning the effects of pregnancy or menstruation on job performance remain largely speculative."

Regardless of whether women are capable of being combat soldiers, many military men feel that putting women into combat units would lower the morale and fighting ability of those units. The problem would be particularly acute, they say, for outfits like airborne infantry divisions, the Rangers or warship crews, whose esprit de corps depends to a great extent on their own machismo image.

CAMARADERIE IN CRISIS

This is the official Navy view. As former Vice Chief of Naval Operations Adm. Worth Bagley has testified before Congress, many men are attracted to the Navy "because they enjoy being in a job which has been historically associated with fellowship among men in a difficult and dangerous endeavor."

The Army, meanwhile, is completing a series of tests, called MAX WAC, to determine the effect of women serving in combat support units which might be expected to come into direct contact with an enemy on the battlefield. Although the final results are not yet in, an official for the test says, "MAX WAC will show that women can function adequately in support of units without lowering the units' effectiveness."

In the beginning, says the official, the Army had special rules to protect women in the field. They had to pitch their tents in the center of a company encampment, go to the toilet in pairs, and were not allowed to walk sentry duty. In most cases, these restrictions were found to be unnecessary. "Soldiers out in the field tend to adjust to reality."

The only other test worth noting is the Navy's "Sanctuary" experiment, so named for the USS Sanctuary, a hospital ship to which both men and women were assigned.

THEY GOT HOT

On one particular cruise, the commanding officer noted, "subtropical temperatures necessitated shifting to tropical uniforms and T-shirts, and many recreation activities were carried out on the weather decks after working hours and during holiday routine. Then, all of a sudden, public display of affection that once was very discreet or non-existent crept in."

As the commander reported, "This had a demoralizing effect on both men and women and most particularly on the senior petty officers." This problem was solved, he said, by making public displays of affection illegal and subject to punishment under Article 15 of the Uniform Code of Military Justice.

As the Brookings study points out, neither of these experiments tested the performance of women under combat conditions; the results are useful only in a general way. However, there are examples from recent history that should be instructive.

During World War II, more than a million women were drafted into the Russian armed forces, many into combat. Russian women served as fighter pilots, tank crew members, machine gunners, snipers, and in artillery crews. Israeli women fought in the 1948 war for independence—although, contrary to common belief, they no longer fill a combat role. And, of course, there are the Viet Cong women mentioned by Admiral Zumwalt. Each

of these examples, says the study, deserves careful study by the Pentagon.

The debate over permitting women to be combat soldiers, says the study, is hardly an idle one. Not only is there the question of equal rights, the Pentagon must also worry about keeping up its force levels. As the baby boom recedes over the next decade, there will be fewer and fewer men eligible for military service. Simple calculations show that the only way to keep this country's forces at their present level of approximately 2 million—short of returning to the draft—is to enlist more women.

However, there is a limit on the number of jobs open to women in the military. The study estimates that as things now stand, it would be possible to find places for 400,000 women; any more than that, and it would be necessary to let women be combat soldiers.

RESTRAINING NORTH KOREA

Mr. GRIFFIN. Mr. President, last week the New York Times published a letter written by Prof. Andrew C. Nahm, of Western Michigan University.

Dr. Nahm, whose field is Asian history, is deeply concerned that President Carter and his advisors may be relying too heavily on the ability and willingness of leaders in the Soviet Union and the People's Republic of China to restrain North Korea from pursuing an aggressive course if and when U.S. troops are withdrawn from South Korea.

I ask that Professor Nahm's letter be printed in the RECORD.

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

[From the New York Times, June 22, 1977]

KOREA: HOW TO PLEASE MOSCOW AND PYONGYANG

To the Editor:

I am afraid that there is a growing notion in the United States that the alleged assurances from both Moscow and Peking would discourage North Korea from taking another risk to destroy South Korea.

It was reported by General Brown and Under Secretary of State Habib that both Moscow and Peking have no intention of increasing tension in Korea after the American pullout. However reliable such assurances may be, the notion that Moscow and Peking would prevent Pyongyang from starting another war is based on erroneous facts and naive and wishful thinking. We must remember that Kim Il Sung is not a puppet of either Moscow or Peking.

I fully agree with General Singlaub's view, as well as those of others, that the withdrawal of U.S. grounds troops would increase the possibility of a war in Korea. One must raise the question: "What will we gain by withdrawing our ground troops from South Korea?"

There is no doubt that it would harden the attitudes of the South Korean Government while increasing the North Korean demands for a complete withdrawal of all U.S. military forces from South Korea. Unless it is the U.S. plan to withdraw all U.S. troops from South Korea in order to exact a concession from Pyongyang for its recognition of South Korea and the abandonment of its designs to reunify Korea through subversive and violent means, or to force South Korea to be more responsive to U.S. demands, or eventually to abandon South Korea to its own fate, President Carter's Korean policy makes very little sense.

It is not even the fulfillment of his campaign pledge in a real sense. The American pullout will bring no beneficial results for either the U.S. or South Korea while it will please both the Soviet Union and North Korea.

It is important to remember that Kim Il Sung pursues a foreign policy in the name of *Churche's* [self-orientation]: he follows his own domestic policies independently of Moscow or Peking; and he pursues his own goals. The national credo of North Korea is "the liberation [annexation] of the southern half of the republic [South Korea]" and the socialization of its systems and culture. Unless this is done, the North Koreans believe, "the Korean revolution" will not be completed.

It is worthwhile to recall what Wilbur Hitchcock said in his article in the March 1951 issue of Current History about North Korea jumping the gun in 1950 with military supplies from Moscow. It is true that both Moscow and Peking help Pyongyang economically and militarily, and they show no signs at present that they wish to see another Korean War. Be that as it may, Pyongyang will take its independent course of action with or without the support (or approval) of its allies to achieve its aims.

It is certain that the U.S. pullout will increase tension in Korea, and the possibility of a war. Both Kim Il Sung and his regime have amply demonstrated their volatile characteristics, and their ultimate objective is to Communize the entire Korean peninsula by any means.

ANDREW C. NAHM,
Professor of Asian History,
Western Michigan University.
KALAMAZOO, MICH., June 15, 1977.

DIPLOMATIC RELATIONS WITH CUBA

Mr. ABOUREZK. Mr. President, U.S. relations with Cuba have been in the news more and more these days and with each discussion on how to proceed, the emotional controversy grows stronger and stronger.

But what we do not hear much about are the opinions of people living around the United States who are not substantially tied to Cuba through family or by having business interests there under the Batista government. I think it is important and timely to take a look at these opinions on whether or not the United States should normalize relations with Cuba. Recently, a poll was done in Minnesota which reflects that 68 percent of Minnesotans think the United States should reestablish diplomatic relations with Cuba. Granted, this percentage is higher than that of the rest of the Nation as a whole, but these barometers of public opinion on such a controversial issue should not be ignored and I ask unanimous consent that the Minnesota poll on Cuba be printed in the RECORD.

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

SIXTY EIGHT PERCENT BACK RELATIONS WITH CUBA

A large majority of Minnesotans (68 percent) thinks the United States should reestablish diplomatic relations with Cuba, an opinion that is notably stronger in the state than in the nation.

An even larger majority of state residents (72 percent) has no interest in traveling to Cuba.

In a statewide opinion survey taken in May by the Minneapolis Tribune's Minnesota Poll, 68 percent said diplomatic relations between the two countries should be reestablished. Eighteen percent disagreed with that view and 14 percent had no opinion.

In late March the Gallup Poll found 53 percent of the people interviewed in a nationwide survey said diplomatic relations should be reestablished with Cuba, while 32 percent were against it.

Ordinarily public opinion in Minnesota is close to that in the nation. State residents may have been influenced by the highly publicized trip of 51 Minnesota businessmen to Cuba in late April.

The desire for closer ties between the United States and Cuba comes even though more Minnesotans think Cuba takes orders from Moscow (44 percent think so) than believe Cuba is largely independent of the Soviet Union (33 percent).

President Dwight Eisenhower broke off diplomatic relations with Cuba on Jan. 3, 1961, an action that had the approval of President-elect John Kennedy and of 76 percent of those interviewed in a Minnesota Poll survey at that time.

A balanced sampling of 605 voting-age men and women living throughout Minnesota was interviewed last month. Toward the middle of the interview, people were asked:

"Do you have a great deal of interest, some interest, very little interest, or no interest at all in traveling to Cuba?

The over-all response:

	Percent
Great deal of interest in traveling to Cuba	4
Some interest	9
Very little interest	14
No interest	72
No opinion	1
Total	100

Those with an interest at all in travel to Cuba total 27 percent, the same percentage the Gallup Poll found in March when Americans were asked if they would like to visit Cuba.

The next question was:

"Do you think the United States should or should not establish diplomatic relations with Cuba in the next year or so?"

Feeling in favor of reestablishing diplomatic ties has increased markedly in two years as the following table shows:

[In percent]

	Jan. 1975	*May 1977*
Should establish diplomatic relations	56	68
Should not	30	18
No opinion	14	14
Total	100	100

"We forced them into enemy status to begin with, now it's time to resume," said a mechanic living in East Grand Forks.

Some of those questioned in the current survey who favor renewal of diplomatic communications added advice to their answers: "Castro must agree to return some of the property he took from us . . . take time in doing this as the safety of the country is at stake . . . do it if you can trust them . . . ok, but we should watch our step."

Minnesotans next were asked:

"Do you think Cubans generally have a better or worse life under President Fidel Castro than they did before Castro?"

Here's how all Minnesotans responded:

[In percent]

Cubans have a better life under Castro	27
Worse life	22
No opinion	51
Total	100

"The Cubans had nothing before," said a Shoreview homemaker. "I'm not sure he's all good, but what government is?"

"They traded their freedoms for economics, so it is both better and worse," said a Mankato businessman.

The final question in the series:

"Do you think Cuba often takes orders from Moscow or is largely independent of the Soviets?"

The replies:

[In percent]

Cuba takes orders from Moscow	44
Is largely independent	33
No opinion	23
Total	100

"Cuba is heavily dependent economically, but doesn't take orders," said a research technician from St. Paul.

"Cuba is influenced by Russia, but Castro makes his own decisions," said a college student from Grand Marais.

Minnesotans who think Cuba does take orders from Moscow favor reestablishment of diplomatic relations, 65 percent for it to 24 percent against.

This Minnesota Poll involved interviews with 605 men and women 18 and over throughout Minnesota May 20–23. As a scientifically based opinion survey it provides an approximation of the response that could be expected if all adult Minnesotans had been interviewed. The editors of the Tribune developed the questionnaire used in the survey. Custom Research, Inc., Bloomington, obtained the interviews and tabulated the answers.

Results of such surveys are subject to sampling error. For a random sampling this size, it is possible to say that the error will not exceed four percentage points either way. Since this sample is taken only from households with telephones, the error may be larger than for a completely random sampling.

ENERGY CONSERVATION THROUGH ELECTRIFICATION OF THE ALASKA GAS LINE

Mr. STEVENS. Mr. President, on May 16 and 17, the Council on Environmental Quality held hearings in Anchorage on the adequacy of the environmental impact statements prepared for the three competing Alaska natural gas transportation proposals. At these hearings, Robert W. Retherford, an engineer in private practice, presented the results of a study performed for the Alaska Power Administration and the feasibility of using electric power to drive the pumps and other equipment for each of the gas pipeline proposals.

The study, entitled "North Slope Natural Gas Transport Systems and Their Potential Impact on Electric Power Supply and Uses in Alaska," concludes that an electric generation and transmission system, using new and existing facilities, could be integrated with a trans-Alaska gas pipeline to provide electricity to the major load centers of the Alaska railbelt at an average cost of 20 percent less than the most competitive alternative and, at the same time, allow an additional 8 percent of Alaskan gas to reach the marketplace.

This additional 8 percent of gas could meet the annual energy needs of nearly 750,000 American homes.

This is a classic example of how two projects can be planned together to achieve greater economies for both. Electricity is provided to Alaskan communities for homes, schools, businesses, hospitals, and other uses for 20 percent less than by any other means. And priority users in the South 48 States receive 8 percent more gas than they would if the pipeline was powered by gas turbines, as is now planned.

Such potential savings deserve a second look.

Mr. President, I ask unanimous consent that the testimony of Mr. Retherford and the overview pages of the above-mentioned study be printed in the RECORD.

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

STATEMENT OF ROBERT W. RETHERFORD

I am an Alaskan resident of 27 years with my home in Anchorage. I came to Alaska as Chief Engineer for the Chugach Electric Association in 1950. In 1954 I began the consulting engineering practice of Robert W. Retherford Associates and have continued in that practice since. The services performed are primarily those related to the electric power utilities throughout Alaska.

In reference to my request to be heard with regard to the environmental impact statements prepared for the alternate Alaska natural gas transport systems the following particular background is described:

In late 1974 and early 1975 I participated as a consultant with the Alaska Power Administration in support of a Department of Interior study team that was preparing an Environmental Impact Statement for the Alaskan Arctic Gas Pipeline Company proposal to transport natural gas from Alaska's North Slope to United States markets. The particular responsibility of the Alaska Power Administration was to assess the impact of the proposed system and its alternatives on the existing and proposed electric power generation and transmission facilities in the vicinity of the pipeline route.

In the input data prepared for this study team were included comments suggesting that electrification of the natural gas transport system would substantially improve the efficiency of the gas transport system, provide additional community benefits along the route and support the development of a renewable energy resource (hydroelectric power) that would outlive the fossil energy transport system.

In early 1976 after review of the Federal Power Commission's (FPC) Draft Environmental Impact Statement (DEIS) for the Alaska Natural Gas Transportation Systems, the Department of Interior (DOI) submitted a letter (dated February 4, 1976) to the FPC commenting about the DEIS. Included in these comments was this paragraph: ". . . We believe it would be appropriate for the final statement to examine an alternative using electric power in lieu of gas for pumping and compressor stations and liquification in Alaska. This would recognize a major potential for conservation of natural gas."

In the FPC Final Environmental Impact Statement (FEIS) the FPC staff stated in response to the DOI comment quoted above as follows: ". . . The source of electrical power for such uses would most likely come from the combustion of natural gas or petroleum products in generating plants. Such energy conversion and the required transmission systems would result in loss of energy potential and cause an increase in energy consumption rather than conservation that is asserted in this comment. The construction of electrical transmission lines would be required, further increasing construction costs and environmental impact . . ."

I disagree with the response of the Federal Power Commission staff just cited above.

I strongly agree with the suggestion of the Department of Interior that an alternative using electric power in lieu of gas for powering a gas transport system is appropriate for study. The following comments outline in brief the basis for my position:

(1) The Department of Interior (DOI) through their own agency, the Alaska Power Administration (APA), are well aware of energy alternatives to fossil fuels in Alaska. APA operates two hydro-electric projects in Alaska, carries out studies relating to additional hydro-electric and other potential energy sources throughout Alaska, collects and publishes statistical information about electric utilities and other major electricity producers throughout Alaska, and provides expert assistance in the cooperative efforts of Federal, State and Private agencies in producing the several volumes of the Alaska Power Survey in cooperation with the Federal Power Commission.

(2) The APA suggestion (through DOI) regarding possible electrification of the Alaska gas transport systems does recognize ". . . a major potential for conservation of natural gas" which could be accomplished by substituting electricity produced from alternate energy resources such as hydro-power or coal, both of which Alaska has in abundance.

(3) It is possible that the Federal Power Commission staff considered that the electric power for displacing the gas fuel ". . . would most likely come from the combustion of natural gas or petroleum products . . ." because the Southcentral and Interior regions of Alaska are now generating about 75% of their electric supply from such sources—mostly gas; however, because of the drastically increasing costs of oil and gas, much has been done to increase the development of hydrolectric resources to displace these fuels.

(4) An Interim Feasibility Report on Hydroelectric Power and Related Purposes, Upper Susitna River Basin, Southcentral Railbelt Area Alaska, has been prepared by the Corps of Engineers December 1975 (with revisions to June 1976). The Alaska Power Administration prepared the Marketability Analysis, Transmission System conceptual design and the Environmental Assessment for the Transmission system related to those projects. The report concluded that an adequate benefit/cost ratio existed to warrant proceeding with construction of the recommended development. This project would have a capacity of 1,568,000 kilowatts and an annual energy output of almost 7 billion kWh This project is a desirable addition for meeting the railbelt community electrical requirements. In combination with coal-fired electrical power plants the project could supply the requirements of an All Alaska gas transport system and the railbelt communities as well. (See APA report referred to in (6) below). The most likely sponsor for this project at present is the State of Alaska.

(5) I must disagree with the FPC staff response that electricity generated by oil and gas and used to displace the fuel gas ". . . would result in loss of energy potential and cause an increase in energy consumption rather than conservation that is asserted (by the DOI) in this comment." The state-of-the-art today is such that the efficiency of a large gas or oil fired power plant and its associated transmission system would assure delivery of energy to the shaft of a pump or compressor used on a pipeline at a substantially higher efficiency than that of the direct drive turbines proposed for the gas transport systems. The investments would be greater but about 20% less fuel would be used. (See discussion on pages 22–23 of the APA report described in (6) following.)

(6) Recognizing the significance to Alaska's electrical utilities of the gas transport proposals, the Alaska Power Administration through a contract with Robert W. Retherford Associates has prepared a report more directly addressing the relationships of potential gas pipelines to existing and potential electiric power generating and trans-

mission facilities considering power system needs through the year 2000. This report, titled "North Slope Natural Gas Transport Systems and Their Potential Impact on Electric Power Supply and Uses in Alaska" was completed in March 1977 (copy attached). The report describes in concept ". . . A feasible trans-Alaska generation and transmission system . . . that could supply electricity for gas line electrification and future community requirements . . . the cost for power delivered to the major load centers of the Alaska Railbelt would average 20% less than the most competitive power supply . . . the project would insure that an additional 8% of the Alaska gas resource would reach the marketplace . . . and (this extra gas) could supply the annual energy requirements of nearly 750,000, American homes."

It is evident to me that electrification of a gas transport system using hydroelectric and coal-fired power plants is a feasible and desirable way to substantially improve the deliverability of the natural gas and enhance the electric supply systems of communities along the way.

I believe that the Federal Power Commission did not review in sufficient depth the potential for electrification of the gas transport systems. I further believe that if electrification is accepted as feasible, which it is, it must become part of the route selection process. There is a tradeoff of electric energy for more gas delivered to the marketplace. Then it is clear that the value of the gas will pay for the electricity used in its place—hence, it will pay for the electrical systems that produce and deliver the electrical energy.

These systems assuredly will provide additional benefits to the communities along the route, such as improved reliability of electrical service and lower costs by virtue of the enhanced power supply made possible by the combined loads of community and gas transport system. Where hydroelectric facilities are incorporated there will be a residual benefit of a renewable source of energy long after the non-renewable (gas) is gone. And the marketplace benefits because it receives more energy for use where there may be no other energy choice.

In the All Alaska system, the displaced gas would be paying for Alaskan electric facilities,

In the Arctic Gas System, the displaced gas would be paying largely for Canadian electric facilities (some U.S. facilities south of the Canadian delivery points), and

In the Alcan system, the displaced gas would pay for some Alaskan electric facilities (731 miles of pipeline in Alaska), larger Canadian electric facilities (somewhat less than for the Arctic Gas route) and some U.S. facilities south of the Canadian border.

It is suggested that the relative benefits of electrified gas transport systems for the three applicants under consideration be accounted for. It is clear that this was not done in the final environmental impact statements.

I recognize that time is an important factor but I also believe that with the information available today a credible evaluation of electrification and the potential tradeoffs for each gas transport system can be developed for the President's consideration. Thank you for your time and consideration of this matter so important to all Americans concerned with energy conservation.

OVERVIEW

THE SITUATION

The magnitude of the fossil-fuel resources of Alaska is seldom comprehended in meaningful terms. For perspective, consider that if the 114.3 tcf of proven and speculative reserves of natural gas [16] in the general North Slope region were liquefied to reduce its volume by 620 times and shipped to the U.S. West Coast by large LNG (liquefied natural gas) tankers of 165,000 cubic meter capacity*, it would require 22 tankers making 28 trips a year each for 50 years. Each tanker would carry enough gas in one year to provide the annual fuel needs for 800,000 average U.S. homes.

Two pipelines of 42-inch diameter reaching about 800 miles from the North Slope to tidewater and almost 3,500,000 horsepower in compressors, refrigeration units, electric generators and miscellaneous equipment would be needed to complete the system. The fuel-gas used only to power this transport system would equal that consumed by 1,600,000 homes for 50 years. (The numbers are similar for a totally overland pipeline transport system.)

THE CHALLENGE

The impact of such an energy transport system creates two significant challenges for the Alaska electric utilities near the transport corridor: A) an opportunity to use the fuel being transported across Alaska; and B) a chance to provide electrical energy to power the transport system.

(A) The opportunity to use the clean burning natural gas for electric generation will exist when such a transport system is built. It is concluded, however, that the probable cost of this fuel and the developing national policy discouraging such use will prevail against using this new natural gas resource for long term electric generation. Alaska has suitable alternate energy supplies, such as coal and hydro resources, that can provide for the electrical requirements of the State. The following pages in Part I contain a more detailed discussion.

(B) The chance to provide electric energy to power a natural gas transport system is a major challenge. The opportunity exists to displace the fuel-gas used to power the gas transport system by using electricity. This displaced gas could then be delivered to suitable markets in the United States (including Alaska) for use in heating homes and/or supplying vital industrial processes that require the unique qualities of the natural gas. Part I of this report estimates the energy requirements of a gas transport system and the nearby Alaska communities that would be affected.

A SOLUTION

Part II describes a trans-Alaska generation and transmission system to supply these communities and electrify a gas transport system. The particular gas transport system selected for analysis is one of the El Paso Alaska alternatives that would build the gas pipeline to Cook Inlet and construct the LNG plant there instead of Prince William Sound. This scheme could utilize the proposed Anchorage-Fairbanks electric transmission line corridor already being considered as part of the Upper Susitna hydroelectric development.

SUMMARY

A feasible trans-Alaska generation and transmission system is described that could supply electricity for gas line electrification and future community reuirements. This project would require by 1985 about 2,700,000 kilowatts of hydroelectric and coal-fired steam-electric capacity and the construction of almost 1,700 miles of high voltage transmission lines extending from Prudhoe Bay to Cook Inlet. The cost for power delivered to the major load centers of the Alaska Railbelt would average 20% less than the most competitive alternate power supply. The estimated investment that would be made for this project by its completion at the end of 1985 would total about 4¼ billion dollars (60% of this amount would probably have been spent for community electric facilities in any case). The project would insure that an additional 8% of the Alaska gas resource would reach the marketplace. The value of this gas would more than pay the costs of its displacement by electric energy and could supply the annual energy requirements of nearly 750,000 American homes.

RECOMMENDATION

It is recommended that an in-depth analysis of the project described be accomplished as rapidly as practicable with particular emphasis placed on the following:

1. The critical path requirements for completing the project on an acceptable schedule to match the completion schedule of the gas transport system.

2. Review of cost estimates relating to such schedules and considering an integrated system of power plants and transmission lines.

It is also recommended that a study be initiated to consider the broader implications of such a power system, such as:

1. The opportunity to send lower cost energy by transmission lines to more remote load centers of Alaska.

2. The further uses of electrical energy for displacement of fossil fuels where practicable, such as the crude oil transport system and other future systems.

*These tankers are 122,000 tons displacement, about 100 feet long, 150 feet wide, 100 feet deep and with a 40-foot draft.

THE SENATE FARM BILL

Mr. ANDERSON. Mr. President, the Senate farm bill which we passed several weeks ago will be in conference committee, just as soon as the House acts on its version of the measure.

The Senate farm bill is a good bill in many respects. But I must say that it contains a glaring deficiency. The wheat and corn prices contained in the bill still fall below what is necessary for the farmer to meet his production costs.

There has been considerable debate about what it costs to produce a bushel of wheat and a bushel of corn. Yet one thing is certain. The cost of production for wheat is more than the $2.90 per bushel established by the Senate as the 1977 target price. It is more than the $1.75 for corn which remains the 1977 target price. And the cost of production is far more than the $2.25 loan price for wheat.

I am encouraged that the 1978 wheat target price will rise to $3.10 under the Senate proposal, that the loan price will go to $2.47, and that the 1978 target and loan prices for corn will be $2.28 and $2.20, respectively. Whether these prices will actually meet 1978 production costs is a question most farmers will answer negatively.

As far as I am concerned, Congress has an obligation to establish a cost of production figure for wheat which at least falls within the $3.00 to $3.70 range calculated by the USDA.

Unfortunately, neither the Carter administration nor the House Agriculture Committee even comes close to meeting this responsibility.

The Senate performed better. But I had hoped that Congress would be considering price supports for wheat and corn that at least approached the price levels which the Senate approved by voice vote in 1975. Believe it or not, the Senate's 1975 target price was $3.41 and the loan price was $2.89.

Is it any wonder that farmers across the land were dismayed and angry when the administration originally recommended a wheat target price that was

nearly a dollar per bushel less than what the Senate passed 2 years ago? Can anyone blame the farmers for being upset when we go into conference committee with the House with wheat target prices more than 50 cents less than the Senate offered 2 years ago?

What has changed since 1975? The cost of production certainly has—it has gone up. We have had a change of administration, and perhaps that is the key. Two years ago the Senate was willing to send the House and the President a bill which represents what the Senate considered the real needs of American family farmers.

This time, however, it seems that there is a reluctance to do open battle with the administration's farm program. The Senate Agriculture Committee is the best friend the farmer has in the U.S. Government. But after being subjected to constant pressure and veto threats, the Agriculture Committee had to approve prices, which, while substantially better than the administration's recommendations, still fell short of the solid standard which the Senate established in 1975.

Several of us prepared an amendment to raise the wheat target and loan prices to more realistic levels. We thought that perhaps the Senate might seriously consider raising the 1977 target price to $3.31 per bushel and at the same time make a significant adjustment in loan prices. We felt that these prices could be easily defended on the basis of USDA cost of production data.

It is said to report that we were not successful. The Carter administration sponsored an amendment to cut the wheat target price all the way back to $2.65. This amendment was rejected by the slimmest of margins—five votes. It became obvious that our amendment for $3.31 wheat did not have a prayer and the amendment had to be withdrawn.

The same thing happened to efforts to improve corn prices. A simple amendment to raise the 1977 target price to $1.85 lost overwhelmingly. Two years ago the Senate passed a bill that put the corn target price at $2.25.

It is tough to lose these fights. It is even more difficult to understand why the Carter administration and some of our colleagues in the House are zeroing in on wheat and corn farmers in the otherwise praiseworthy pursuit of a balanced budget.

We do know that the President inherited a farm program designed to make family farmers bear the burden of constant bust and occasional boom of an international market. Changing this legacy is not easy. But the administration has failed to meet the challenge.

It is difficult to disagree with a President, especially one as capable and dedicated as President Carter. I regret that the farm program being promoted by the administration leaves me no other choice.

It is essential that the Senate continue to oppose most vigorously the Carter administration's farm program that will, no doubt, be reflected in the House bill. I am pleased that the Senate chose to challenge the President's recommendations by increasing the wheat and corn price support levels. My only disappointment is that a majority of the Senate did not agree to carry the challenge even further.

I now urge my colleagues to keep the Senate-passed farm price support program intact. When the bill goes to conference committee with the House, the Senate conferees will be under great pressure from the administration to retreat from the wheat and corn prices set by the Senate. The Senate conferees will be asked to compromise.

I ask my Senate colleagues to remember that the Senate bill itself is already a compromise between what the administration is willing to give and what the farmer really needs. There is no need to make further concessions.

RETURNABLE BEVERAGE CONTAINERS BACK IN THE NEWS

Mr. HATFIELD. Mr. President, I would like to call to the attention of my colleagues two articles which recently appeared in the Washington Star and the Washington Post concerning State and national efforts to pass returnable beverage container legislation.

In the Washington Star of June 22, 1977, former Oregon Governor and longtime proponent of deposit legislation, Tom McCall, in his usual eloquent and forthright manner, expressed his strong concern that positive action on this proposal be taken both at the State and national level. The Washington Post, on the following day, June 23, 1977, published an editorial endorsing legislation that I have offered in the Senate and that Congressman JIM JEFFORDS has offered in the House that would encourage the reuse of bottles and the recycling of cans through a national mandatory uniform deposit program.

While no substantive action has yet occurred on either of these bills, I am confident that as more States pass their own container laws and as we progress further on national energy and materials policies, these proposals will receive favorable hearing. It is my understanding that the Science and Technology Subcommittee of the Senate Commerce Committee intends to hold hearings next month to receive the report of the National Commission on Supplies and Shortages. My colleagues will remember that this report endorses the returnable beverage container concept. I would hope and will strongly urge members of the subcommittee to include a section on beverage containers in whatever legislation is drafted from this report.

Mr. President, I ask unanimous consent that the two articles mentioned earlier be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, June 23, 1977]

THE GROSS NATIONAL TRASHPILE

Despite multi-million-dollar lobbying by those who are in the business of manufacturing or using throwaway bottles and cans, the nation's war against junk may be gaining new allies in Congress. Study after study keeps showing not only that throwaways are desecrating the national landscape and costing consumers unnecessarily for packaging and retrieval, but that they also are a waste of energy and resources. So there is increasing sentiment to reverse this no-deposit, no-return attitude about resources through passage of returnable-beverage-container legislation.

Tens of billions of throwaways are produced in the United States each year. That's a lot of trash. It's also a monument to wasted energy, as sponsors of the container legislation keep pointing out. Sen. Mark O. Hatfield (R-Oreg.) has been leading the Senate effort for deposits on bottles and cans as an incentive for the marketing of refillable beverage containers. He can point to numerous reports by government and citizen groups that cite potential energy savings through a revival of returnables. For example, estimates show possible savings of 115,000 barrels of oil a day and 7 million tons of reusable materials each year through a nationwide return to refillable containers.

To be sure, the statistics all leave some room for dispute by the industries that continue to foist millions of tons of steel, aluminum and glass on consumers (along with cheery reminders to use litter baskets). But it would seem only common sense that these billions of bottles and cans—whether strewn all over the land or stacked in little piles to be recycled at additional energy expense—are an expensive and offensive excess.

In the Senate, the legislation enjoys strong support not only from Sen. Hatfield, but also from Sen. Bob Packwood, Mr. Hatfield's Republican colleague from Oregon—where a popular, effective state law has been on the books for some years now. In the House, Rep. James M. Jeffords, Republican from Vermont—which also has such a law—heads a bipartisan list of 55 cosponsors. The nearly identical House and Senate bills would simply require that over the next three years, each soft-drink and beer container carry a statement of its refund value of at least a nickel.

Already, wise consumers have discovered that, where deposit returnables have been readily available, the savings can be considerable. Moreover, no consumer would be required to return anything; the deposit merely would serve as a strong incentive to the packaging industries to let consumers borrow reuseable containers instead of repeatedly buying new cans and bottles. Through a uniform national changeover to refillables, the system would be handy for consumers, who now can't always find their favorite products in this sensible packaging.

As for the impact on industries in this market, most of the gloomiest estimates put out by opponents of the bill have assumed a complete and sudden switch to returnables. Not only would the shift be gradual, but, moreover, as the Environmental Protection Agency has noted, a nationwide phasing-in would minimize adverse repercussions. Besides, all indications are that there would be no net loss in jobs due to such a gradual shift.

So quite aside from absurdity of continuing to manufacture a gross national trashpile every year, there is a clear national interest in this energy- and resource-conservation measure. The immediate question is whether the legislation will receive proper congressional consideration in Congress. In the Senate, the bill rests with the Commerce Committee's consumer subcommittee. In the House, the measure is tied up in an Interstate and Foreign Commerce subcommittee on transportation and commerce, headed by Rep. Fred R. Rooney (D-Pa.), who—along with steel and brewery interests in his district—isn't eager to see the bill approved. While their concerns about the impact of the bill are understandable, the container bill is a reasonable measure that, instead of causing harmful upheaval, is meant to curb a foolish, expensive waste of increasingly pre-

cious resources. It deserves enactment in this session of Congress.

[From the Washington Star, June 22, 1977]

COP-OUT ON THE BOTTLE BILL

(By Tom McCall)

PORTLAND, ORE.—We haven't seen the smoke yet, but you have to assume it's coming.

There just has to be volcanic motion beginning to gurgle and puff somewhere inside the Carter administration.

Clear out here in Oregon even we know of a couple of right turns of the Carter hierarchy calculated to make activists smoulder.

We're not very radical activists out here—really more innovators than placard-wavers—but where the DEVIL, for example, is the Bottle Bill in the thinking of this administration?

And why hasn't Carter consumerists Esther Peterson let it be known to some of us that the Carterites eagerly intend to induce Congress to reverse the recent U.S. Supreme Court "license to cheat" opinion.

Has former people's lobbyist Carol Tucker Foreman lost her tongue, now that she's folded into The Establishment as an assistant secretary of agriculture for consumer affairs?

Where's Doug Costle on the Bottle Bill? Or skip the Environmental Protection Agency, which he heads, and shoot right up to the top, to energy czar James Schlesinger. How come Schlesinger overlooks this Oregon-born legislation—so symbolic and yet so fruitful?

It's symbolic because it provides a visible, practical, easy-to-cross bridge from a profligate to a husbanding society. It shows we can do it and encourages us to think of the many other ways we can make the transition which isn't all that rough; a small slide from an opulent to a merely affluent life.

But you've got to get going, and here was a starter that couldn't miss—a national returnable container deposit law. A year-long study by the Federal Energy Administration, based on only 10–15 trips for a refillable bottle, estimated the legislation would result in creation of 118,999 jobs (net) and savings of 81,000 barrels of oil per day. Thirty-five trips is closer to actuality, and last year Oregon's only brewery found a real trouper in its float of returnables—an 11-ounce brown glass stubby made in 1933.

Where was President Jimmy on that issue? Who scared him off? Was it the union labor brass he'd so bitterly disappointed on situs picketing and the Federal minimum wage, or was it some of the half-dozen administration higher-ups who used to have connections with Coca Cola's Georgia-based national headquarters?

Maybe it's their international headquarters: I don't know for sure. I do know Coke has a major administrative operation in Atlanta. I do know they're active against the Bottle Bill as part of an industry team of adversaries spending millions to push around gutless members of Congress and state legislators and to smother the truth with cascades of dollars and deceitful propaganda targeted in on state and local initiatives and referenda.

The bottlers, brewers and their package-makers got trimmed bady last November, though, in votes in Michigan and Maine, and they just barely managed to buy the Bottle Bill election in Massachusetts.

Containers also are central to our resentment of the Supreme Court decision disallowing state truth-in-packaging laws tougher than federal standards. Oregon and 31 other states sided with California in a lawsuit arguing that the states had the right to exceed federal packaging requirements in order to offer greater protection to the consumer.

Like Oregon's, the California law mandated that bacon and flour, for example, sold at the grocery store, weigh exactly what their package said they weighed. The March Supreme Court decision decreed otherwise, declaring that a 60-year old administrative practice permitted "reasonable variations" between the weight on the label and actual weight of the contents.

Had Congress wanted it different, a Supreme Court majority argued, it could have said so loud and clear a long time ago.

My old state director of agriculture when I was governor, Irvin Mann, calls that "a license to cheat" rationale.

"If President Carter is truly consumer oriented, he'll ask Congress to repair this very basic, essential breach in consumer protection," Mann challenged.

But will he? White House silence indicates that the boat in which the President and Congress fitfully ride will not be rocked on this one. If moderate Republicans in Oregon are aroused by this lack of pro-consumer zeal—and by a cop-out on the Bottle Bill—one wonders how long the Democratic activists in the Carter administration will sit on their smoking hands.

MULTIPURPOSE SENIOR CENTERS

Mr. CHURCH. Mr. President, I am pleased to announce that the Department of Health, Education, and Welfare will issue final regulations this week for the title V multipurpose senior centers programs of the Older Americans Act. These regulations have been long awaited by the State offices on aging and older Americans who are eager to expand or start-up senior centers in their communities.

Title V authorizes funds for renovating, altering or acquiring facilities to be used as multipurpose senior centers. I am particularly pleased to learn that the administration agrees with Congress that these funds can be used for limited expansion of senior centers. There was some question whether limited expansion could be supported by title V, since the statute prohibits funding for construction purposes. However, the Department has agreed with an interpretation expressed by myself and members of the Human Resources Committee and the Committee on Aging that limited expansion can be supported under this title. I ask unanimous consent that our letter to Secretary Califano be printed at the close of my remarks.

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

(See exhibit 1.)

Mr. CHURCH. Mr. President, the issuance of these regulations means that the $20 million appropriation for title V for fiscal year 1977 will finally be released. This will support approximately 2,000 centers throughout the country. I am sure that my colleagues join me in welcoming the issuance of these regulations which will bring many more of these effective, popular senior centers to their communities.

I also wish to commend Secretary Califano for his prompt action in response to our letter.

The letter follows:

EXHIBIT 1

SPECIAL COMMITTEE ON AGING,
Washington, D.C., June 7, 1977.

Hon. JOSEPH A. CALIFANO, Jr.
Secretary, Department of Health, Education, and Welfare, Washington, D.C. 20201.

DEAR MR. SECRETARY: As you know, the 1973 Older Americans Amendments established a new Title V to fund multipurpose senior centers. Funding is authorized for "acquiring, altering, or renovating existing facilities to serve as multipurpose senior centers.

For fiscal 1977 the Congress appropriated $20 million for Title V. However, the Administration on Aging has not yet allocated these funds because final regulations to implement Title V have not been published. It is our understanding that your Department plans to issue the regulations soon, and we would urge this be done as promptly as possible.

We have been informed that the General Counsel's office has construed Title V—as it is now drafted—to prohibit grantees or applicants from adding cubic footage or expanding existing facilities to be used as senior centers. In 1973 the Senate removed the authority for the construction of multipurpose senior centers. The intent was to insure that Title V would not become a costly "bricks and mortar" program. The purpose, though, was to prevent the erection or building of an entirely new facility to be used as a senior center. There was no intent, in our view, to prohibit a Title V grantee or applicant from altering a facility by expanding it to make the building more suitable as a senior center. This type of alteration would certainly increase the floor space of an existing facility, but it is not within the meaning of the prohibited "construction." The General Counsel's construction of the language in Title V may have the unintended effect of forcing applicants to acquire a new facility at a much higher cost than the modest expansion of an existing facility.

We, therefore, urge that you give serious consideration to modifying the soon-to-be issued regulations to permit limited expansion of existing facilities to serve as multipurpose senior centers.

Thank you and best wishes,

Sincerely,

FRANK CHURCH,
THOMAS F. EAGLETON,
HARRISON A. WILLIAMS, JR.,
PETE V. DOMENICI,
JOHN H. CHAFEE,
JACOB K. JAVITS.

SOLAR ENERGY FOR HOMES

Mr. LEAHY. Mr. President, earlier this year I cosponsored a comprehensive package of legislation designed to foster the development of solar energy as an alternative to conventional heating and cooling systems. The package combines several financial incentives including low-interest and guaranteed loans, grants, and tax credits.

Hopefully, most, if not all of this legislation will be enacted by Congress. Given the realities of the legislative process, however, it will probably be some time before many Americans will be able to benefit from these incentives.

In the meantime, the price of oil and gas will continue to increase and claim a larger and larger portion of the average family's already overburdened budget.

To help meet these interim needs I introduced three bills, the Solar Energy for Homes Acts on June 22. These bills would make use of existing mechanisms to promote solar energy use and development by amending the Federal Housing Administration—FHA, Veterans' Administration—VA, and Farmers Home Administration—FmHA—loan programs. Essentially, the bills will insure that solar heating and cooling equipment is treated the same as con-

ventional equipment for the purposes of Federal housing loan programs. These bills would remove the remaining institutional barriers that are still part of our current programs—and allow those who qualify for these programs and wish to install solar equipment to do so quickly, easily, and more cheaply.

Some of these barriers were the result of a lack of information, and some were simply due to the fact that the programs had not kept up with the rapidly changing energy situation and the technological advances that made possible alternatives to conventional fossil fueled systems.

For example, until very recently FHA denied Government loans or loan guarantees to applicants who preferred solar over conventional systems for heating and cooling the property on which they sought to secure loans. FHA felt that it could not approve any solar systems for its minimum property standards—standards which must be met in order to qualify for Federal housing loan programs—simply due to a lack of sufficient available research and information.

With the information provided by the solar heating and cooling demonstration program authorized by Public Law 93-409, FHA was able to formulate intermediate standards for solar equipment. Solar systems which meet these interim standards will now be approved by FHA and can be included in applications for its loan programs. Final standards will be available by 1980.

However, there is still a feature of many of these programs which discourages potential mortgagors from "going solar." Most Federal mortgage programs have limits on the size of loans which may be made or insured. For example, the section 235 program under which low-income families can get insured loans has a basic limit of $21,600 on the size of an insured loan for a new home. A solar system can cost between $2,000 and $4,000 more than a conventional, fossil-fueled heating or cooling system. Inclusion of such a system in a new home thus could easily put a family over the limit. Hence they would be more likely to choose a conventional system in order to qualify for the low-interest loan, a system which over its useful life, might actually be more expensive than the initially higher-priced solar system.

Thus, while solar equipment is no longer specifically excluded from HUD loan programs, loan limits which do not—and realistically could not—reflect the higher initial cost of solar as opposed to conventional thermal equipment discourage the purchase of solar systems. Solar equipment has low life-cycle costs, even though the initial cost is high. Over 10 to 15 years, solar equipment has lower life-cycle costs than conventional equipment. But loan limits reflect only the initial costs.

A similar problem exists with regard to the VA guaranteed loan program. The FmHA housing programs simply do not have explicit authority to make or guarantee farm improvement loans for solar equipment.

Mr. President, I would like to take a moment to briefly describe what each of these bills will do.

S. 1737 would address the loan limitation problem in the HUD programs under FHA by allowing loan limits to be increased by up to 20 percent, if necessary, only to cover the extra cost of the solar equipment. In addition, all solar equipment included as part of the HUD loans would have to meet HUD standards.

S. 1738 amends the Consolidated Farm and Rural Development Act to explicitly include solar equipment among the items for which farm improvement loans may be made or guaranteed.

S. 1736 deals with the VA loans programs, and would include solar equipment among the qualified items for which the VA guaranteed loans to veterans can be made. Under this bill, qualified solar equipment could not exceed 20 percent of the value of the home in which it is installed.

The overall effect of these three bills would be to provide the same benefits of Federal loan programs to those who heat and cool their homes with the sun's rays as are currently available to those who prefer conventional systems.

Because they take advantage of existing programs by simply removing institutional barriers to make the programs more equitable, the bills also have the advantage of creating no new bureaucracies. No new spending authority would be required. Intermediate performance criteria developed by HUD in the solar heating and cooling demonstration program would provide consumer protection.

Mr. President, Congressman BAUCUS of Montana has already introduced identical legislation in the House. Language similar to the concepts contained in S. 1737 and S. 1738 has already been incorporated into bills that will come to the floor of the House soon as a result. Consequently, I am optimistic about passage during this session of Congress.

Mr. President, if we are sincere in our desire to offer solar and other renewable energy sources as viable alternatives to conventional systems which depend upon increasingly scarce and expensive fossil fuels, then we at the Federal level must set an example by getting our own house in order first. My hope is that this Congress will also enact additional financial incentives, such as those which have already been proposed for our tax structure. However, these bills offer a small, but very significant, simple, and inexpensive step forward now.

DANGERS IN DILUTING HATCH ACT

Mr. HELMS. Mr. President, many of us have viewed with regret the recent vote by the House of Representatives to repeal the Hatch Act. There have been some attempts to characterize opposition to the Hatch Act repeal as a partisan endeavor. Nothing could be further from the truth, of course.

The morning newspaper in my hometown of Raleigh, N.C., the News and Observer, can scarcely be regarded as a conservative publication. It is fiercely partisan in its espousal of Democratic Party politics, as it has every right to be. It is noteworthy, therefore, that this newspaper, in its June 9 edition, published an excellent lead editorial.

My friend, Claude Sitton, editor of the News and Observer, may feel a bit faint when he discovers that I have done so, but I commend him for his perception of the real issue. After all, the protection afforded Federal career workers by the Hatch Act is more important and of longer term than any ephemeral political realities.

Today the liberals and Democrats are in power; tomorrow, the conservatives or Republicans may take their place. During a civil service employee's career, the reins of Government change. The important thing is that career employees be able to go about their duties in a conscientious manner, free from burdensome political pressures totally unrelated to their job.

Mr. President, I ask unanimous consent that the aforementioned editorial, entitled "Dangers in Diluting Hatch Act" be printed in the RECORD.

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

DANGERS IN DILUTING HATCH ACT

The U.S. House of Representatives has taken off in the wrong direction with Tuesday's vote to weaken the Hatch Act. This move should be halted by the Senate.

The Hatch Act, passed in 1939, bars most (but not all) active politicking by federal and postal employes. The purpose is to assure impartial administration of U.S. laws and programs, and to promote equitable treatment of workers without regard to their political leanings.

Generally, the law has worked well for almost 40 years. Meantime, it has left federal workers free to join and contribute to political parties and to take part in non-partisan politics—which describes about 75 per cent of local elections in this country.

Traditional arguments against the Hatch Act are that it infringes on First Amendment rights of federal workers. However, the U.S. Supreme Court has upheld the law three times.

In its most recent ruling four years ago, the court catalogued the risks of Hatch Act repeal: biased federal administration, a government work force shaped into a huge political machine, employe treatment based on partisan considerations and pressure on U.S. employes to do political chores. "It is in the best interest of the country, indeed essential, that federal service should depend on meritorious performance in rather than political service," said the court.

The House-passed bill to weaken the Hatch Act does contain safeguards. Federal employes would have to use their own time—not the taxpayers—for political activities. Politicking in government buildings would be barred. Also, the bill would keep under the original Hatch Act rules all U.S. inspectors, law enforcement and national security employes, workers handling contracts for goods and services and those awarding grants or licenses.

But these restrictions still would leave far too much danger of federal employes becoming subject to political pressure or tempted to exert it. That is an excellent reason for the Senate to reject the measure.

OTA FOOD GRADING REPORT

Mr. HUMPHREY. Mr. President, today I would like to note the release of a report, "Perspectives on Federal Retail Food Grading," by the Office of Technology Assessment. This report, re-

quested by my good friend and colleague, the Senator from South Dakota (Mr. McGOVERN), chairman of the Select Committee on Nutrition and Human Needs, is an effort to assess the important issue of Federal food grading and how it might be changed to provide more useful information to consumers.

Today consumers are demanding more information to help them in making wise purchasing decisions with their limited food dollars. My good friend, Secretary of Agriculture Bob Bergland, realizes this and he and his colleagues are giving this area increased attention. The Assistant Secretary for Food and Consumer Services, Ms. Carol Foreman, is concerned that the present food grading standards do not mean a great deal to consumers. In a speech before the Agriculture Editors Association, she stated that—

We need to re-examine these grades and simplify them so they help instead of befuddle the consumer.

This OTA report constitutes the first comprehensive study of the present program. The objective of this report was to try to establish how Federal programs could convey more information to consumers. This report provides Congress and the administration with an objective analysis of the program and a wide range of options that can be used to modify the program to provide this information.

OTA's report will be forwarded to the Select Committee on Nutrition and Human Needs today. As a member of both Senator McGOVERN's committee and the Technology Assessment Board, I welcome this report. I recommend this report to the Members of this body.

Mr. President, I ask unanimous consent that Part I, "Summary of the Issues, Findings and Congressional Options," be printed in the RECORD.

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

SUMMARY OF ISSUES, FINDINGS, AND CONGRESSIONAL OPTIONS

INTRODUCTION

Food grading is basically a sorting process, a method of separating a food product into two or more groups through the use of chosen base criteria. Once separation is accomplished, the grade assigned should directly impart the criteria used in its determination. Grades are not used for sorting across products—i.e., apples from pears—but rather within products—i.e., apples from other apples.

Present Federal food grades impart little information to the consumer. Federal grade criteria for sorting products are based on sensory characteristics—such as taste, flavor, color, or exterior appearance—and evolved as a mechanism to facilitate wholesome transactions in industry. To benefit consumers, simple, uniform terminology, increased nutritional information, and standardized systems for grading might be established. The question now arises as to whom grades should serve: consumers, industry, or both?

Industry and consumers are affected by:

which food products are graded;

what criteria are chosen for the grade;

how the grade is designated on the product; and

where grading occurs in the food distribution channel.

This study assesses the social, institutional, and economic consequences of modifying or changing the present grading system to a retail- or consumer-oriented grading system. Public policy issues of significant concern to Congress and the Nation surrounding Federal retail food grading are defined.

These issues are:

(1) the criteria (or sorting rules) used for grades;

(2) whether or not retail grades should be mandatory; and

(3) the nomenclature used for grades.

The Office of Technology Assessment found that each major food category—processed foods, fresh fruits and vegetables, and fresh red meat—poses a different problem. Therefore, potential costs and benefits (with respect to a retail-oriented food-grading system useful to consumers for making better food-purchase decisions) differ for each category. The issues, as they relate to each of these broad product categories, are discussed in the text, and possible congressional options for each grading issue are identified. Each option has a cost; none are free. Also, each option has potential benefit to consumers. Careful consideration should be given to the net benefit (cost in relation to benefit) prior to adoption of any particular option. In this report, a full range of congressional options are stated regardless of the potential relative or absolute net benefit to various participants in the food distribution system.

ISSUE I: GRADE CRITERIA—COMBINING SENSORY CHARACTERISTICS AND NUTRITIONAL CRITERIA

Current food grades are based on criteria reflecting sensory characteristics such as flavor, texture, color, or other palatibility or cosmetic factors. A major issue in food grading, is whether to change this basis to reflect sensory and nutritional factors simultaneously. The issue is complex. One general problem associated with making nutritional content a basis for grades is that nutrition deals with diet. As one food grading workshop (see methodology) participant states:

We can conceive of a nutritious diet, but the concept of a nutritious food product has never been developed. There are many components of a nutritious diet, and the concept of getting them all in a product is very repulsive to nutritionists and, I think, the populous in general. So there is a very great difficulty in nutrition labeling. Any product is a component of a diet, and it may be a useful component although it is very lopsided in its individual characteristics. What makes a nutritious product is what other products it is combined with in a day or a period of several days. We have a conception of nutritional diet; we do not have a conception of nutritional product.[1]

FINDINGS

Current Government programs for processed foods include regulation of food products for wholesomeness and safety standards of identity, fair labeling and packaging, and optional nutritional labeling and grading systems. In addition, most major food manufacturers have elaborate quality control programs that assure compliance with Government regulations and their own specifications. Retail grade criteria should not be changed to reflect some combination of sensory and nutritional factors, as it is not meaningful to grade processed foods on both. Problems include an inverse relationship between sensory and nutritional characteristics and the time lag necessary to establish nutritional content and grade and label the product. For processed foods, analysis by OTA indicates that the most appropriate vehicle for conveying nutritional information to consumers is the nutritional labeling program already in operation.

With regard to fresh fruits and vegetables and red meat, nutritional factors apparently cannot be combined with sensory factors and serve as basis for retail grades. Evidence in this report indicates that the nutritional content of fresh products is quite similar within any particular commodity. For example, apples, regardless of variety, tend to have similar nutritional characteristics, as does round steak regardless of cattle breed. This means that nutrition information cannot serve as a meaningful basis for sorting (therefore grading) various products within a commodity category.

There are a number of options for increasing the flow of nutritional information to consumers, the intent being that such information would facilitate food purchase decisions. The range is wide. Some options deal directly with grade criteria changes, while others deal with increasing consumer nutrition education.

CONGRESSIONAL OPTIONS

The following are some of the options available to Congress for the grade criteria issue:

Congress could direct the Department of Agriculture (USDA) to facilitate the adoption of a voluntary/mandatory nutritional labeling program for fresh retail meat cuts.

Congress could support or provide incentives for education programs by Government agencies or the private sector to inform consumers about:

1. The nutrition of fresh fruits and vegetable products and also the differences in nutritive content from one commodity to another; and

2. The nutrition of processed food products and interpretation and use of the current nutritional labeling program and/or grades for processed food products.

Congress could direct the Food and Drug Administration (FDA) to disseminate information to consumers concerning those programs currently in operation that assure the safety, wholesomeness, labeling, and identity of most manufactured or processed food products.

Congress could direct USDA to administer a standard labeling and variety identification program for fresh fruits and vegetables that are sold in retail packages.

Congress could direct USDA to institute voluntary/mandatory program of retail meat grades where grade criteria are based on yield per pound or per serving. Such a program should not be instituted, however, prior to a program that would assure uniform identification of retail meat cuts.

Since net benefit of any retail grade scheme for meat is highly dependent upon the type of meat distribution system in existence, committees of Congress with jurisdictional authority could examine the potential for improving the distribution costs of meat from various systems (such as conventional compared to centralized frozen) in oversight hearings. Such hearings could produce further evidence on the potential impacts and benefts of retail grade alternatives for meat.

ISSUE II: VOLUNTARY OR MANDATORY SYSTEM

There are three basic systems that might be used for grading under the voluntary/mandatory issue:

Private voluntary system

With a private system, the development of standards for grading and the adoption of those standards are done by industry and used voluntarily.

Voluntary/mandatory system

Under a voluntary/mandatory system, Federal Government grades are established. Any business firm that elects to enroll in the Federal program would be required to adopt the established grades.

[1] Transcripts from food grading workshop conducted by OTA on July 28–29, 1976 (hereafter referred to as Workshop vol. —). Workshop, vol. I, pp. 136–137.

Mandatory system

The mandatory system would establish the Federal grades, and use of these grades would be required by law.

FINDINGS

A private voluntary system would be of little use as an information aid in purchase decisions as it would not be expected to have wide industry adoption. From a consumer information viewpoint, the only beneficial grading system would be either an improved voluntary/mandatory system or a mandatory one. Federal grade systems for all food products are currently voluntary/mandatory, and the relative advantages and disadvantages of this system—as opposed to a completely mandatory grading system—are as follows:

Mandatory grading of food would be more costly than the current voluntary/mandatory system. This means that for a mandatory system to produce a positive net consumer benefit, the benefits from a mandatory system must exceed those of a voluntary/mandatory system.

For processed foods, OTA's analysis indicated that a mandatory system probably would not produce a positive net consumer benefit. Brand names partially substitute for retail grades. They have allowed society to exercise its perception of quality by selection of one brand name over another. A mandatory grading system would largely duplicate the information brand names currently provide consumers.

If retail grades were mandatory for processed foods, an inevitable consequence would be to suppress differentiation or variability and evolution of product characteristics. Thus, if society looks at the choice of whether or not to institute retail grades for processed foods, an important implication of that choice is what products should be stabilized in terms of characteristics, and what products should be permitted to continue to evolve.

There is no concentration point of firms in the handling of fresh fruits and vegetables relative to other product-marketing channels. This means no economical point exists in the fresh fruits and vegetables marketing channel for interception of large quantities of a product for the purpose of mandatory grading. A strictly mandatory system of grades, therefore, could be extremely expensive because the industry is structurally dispersed. A mandatory system probably would not produce a positive net benefit to consumers, since mandatory grading costs would be substantial and the additional information provided would likely be of marginal benefit to most consumer purchase decisions.

The current fresh red meat marketing channel, unlike fresh fruits and vegetables, does have points of relative concentration of firms. Given this structure, mandatory retail grading is viewed as potentially more feasible. However, net consumer benefit from mandatory grading as opposed to the current voluntary/mandatory system depends on the type of retail grading system implemented and on the type of distribution system for red meat assumed prior to net-benefit calculations.

Three possible systems for red meat grading are analyzed in this report:

(1) yield per pound or per serving;

(2) uniform mandatory retail cut identity labeling; and

(3) a combination of current grades with the other two systems.

There is however, a direct relationship between the type of meat distribution system and the cost of any mandatory retail grading system. This means that net consumer benefit varies by both the type of grading base and the type of distribution system. Further detailed analysis, beyond the scope of this report, is necessary before net consumer benefit from any combination of grading and distribution systems can be determined.

CONGRESSIONAL OPTIONS

The following are some of the options available to Congress for the voluntary or mandatory grading issue:

Congress could make grading mandatory:

For processed foods, designation of current grades could be made mandatory on retail packages for selected products.

For fresh fruits and vegetables, the current wholesale grade criteria could be used and designation of the grade could be made mandatory at retail.

For fresh red meat, the current carcass-grade criteria could be used, and the grade could be designated on all individual retail meat packages.

Congress could make grade designations at retail mandatory for any food product which is currently graded on a voluntary/mandatory basis. That is, if the product is graded, then the retail package must display that grade.

Congress could provide incentives for widespread adoption by industry of the current voluntary/mandatory system for each major product category. Incentives could include a tax break for business firms that adopt the program and/or a direct subsidy to defray the initial cost of the program.

ISSUE III: GRADE DESIGNATION OR NOMENCLATURE

Confusing grade designation or nomenclature is a major problem for consumers in both fresh fruits and vegetables and processed foods. Uniform, easily understood terminology across grades is a basic need to aid consumers in making food purchase decisions.

There are two basic concerns regarding uniform nomenclature. One is the trade-off between meaningfulness and simplicity in terminology. That is, extremely simple designation for grades (such as A, B, C) impart no meaning in terms of grade criteria. More descriptive grades (such as young, tender, or extra fancy) are more complicated to use but may be more meaningful.

A second concern is that nearly all conceivable grade designations imply rank. One objection to the implication of rank is that a second- or third-grade product may in fact be superior to the top grade, depending on its use or relative price. If simple grade designations were uniformly adopted, such implications of rank might mislead consumers or impart incorrect information to them.

FINDINGS

There are unsettled questions regarding the optimum terminology for grades of fresh fruits and vegetables and processed foods. However, no reasons have been found for not instituting uniform designations for these products, regardless of the terminology chosen.

The terminology currently used for fresh red meat is uniform for all such products. However, one of the more significant consumer information needs is standard identification of individual retail meat cuts and standardized retail package labels. Voluntary identification and labeling standards devised by the National Livestock and Meat Board, exist for fresh beef. This voluntary program has been adopted as law in some States.

CONGRESSIONAL OPTIONS

The following are some of the options available to Congress for the grade designation issue:

Congress could standardize nomenclature for the first, second, third, and fourth grades for both processed foods and fresh fruits and vegetables, so they would be consistent from one product to another.

Congress could direct USDA to immediately adopt the new simplified grade nomenclature for fresh fruits and vegetables it announced in July 1976. This would mean that adoption of this program would not remain at the discretion of growers or processors of these commodities.

Congress could direct USDA to administer a standard labeling and variety identification program for fresh fruits and vegetables sold in retail packages.

Congress could make the current voluntary program on meat identification standards mandatory for all retail meat cuts. This would facilitate uniform identification of retail meat cuts.

THE INDIAN CHILD WELFARE ACT OF 1977

Mr. ABOUREZK. Mr. President, on April 1 of this year, I introduced the Indian Child Welfare Act of 1977, with the cosponsorship of my friends and colleagues, Senator HUMPHREY and Senator MCGOVERN. I am happy to announce that we have been joined by another of our colleagues, Senator HASKELL. I will be glad to add others who may be willing to support this much needed proposal.

Many questions are raised about Federal responsibility and past Federal action in this regard. For example, why has the Federal Government, under the auspices of the Bureau of Indian Affairs and the Department of Health, Education, and Welfare, not been active enough in supporting and protecting Indian families? Why do State welfare departments, which receive substantial amounts of Federal dollars for the welfare of Indian children, continue to take actions which appear to be against the best interests of those children and families who the funds are intended to help? Why do the BIA and HEW have no adequate family rehabilitation and protection programs in Indian communities? Why is it that the BIA and HEW, by their silent complicity, continue to fund State welfare programs which act unlawfully toward Indian families and their children?

Although there has been no widely accepted national study of this problem, most estimates indicate that the number of Indian children in out-of-home placements has been extremely high. A 1962 BIA study of children whose foster care was paid for by the BIA estimated a rate of placement double that for non-Indian children.

During our 1974 Senate hearings on Indian child welfare, several speakers presented statistics on the numbers of Indian children in placement. Dr. James Shore, director of community psychiatry training program for psychiatric residents in the State of Oregon and associate professor at the University of Oregon Medical School, former chief of mental health programs for the Indian Health Service in the Pacific Northwest, stated that 28 percent of the youth under age 18 of the Confederated Tribes of the Warm Springs Reservation in Oregon were in placement several years earlier. Thirty-four percent of these were in foster care placement by the State, 21 percent were in boarding schools, and the remainder were in other off-reservation homes or in tribal foster homes.

A published article by Dr. Joseph Westermeyer, department of psychiatry, University of Minnesota, which was entered into the records, reports statistics from a Minnesota study conducted

between 1969 and 1971, which found that—

The rate of foster placement and state guardianship for Indian children ran 20 to 80 times that for majority children in all counties studied.

Several speakers at the hearings also referred to statistics estimated by the American Association on Indian Affairs, Inc.—AAIA—Which were entered into the record. The AAIA estimates indicate that one out of every eight Indian children in Minnesota was in an adoptive home and that Indian children were placed in foster homes at a rate 4 to 5 times higher than non-Indian children in Minnesota; 2.6 times higher in Arizona; 15.7 times higher in South Dakota; and 9.6 times higher in Washington.

A memorandum from the BIA Billings area director to the Commissioner of Indian Affairs, BIA, agrees with the AAIA estimate that "in Montana Indian children are placed in foster homes at a rate 10 times the national average." However, he disputes the AAIA estimate that 96 percent of foster care placements in Montana are of Indian children. The memorandum cites State figures as of January 1973 that approximately 30 percent of foster care placements made by the State are of Indian children. If BIA foster care placements are included, the percentage rises to 54-percent Indian. If placements in BIA boarding schools and boarding dormitories for social reasons are added and other cases involving Indian children who are living away from home but are not in foster care or in a boarding school, then Indian children account for 17.3 percent of all out-of-home placements in Montana as of January 1973.

REASONS FOR OUT-OF-HOME PLACEMENTS

Several reasons have been suggested for the high volume of out-of-home placements of Indian children. First of all, for many years, placements in BIA boarding schools and missionary schools and placements in white foster homes combined with BIA or public school education seemed too many people to be deliberate devices for encouraging Indian children to assimilate into Anglo society. Second, the lack of preventive and supportive services on reservations and in urban Indian communities contributes to the higher placement rates. Third, the high rate of alcohol abuse among Indians has also caused social workers to remove Indian children from their homes in disproportionate numbers. For example, Dr. James Shore reported that alcohol abuse was the primary cause for child removal in 95 percent of the cases on the Warm Springs Reservation.

Some witnesses at our 1974 hearings attributed the high placement rates for Indians to the application of culturally biased standards in judging whether or not an Indian child should be removed from his or her home. William Byler of the AAIA stated that the persons responsible for making decisions about child neglect may not be equipped by their professional training to decide whether or not a child is suffering emotional damage at home, in spite of conditions which might indicate neglect in an Anglo middle-class home. For example, Indian children are given a great deal more responsibility that is common in Anglo culture. They may play farther from home unsupervised by an adult—although other children are usually responsible for the younger ones. Dr. Joseph Westermeyer also found that in Minnesota parents leaving young children in the care of 8- or 10-year-old children were charged with abandonment.

Several witnesses at the hearings testified to another cause of high out-of-home placement rates of Indian children—the failure of officials to follow proper legal procedures in cases involving the removal of Indian children, thus taking advantage of Indian parents who were not aware of their rights. A number of witnesses at the hearings were Indian people who had lost custody of their children, and their testimony indicated substantial abuses of proper legal procedures. These parents were often unaware of their rights and were not informed of them, and they were not given adequate advice or legal assistance at the time when they lost custody of their children.

Drs. Mindell, child psychiatrist on the faculty of the department of psychiatry at Albany Medical College, and Gurwitt, associate clinical professor in child psychiatry, testified to another cause for the removal of Indian children:

The decision to remove a child from his parents is often made by poorly trained federal and state agency personnel and without the parents' understanding their rights; *e.g.*, where they may voluntarily waive their parental rights without understanding the implications.

Although social workers cannot remove a child from a home without a court order, it is important to note that in the tribal courts the Indian parent usually does not have a professional attorney and may be unable to counteract the professional knowledge of the non-Indian social worker through cross-examination. Dr. Gurwitt stated at the hearings that "the child has had no advocate in court to represent his interests, nor in most cases—have—his parents." Dr. Carl Mindell indicated that courts usually take the word of the welfare worker more readily than the word of the parents.

THE IMPACT OF REMOVING CHILDREN FROM THEIR HOMES

An important issue with regard to the placement of Indian children is the effect of placement on both the children and the family. Westermeyer found in Minnesota that "when the children were taken away by a social agency, the Indian couple split up immediately or soon afterward—no exceptions to this were encountered by the authors or reported by informants." A witness at the hearings from Pine Ridge, S. Dak., reported, on the basis of a survey on the Rosebud Reservation, that:

I found most of the people are concerned about the Indian children, but it seems to me like once an Indian family loses a child, they give up.

Dr. Shore testified:

Once placement of the children has been initiated, Indian parents often withdraw, become depressed and begin or resume intensive drinking.

A 1970 BIA workshop on "social services for parents of children in boarding schools" reported:

Research indicates the door of a child's home begins to close behind him when he leaves home and that if we are going to help families we must get our foot in that door to prevent its closing. Once there has been a break in a parent-child relationship that relationship is difficult to reestablish.

Witnesses testifying at the Senate hearings on Indian child welfare generally agreed that large numbers of Indian children are placed in non-Indian foster or adoptive homes. Westermeyer found that in Minnesota in 1969 of over 700 foster homes caring for Indian children, only two had an Indian parent, although in his testimony at the hearings he stated that more Indian foster homes have been recruited since 1969. An evaluation of the Seattle alternative to foster care project states that a 1974 survey of placements of Indian children in Washington found that 114 of 159 children—72 percent—were placed in non-Indian homes.

A 1962 BIA study—available only in draft form—of children in BIA-supervised foster care found that "over half of the foster mothers were Indian, over two-fifths of the foster fathers." The percentages were somewhat lower for children whose supervision was shared by the BIA and the State or county welfare department. BIA's 1972 followup study found Indian parents in about 65 percent of the BIA-supervised cases. It should be noted that the figures for 1962 and 1972 are not comparable, as the 1962 study asked about mothers and fathers separately, while the 1972 study asked for combined figures for Indian parents.

Indian children placed for adoption have also frequently been adopted by non-Indian families. A witness at the hearings cited statistics from the Tripp County, S. Dak., welfare department that show that from 1967 through 1974, 898 Indian children were adopted, 354 by Indian families and 544 by non-Indian families. Partly because of the decreasing numbers of Anglo children available for adoption and changing attitudes toward interracial adoptions, the demand for Indian children has increased dramatically.

The Child Welfare League also conducted a survey in 1966 of 90 public and voluntary agencies in States having large Indian populations. They found that 696 children of "Indian extraction" were placed with caucasian couples, 14 with Indian couples, 32 with Indian-caucasian couples, and one with Mexican-Indian couple. The remainder were placed with Negro, Mexican, or oriental couples.

The results of placements of Indian children in non-Indian homes have become of grave concern for many Indian people and also for non-Indian people who work with them, especially psychiatrists, psychologists, and social workers. One concern is that Indian cultures are being destroyed by this practice since so many Indian children are not learning Indian ways. A typical Indian view was

expressed by Mr. Phyllis Fast Wolf, an Oneida living in the uptown area of Chicago:

Thinking Indian is a way of life and I think that these children should have an opportunity to learn our heritage and set of values.

This concern was also expressed by a number of witnesses at the Senate hearings; for example, one witness labeled the pattern of placements as "another form of that systematic form of genocide."

The second aspect of the placement of Indian children in non-Indian homes that is of concern is the psychological damage to the children that may result. As one author writes, when children are placed away from the reservation, they "face breaking ties not only with parents and siblings but also with friends, relatives, community, culture, and anything familiar." Several of the psychiatrists who testified at the hearings also reported on the ill effects suffered by environments. While this issues is not specific to placements of Indian children, it is exacerbated by the cultural differences experienced by the Indian child placed in a non-Indian home.

If an Indian child is placed in a non-Indian home while he is still a baby, problems may arise in later years, particularly during adolescence. Dr. Westermeyer testified that the adolescents and adults he had seen in his practice had been "raised with a white cultural and social identity"; then, "during adolescence they found that society was not to grant them the white identity that they had." They encountered this identity problem through pressures from white parents on their children not to date the Indian children, derogatory namecalling, and difficulty obtaining jobs and credit.

The problem was compounded by the lack of an Indian peer group and family to support the Indian children in this identity crisis. Mel Sampson, another witness and a tribal councilman of the Yakima Indian Nation, stated:

They literally suffer when they discover that their physical appearance is not that of their adopted parents. . . . The wonderment and the search for true identity is crucial and probably, at times, never completed.

The evaluation of the alternative to foster care project in Seattle states that placements of Indian children in non-Indian homes "regardless of their quality, pose serious questions regarding the degree of ethnic identification possible for children so placed, and the effect of ethnic identification on general identity formation." To illustrate this point, here are a series of questions and answers taken from our Indian child welfare hearing record.

QUESTION. At what year were you taken from your family?

ANSWER. September 1963, 13 years old.

QUESTION. Why were you taken?

ANSWER. My father died. They thought my mother couldn't take care of us.

QUESTION. Were you taken off the reservation?

ANSWER. Yes, Twenty miles away. I was placed in jail 17 days while they attempted to find me a foster home.

QUESTION. Were you taken to a non-Indian family?

ANSWER. Yes.

QUESTION. How many non-Indian families have you and your brothers and sisters been shipped off to?

ANSWER. Fourteen families.

QUESTION. How many brothers and sisters do you have?

ANSWER. Seven.

QUESTION. What kind of effect did moving you off the reservation, away from your natural parents and family, have on you?

ANSWER. They took me away from my people, from my family, all my friends, brothers and sisters, everyone. I lost all my Indianess, language, religion, beliefs, my entire sense of belonging.

QUESTION. As you've grown up, have you felt the hurt of being taken away? Do you miss the time being away from your people?

ANSWER. Yes. I especially feel for this same problems for my brothers and sisters. They lost everything.

QUESTION. Have you or your brothers and sisters ever been literally instructed to discontinue or forget your Indian people and their beliefs?

ANSWER. Yes. Definitely.

QUESTION. Have you or your brothers and sisters ever been in trouble criminally as juveniles?

ANSWER. Yes. To a large extent.

QUESTION. Do you attribute any of this to your being placed in white homes?

ANSWER. Yes.

QUESTION. Why?

ANSWER. It built in me a resentment, a feeling of anger, they had stolen everything from me. I was mad at the world. I didn't care.

QUESTION. Do you know other Indian children in this area of Minnesota who have been placed in white foster homes?

ANSWER. Yes.

QUESTION. How many?

ANSWER. Over 80 percent of the children of the village I grew up in, Sawyer, on the Fond Du Lac Reservation. The population is 280. Since then I have met many who were also in foster homes.

QUESTION. Would you say, putting Indian children in Minnesota, in white foster homes by welfare is big business?

ANSWER. It certainly is.

QUESTION. Do you think you will ever recover from what happened to you?

ANSWER. I hope so. I just don't know.

I ask once again, that my colleagues help in trying to turn around this terrible situation by joining me as a cosponsor in this absolutely essential legislation.

NELSON CRUIKSHANK'S NEW MISSION IN AGING

Mr. CHURCH. Mr. President, President Carter has fulfilled the pledge he made during last year's campaign to name a knowledgeable and distinguished person to be his counselor on aging.

Nelson Cruikshank, who has served as president of the National Council of Senior Citizens since 1969, will soon fill that role. He will also become Chairman of the Federal Council on Aging.

These appointments bode very well indeed for the entire field of aging. Nelson Cruikshank has long concerned himself with matters directly related to the well-being of older Americans. In his major career assignment as director of the AFL–CIO department of social security, he paid special attention to the needs of older Americans, but he also saw the value of social security for persons of other age groups as well. And as president of the NCSC for 8 years, he has taken a very broad view of other programs and problems which affect older persons and younger members of their families.

I welcome President Carter's choice. And in the President's announcement is a brief and useful description of Mr. Cruikshank's many accomplishments. I ask unanimous consent to have that announcement printed in the RECORD.

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

THE WHITE HOUSE ANNOUNCEMENT

The President today announced that he will designate Nelson Cruikshank as chairman of the Federal Council on the Aging. Cruikshank's designation was announced by the Vice President in a speech to the Council's biennial legislative conference this afternoon. Cruikshank will also be appointed counselor to the President. He is presently a member of the Council and president of the National Council of Senior Citizens.

Cruikshank was born June 21, 1902, in Bradner, Ohio. He received an A.B. from Ohio Wesleyan University in 1925 and an M. Div. from Union Theological Seminary in 1929.

From 1930 to 1933 Cruikshank directed the relief program of the Brooklyn (New York) Federation of Churches. From 1933 to 1935 he directed the Workers Education Program of the New Haven, Connecticut Central Labor Union at Yale University, and organized for the AFL in Connecticut. He directed the WPA Workers Education Program at New York University in 1935–36.

Cruikshank worked in labor relations for the Farm Security Administration from 1937 to 1942, serving as director of the Migratory Labor Camp Program from 1940 to 1942. In 1943 and 1944 he was executive assistant to the labor members of the Management-Labor Advisory Committee of the War Manpower Commission, and deputy vice chairman of the Commission in charge of labor relations.

From 1944 to 1950 Cruikshank was director of Social Insurance Activities for the AFL. In 1951 and 1952 he was director of the Labor Division Economic Cooperation Administration in Paris, France. He served as director of the Department of Social Security at the AFL–CIO in Washington from 1953 until his retirement in 1965.

Since retirement, Cruikshank has served as a visiting professor at Michigan State University, the University of Michigan, and Pennsylvania State University. He has been president of the National Council of Senior Citizens since 1969.

Cruikshank was a member of the U.S. delegation to the First General Assembly of UNESCO in 1946, and served on the U.S. National Commission for UNESCO from 1946 to 1950. He was a member of the U.S. delegation to the First General Assembly of WHO in 1948. From 1962 to 1970 he was a member of the ILO's Committee of Experts on Social Security.

In 1976, Cruikshank was co-chairman of Senior Citizens for Carter with Miss Lillian Carter. He has been a member of the Federal Council on the Aging since 1974, and is chairman of its Committee on Economics of Aging.

OUR WORDS CAN PROMOTE HUMAN RIGHTS

Mr. PROXMIRE. Mr. President, we often wonder whether the United States can do anything to protect the rights of peoples outside our borders. In Paraguay, the very country which I cited a few days ago as an example of the continuing threats to human rights that allegedly occurs in many areas of the world, American actions have produced positive results.

Many Paraguayan prison inmates, who reportedly underwent torture and inhumane treatment while confined, were freed beginning in November of last year. The New York Times concluded that—

Since the election of President Carter, governments in the region, nearly all of them military-controlled, have been freeing their political prisoners.

Carmen de Lara Castro, the president of the Paraguayan Human Rights Commission, gave Mr. Carter credit for the release of the prisoners. Mrs. de Lara Castro expressed surprise at the government action, as prisoners had been the subject of what seemed to be permanent incarceration and persecution. The Times quoted Mrs. de Lara Castro as saying:

I have a lot of hope regarding Carter. There seems to be an improvement in the situation here.

The Times also reported Alejandro Orfila, the Secretary-General of the Organization of American States, has spoken with Paraguyan President Alfredo Stroessner about Stroessner's impression of the Carter administration. According to the Times, sources close to Orfila said that—

(Stroessner's) impression is that Carter is serious about human rights.

Mr. President, the most important insight to be gained from the release of the Paraguayan prisoners is that President Carter helped save prisoners from torture and endless confinement without spending any money and threatening the use of American troops.

Mr. Carter has helped to stop persecution in Paraguay, among other countries, by expressing his commitment to protecting human rights. Mr. President, the Senate should not act as if Mr. Carter has a monopoly on this type of commitments. By ratifying the Genocide Convention, we can oppose and help prevent the crime of genocide. I urge my fellow Senators to join me in pushing for ratification of this important treaty.

ELLIOT RICHARDSON AT THE LAW OF THE SEA CONFERENCE

Mr. METCALF. Mr. President, our new Ambassador to the Law of the Sea Conference, Elliot Richardson, is a man whose personal integrity and skill as a negotiator are beyond question. It is, therefore, more than a matter of passing interest that Ambassador Richardson paused during the latest marathon round of discussions on the ocean mining portion of the Conference at the United Nations, to express his strong personal disappointment with the trend of the negotiations. In a recent statement he aimed his criticism at a revision of the revised single negotiating text issued by Committee One Chairman Evensen, singling out four problem areas arising from the granting of excessive powers to the proposed International Seabed Authority. These were:

First. Insufficient assurance of access to seabed manganese nodule resources for participating nations and mining companies;

Second. Likelihood of unacceptable financial burdens being imposed upon the ocean mining industry;

Third. Imposition of overly stringent production limitations on ocean mining industries;

Fourth. Prospect of access to seabed resources being accorded on political rather than economic grounds.

If Ambassador Richardson's remarks were an attempt to jolt the so-called Group of 77 at the Conference into reassessing the direction in which it is pushing Chairman Evensen, his success remains to be seen. The Christian Science Monitor on June 16, 1977, published an article which well describes the situation. Particularly noteworthy is Mr. Richardson's warning that the patience of Congress is wearing thin. He is absolutely right. I would hope that his words are being weighed with greatest attention.

I ask unanimous consent that this article be printed in the RECORD.

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

DISAPPOINTMENT AT LAW OF SEA CONFERENCE

(By David Anable)

UNITED NATIONS, N.Y.—For the rich nations of the West, frustration and disappointment.

For the militant countries of the developing world, a tactical victory.

That perhaps best sums up how things have gone during the first three weeks of the current eight-week session of the Law of the Sea Conference here in New York.

The hopes with which most Western delegates started this latest attempt to extend new concepts of international law to the two-thirds of the earth's surface covered by seas and oceans have turned sour. As one disgruntled delegate put it, the West has been given crumbs while the developing world has grabbed triple-decker sandwiches.

Expressing his own disappointment, U.S. chief negotiator Elliot L. Richardson has warned that "the outcome of the conference does genuinely hang in the balance." But he also has made it clear that the United States has by no means given up hope of eventual success.

The central issue now, as it has been for months if not years, is the mining of the deep seabed nodules that contain minerals such as copper, nickel, manganese, and cobalt.

Third-world militants want an international seabed authority to have an effective monopoly over mining the billions of dollars worth of golf-ball-like nodules—on the principle that they are part of the common heritage of all mankind.

These countries reject on principle the compromise proposal put forward by industrialized countries that there should be equal access by the authority and by private companies or states.

At an informal meeting of 86 delegations in Geneva last February-March, there were signs that the militants were being brushed aside by other third-world countries keen to reach a compromise settlement. Back here in the formal gathering of the full 150 delegations, however, the "progress" the West had hoped for has not so far materialized. The militants have at least delayed the disintegration of third-world unity.

In particular, Western delegates are concerned over the trend this session toward giving the seabed authority more and more discretion. They insist that its powers must be carefully tied down in the proposed treaty so that it cannot later interfere with private companies' rights to contract for and dredge up profitably their half of the mineral nodules.

As a quid pro quo, Western countries have tried to reassure the developing world that the authority's own mining arm, the Enterprise, will be capable of working its half of the seabed sites. Hence the detailed U.S. plans for financing the authority submitted to this session.

But third-world militants still insist that money is not enough; "money is not the problem, the problem is transfer of technology. Perhaps we can get the money; but the technology, no, never."

Such delegates are not impressed by warnings that a failure to make significant progress here this session is almost certain to prompt the U.S. Congress to move ahead unilaterally with one or other of its own seabed mining bills. Final congressional action along these lines would be in Mr. Richardson's words, "disruptive if not destructive" of the conference.

"I am more afraid about having a bad treaty," retorts one delegate from the developing world. "I don't believe the Carter administration will go ahead—some administrations might have, but Mr. Carter, no."

Mr. Richardson, on the other hand, says, "It's unrealistic for anyone to suppose that the Congress can indefinitely hold off, given a situation in which very large amounts of money have already been invested and in which other and still larger amounts will still have to be invested if seabed mining is to go forward."

One way or another, it is assumed here that at least one more major negotiating session will be required, probably next spring, if there is to be any hope at all of an eventual treaty.

J. WALTER KENNEDY

Mr. RIBICOFF. Mr. President, J. Walter Kennedy, who was best known for guiding professional basketball into national prominence and who had also been a much respected political figure in my State of Connecticut, died Sunday, June 26, 1977, at St. Joseph's Hospital in his hometown of Stamford. He was 64 years old.

Walter Kennedy is survived by his widow, the former Marion McRedmond of Stamford, and two sons, David and Robert, and a daughter, Kathleen. Mrs. Ribicoff and I extend our deepest sympathies. My association and deep friendship with Walter Kennedy go back many years. He was an extraordinary man who will be deeply missed by all of us who had the good fortune to have known him.

Walter Kennedy became a national figure in 1963 when he was named commissioner of the National Basketball Association. The NBA then had only nine franchises and most of these were located east of the Mississippi.

However, under Walter's brilliant and disciplined leadership, the league expanded and by 1975, at the time of his retirement as commissioner, there were 18 teams in the NBA and professional basketball had taken its place alongside baseball and football as a truly national pastime with franchises from coast to coast.

His achievements as the NBA's second commissioner were legendary, particularly coming as they did at the time the league was meeting competition from the American Basketball Association. Since the merger, professional basketball has continued to gain popularity and, to a large degree, the continued

success of the league is a testimony to the vision and leadership of Walter Kennedy.

While many of his achievements occurred in promoting professional sports, Walter Kennedy went to great lengths to improve his own community of Stamford and the State of Connecticut as well. He was a responsible and energetic public servant and a thoughtful, perceptive political observer and adviser. Twice elected mayor of Stamford, Walter Kennedy was an excellent mayor and an imaginative and hardworking administrator. In 1962, 1968, and 1974 he headed up my Senate election campaigns. He was superb and valuable.

As I look back upon Walter's career, many fine attributes stand out about the man—his remarkably sound judgment, his genuinely humane instincts, courage in the face of adversity, wit and charm and a unique sense of timing. He knew the right thing to do and the right time to do it.

No matter what he did—and his career ranged from broadcasting football games with Ted Husing to activism in the political arena—Walter Kennedy could be counted on to be fair, compassionate intelligent. He was a dear friend and I will miss him very much.

Mr. President, the New York Times and the Stamford Advocate printed articles today about Walter Kennedy's death. In addition, the Scorecard column in the sports section of the Washington Star referred to Mr. Kennedy today. I ask unanimous consent that these articles about Walter Kennedy be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, June 27, 1977]

WALTER KENNEDY, 64, OF NBA IS DEAD

(By Thomas Rogers)

Walter Kennedy, who presided over the National Basketball Association's growth into a major league in the 1960's, died last night at St. Joseph's Hospital in Stamford, Conn.

Mr. Kennedy, who was 64 years, died from cancer.

During his 12 years as the second commissioner of the National Basketball Association, the game prospered dramatically and approached baseball and football as one of the nation's most popular professional sports.

When the former mayor of Stamford, Conn., took over the N.B.A. helm from Maurice Podoloff in 1963, the league had nine franchises; when he was succeeded by Larry O'Brien in 1975, the league had doubled to 18 teams and was looking forward to further expansion.

The N.B.A. television program, nonexistent in 1963, has grown in value to more than $9 million, and attendance had increased from 1.9 million to more than 7 million.

Much of the progress was attributable to the work of Mr. Kennedy, a chubby, energetic, baldish man who brought experience in business, public relations, politics and sports to the assignment.

First, he demand unquestioned authority from the Board of Governors to enforce the league's bylaws and rules without favoritism. Then he convinced the board to use increasingly lucrative television contracts to smooth the way for planned expansion.

Mr. Kennedy's successful stewardship was complicated by the emergence in 1967 of the American Basketball Association, a rival league whose bidding war with the N.B.A. for players escalated salaries into million-dollar contracts. Several attempts at merger were foiled by the N.B.A. Players Association in the courts and through Congressional lobbying during his tenure. A consolidation of the leagues was finally arranged last year.

As commissioner, Mr. Kennedy quickly established his power by fining Red Auerbach, the coach and general manager of the Boston Celtics, $500 for rowdy conduct during a preseason game in 1963. When Mr. Auerbach threatened to quit, if the fine was not rescinded, he received the following telegram:

"The fine stands and must be paid within five days from this date. Kindest personal regards. Walter Kennedy."

PUBLICIST AT NOTRE DAME

Mr. Kennedy first became acquainted with Auerbach and other important N.B.A. officials and coaches when he was its first publicity director from 1946 to 1951. He came to the job after three years of handling publicity at Notre Dame where he had earned a bachelor's degree in 1934.

From 1952 to 1959, he operated his own public relations and business management company in New York and did extensive consultation and representation for the Harlem Globetrotters basketball team.

In 1959 he was elected by a 2-1 margin as Mayor of Stamford, where he had been born James Walter Kennedy on June 8, 1913. He was re-elected easily in 1961, but resigned less than two years later to accept the commissioner's post at an annual salary, estimated at $30,000.

When he retired, arrangements were made for him to serve as a consultant to the league for 10 years with a contract worth more than a half-million dollars "to assure the commissioner comfortable financial security for the rest of his life."

Mr. Kennedy survived a childhood attack of polio to undertake a varied career that included such jobs as emptying ash cans, serving as a bouncer in a Chicago restaurant, working as a waiter in Stamford, selling textbooks, broadcasting college football games with Ted Husing and refereeing basketball games.

During his tenure as commissioner, there were 44 changes of ownership or principals in the N.B.A., which gradually made his relationship with his employers more impersonal. And legal problems were voluminous.

"During the last five years, mostly because of contract jumpers and other off-court activities, a substantial part of my time was spent in depositions as a witness in courtrooms or meeting rooms of Congress or Federal agencies or in what I call the legalities of the job," he said in 1973 when he announced his retirement.

As well as involving himself in charitable and social causes, he spent the bulk of his time after leaving basketball as chairman of the board of the Special Olympics for the Mentally Retarded of the Joseph P. Kennedy Jr. Foundation, chairman of the board of the First Stamford Bank and Trust Company and president of the Naismith Basketball Hall of Fame in Springfield, Mass.

In 1940 he married the former Marion McRedmond of Stamford. They had two sons, David and Robert, and a daughter, Kathleen.

[From the Stamford (Conn.) Advocate, June 27, 1977]

J. WALTER KENNEDY IS DEAD AT 64, EX-MAYOR CIVIC LEADER, LED NBA

J. Walter Kennedy, one of Stamford's best known and most illustrious citizens, died of cancer Sunday night at St. Joseph's Hospital. He was 65. Mr. Kennedy served as mayor of Stamford from 1959 to 1963 and commissioner of the National Basketball Association from 1963 to 1975.

A hospital spokesman said Mr. Kennedy succumbed to cancer at 8 p.m., a year after he was operated on for a malignant tumor on the back.

Mr. Kennedy had been receiving immunotherapy since the operation. Surgery two weeks ago confirmed findings of blood chemical tests taken two months ago that the cancer had spread to the liver. A hospital spokesman said Mr. Kennedy died quietly of liver failure and complications related to the malignancy.

Mr. Kennedy leaves his wife, Marion, a daughter, Kathleen; two sons, David, senior vice president of International Creative Management of New York, and Robert, Advocate sports editor; his mother, Mrs. Lottie Kennedy, and four grandchildren, Kelly, Robert Jr., Christopher and Paul James.

Although a childhood bout with polio precluded his active participation in sports, Mr. Kennedy remained close to his first love throughout his life as a team manager, coach, sports announcer, sports columnist and, finally, as NBA commissioner.

He was also deeply involved in Stamford civic and governmental affairs throughout most of his adult life, serving as a member of the Board of Education, the Board of Recreation, Park Commission (of which he was chairman) and, finally, as mayor of his hometown. He was also active in state politics serving as campaign chairman for Democratic candidates for the U.S. Senate and governor.

A Democrat, running as the candidate of a reform movement with bi-partisan support, he was elected mayor in 1959 by a two-to-one margin, the largest plurality recorded here in a mayoral race. He was reelected to a second 2 year term in 1961, but resigned five months before the expiration of his second two-year term to succeed Maurice Podoloff who had been NBA commissioner for 17 years.

During Mr. Kennedy's 12-year tenure as NBA chief, the league expanded from nine to 18 cities and game attendance tripled. Although changes in the association's constitution and bylaws made Mr. Kennedy the most powerful sports administrator in the country, he once said of style at the NBA helm, "I have an iron fist but I wear a velvet glove."

On his retirement, the NBA established a $25,000 award in his name to promote racial harmony.

At one time, Mr. Kennedy broadcast Army football games from West Point with the late Ted Husing. He was also one of the few nonathletes to be admitted in the Notre Dame Monogram Club, an association of Notre Dame lettermen.

After leaving the NBA in 1975, Mr. Kennedy was named chairman of the board of the First Stamford Bank & Trust Co., and president of Robustelli Travel and a consultant to the NBA.

In addition to his other activities Mr. Kennedy wrote a sports column for the Advocate (which he called "Splinters") for over 40 years. His last column appeared one month ago.

Mr. Kennedy built a reputation for helping others which transcended and yet embraced sports, business and politics. Accepting the post of volunteer chairman of the Special Olympics, Inc., program for the retarded in 1975, he read a poem which he said had become the dominant theme in his life:

"Today my hands are strong, so let me help you. Tomorrow they may be weak or old or sick and you will have to lighten my load . . ." it said in part.

Despite his illness, Mr. Kennedy maintained an active role in the community during the past year to further the causes which had occupied so many of his earlier years.

In his second annual message as mayor in 1961, Mr. Kennedy warned that Stamford must assess its goals as a City and design a precise plan for it destiny so that it would not merely be swallowed up by the tentacles of New York City. Since last year, he had

chaired the steering committee of Stamford's Economic Base Study, whose aim is precisely the one then Mayor Kennedy identified 14 years ago.

Governor Ella T. Grasso called on Mr. Kennedy last year to head a study of the state's legalized gambling operations and to make recommendations to improve the scandal-ridden State Gaming Commission. He was also former chairman of the State Commission on Higher Education.

Even while confined to his hospital bed two weeks ago, Mr. Kennedy accepted the post of honorary chairman of Mrs. Dahlia Johnston's campaign for the Democratic mayoral nomination.

ABC Sportscaster Howard Cosell once called Mr. Kennedy ". . . a man of great conviction, one of the two most courageous men I have ever known in sports. The other was Jackie Roosevelt Robinson."

Mrs. Eunice Shriver Kennedy, president of the Joseph P. Kennedy Foundation, called Mr. Kennedy, "a man with a rare gift." She once said during a testimonial for the NBA king, "He is so aware. He can keep his integrity, his efficiency and yet respond to the needs of others" Mr. Kennedy was an early backer of John F. Kennedy in his campaign for president.

Mr. Kennedy was born in Stamford June 8, 1912, the son of the late Michael J. and Lottie Hoffman Kennedy. He attended local schools and was graduated from the University of Notre Dame with degrees in journalism and business administration. He also enrolled in graduate studies at Yale University and New York University.

Mr. Kennedy joined the Town Welfare Department as a social worker in 1935 and later became a caseworker with Catholic Charities. He then joined the faculty of St. Basil's Prep, where he served as athletic director and basketball coach. He entered the publishing field as director of sales and promotion for the Macmillan Publishing Co. in New York and later served the same capacity at Loyola University Press in Chicago, before returning to his Alma Mater, Notre Dame, as public relations director.

Finally, Mr. Kennedy returned to his native Stamford to launch his own public relations firm with offices here and in New York. His clients included the White Tower Management Corp., the N.Y. Giants baseball team and the Harlem Globe Trotters, the professional basketball team with which he traveled to Russia and met Soviet Premier Nikita Khrushchev.

Mr. Kennedy was awarded the Medal of Monaco by Prince Rainer III for his contributions to education in the principality of Monaco. And he was made an honorary citizen of Italy for his devoted service on behalf of Boys Towns of Italy. In 1966, Pope Paul named Mr. Kennedy a "Knight of St. Gregory," the highest honor conferred by the Vatican on a Catholic layman for "contributions to State and Church." Mr. Kennedy was honored twice for promoting racial harmony while with the National Basketball Association. He was honored by the Roasters at the local group's annual affair in 1976.

Mr. Kennedy was a member of the Knights of Columbus, the "Skeeters," an organization of show business and entertainment figures, of which he was a founding member; the Old Timers and Holy Name Athletic clubs. He was a member of the Board of Trustees of St. Joseph Hospital and St. Bridget's Church.

The funeral will be held Thursday from the Leo P. Gallagher and Son Funeral Home, Broad St. at Suburban Ave., at 10:30 a.m. to St. John's Roman Catholic Church for Mass of Christian Burial at 11 a.m. Interment will bo in St. John Cemetery, Springdale. Friends may call at the funeral home Tuesday and Wednesday from 3 to 5 and 7 to 9 p.m.

In lieu of flowers, the family requests contributions to the St. Joseph Hospital Memorial Fund or the American Cancer Society.

[From the Stamford (Conn.) Advocate, June 27, 1977]

KENNEDY LEFT HIS MARK ON ROUNDBALL

STAMFORD, CONN.—Former National Basketball Association Commissioner Walter Kennedy has left a legacy of change that resulted in the betterment of basketball.

The professional basketball world, which grew up under his firm but gentle guidance, reacted with deep regret to his death Sunday night.

Kennedy, who was 64, died of cancer at St. Joseph's Hospital in Stamford, a city he had served as mayor for three years.

He also had been tapped by Gov. Ellis Grasso to review Connecticut's legal gambling and submitted a report last year.

NBA Commissioner Lawrence O'Brien, who succeeded Kennedy in 1975, said: "Speaking from my heart, I have admired Walter Kennedy for the last two decades, first from his reputation, then from our personal acquaintance.

"No one has made more of a contribution to sports and basketball in particular than he did. It was a challenge for one to succeed him and I know that he will be sorely missed by the NBA staff and all our members across the country."

Kennedy was the 49-year-old mayor of Stamford when he was chosen to replace 73-year-old Marice Podoloff, who retired Sept. 1, 1963.

"I do not anticipate any more difference with the nine men (the number of owners in 1963) that I had as mayor of a city of 100,000 people," Kennedy said on being named commissioner. "Nobody ever looks for Utopia because you know you'll never find it."

When Kennedy took office, his two major objectives were to return the NBA to national television and to expand the league. He accomplished both. Today there are 22 teams in the NBA, which boasts strong local and network television support.

Kennedy, who called himself "a man for my time" during the 12 years as commissioner of the major pro basketball league, had wanted to be a commissioner for life. However, he retired in 1975 because he was fed up with the highpressure world of sports. The continuous congressional hearings, the lawyers, the high priced contracts, somehow didn't fit into his world.

"I'm retiring because of my health and because I think this is a new era," Kennedy said in an interview about three months before he retired on June 1, 1975.

"The day of the strong commissioner is over. The common draft and many other things basic to sports are being questioned and perhaps changed."

The new era was a drastic change from Nov. 29, 1971, when the NBA club owners moved to make Kennedy a strong commissioner.

They voted to give him the power to make unappealable decisions on situations not covered by league bylaws and constitution and to fix a penalty for violations of rules that carried no specific penalties.

He also was given additional powers. Abe Pollin, chairman of the NBA's Advisory Committee, said:

"We fully realize that in so doing we are conveying unprecedented authority to Walter Kennedy, but we have no hesitancy in doing so because of the excellent leadership he has provided during the past eight years."

With all his power, however, the personality of Walter Kennedy reached out beyond the basketball arena.

Mike Storen, the former commissioner of the defunct American Basketball Association and now an executive with the NBA Atlanta Hawks, recalled that "although you (the media) may have called us adversaries, Walter was always a friend first. At no time did he ever stop being a gentleman.

"The basketball industry passed from the dirty arenas and into the view of television with respectability."

In his report to Gov. Grasso on Connecticut's legal gambling, Kennedy alluded to the possibility of the state becoming "Las Vegas East," when with its lotteries, dog racing, jai alai and planned horse race track.

He also warned against Connecticut becoming covered with "wall-to-wall gambling." His proposal for a two-tier gaming commission to improve state oversight of gaming was sent to the legislature by the governor but lawmakers rejected the idea.

Kennedy's greatest honor may have come just before he retired from the NBA in 1975, when he was honored by three black groups—The United Negro Fund, The National Association for the Advancement of Colored People and the Edwin Gold Services for Children Organization—for promoting racial harmony. Their dedication read:

"In the dozen years Walter Kennedy has headed the NBA, the black man has made his greatest strides. The interracial community among players, administrators and officials has had its greatest flourish. We feel it boils down to the influence of Walter Kennedy."

Simon Gourdine, the deputy commissioner of the NBA and the highest-ranking black official in the four major sports, said: "I was hired by Walter Kennedy and for that I'll be eternally grateful. But he was more than a boss. He was warm and compassionate.

"There were times I could see that he wasn't feeling well, but that never slowed him up. He had a tremendous amount of energy. He loved his job."

Kennedy served as the publicity man for the league when it was known as the Basketball Association of America, from 1944–49, and for two years after it became the NBA. He also assigned game officials for two years.

At various times, he was associated with the Harlem Globetrotters and Little League baseball and was a coach and official in high schools and prep schools in New England. From 1943 to 1945 he was publicity director for Notre Dame, his alma mater.

A spokesman for St. Joseph's Hospital said Kennedy underwent surgery one year ago for a malignant melanoma of the back and for the past year was receiving immunotherapy treatments. Two months ago, blood tests revealed the cancer had spread to the liver.

Kennedy is survived by his widow, Marion; his two sons, David and Robert, sports editor of the Stamford Advocate, and his daughter, Kathie.

[From the Washington Star, June 27, 1977]

WALTER KENNEDY'S LEGACY

Ironically, one of the most heartfelt tributes to Walter Kennedy, the former (1963–75) National Basketball Association commissioner who died of cancer at 64 in a Stamford, Conn., hospital yesterday, came from Mike Storen—often a heated rival when he was commissioner of the old American Basketball Association before last year's merger.

"The basketball industry owes him a debt of gratitude because it was Walter Kennedy who brought basketball out of the dirty arenas and into the view of television with respectability," said Storen, now an executive with the Atlanta Hawks. "Although you may have called us adversaries, Walter was a friend first. At no time did he stop being a gentleman."

Then there was this comment from Willis Reed, new coach of the New York Knicks: "He was the greatest man I ever met. If it weren't for the likes of him, this poor boy from Bernice would not be here."

And now, unfortunately, Walter Kennedy will no longer be here.

CLEAN AIR ACT OF 1977

Mr. ANDERSON. Mr. President, it is clear that the outcome of the pending House-Senate conference committee on H.R. 6161, the Clean Air Act Amendments of 1977, will determine, to a significant degree, the quality of air we and our children breathe in the years to come in this country.

Arguments of technical feasibility, timing, economic impact, fuel efficiency, and consumer cost, as articulated to the Congress by those who favor additional delays for stationary and mobile source compliance, pale in the face of evidence that air pollution impairs human health. The House of Representatives clearly has chosen a course of action favoring pollution over public health. The Senate, while extending some deadlines for both stationary sources and automobiles, has voted to place the health of the American public before the demands of industry.

Two recent articles by national columnists Art Buchwald and George Will speak eloquently to the problems of air pollution and the conduct of the automobile industry in lobbying for additional delays in tough automobile emission standards. I commend both articles to my colleagues.

Mr. President, I ask unanimous consent that the column by Art Buchwald, "For Safety's Sake, Stop Breathing," in the Washington Post on June 21, and the column by George Will, "Another Setback in the Quest for Clean Air," in the Washington Post on June 26, be printed in the RECORD.

There being no objection, the columns were ordered to be printed in the RECORD, as follows:

[From the Washington Post, June 21, 1977]

FOR SAFETY'S SAKE, STOP BREATHING

(By Art Buchwald)

My weatherman came on the TV screen the other night and, after predicting warm and humid temperatures, he said, "As for the air-quality index, it's very unhealthy and should stay that way for a few days."

Then the news show went to a commercial showing two elderly people sitting in a canoe on a quiet river talking about "occasional irregularity" and what they do about it.

While the commercial was on my wife said to me, "What does it mean?"

"What does what mean?" I said.

"The business about the air quality being unhealthy."

"I guess it means that the air is not fit to breathe for the next few days."

"Then what are we supposed to do?" she wanted to know.

"That's a good question. It's probably not serious or they wouldn't have mentioned it on television. Otherwise people would panic, and if they panicked they wouldn't buy whatever they're trying to sell on TV."

"How come," my wife wanted to know, "the government bans everything that is dangerous to our health but permits the air we breathe to remain polluted?"

"Well, in the Washington area we don't have any industry so all the bad air comes from the exhausts of automobiles. You can't ban automobiles no matter how dangerous they are to your health."

"Why doesn't the government demand they make automobiles that don't pollute the air?"

"It's been trying to for some time, but every time it sets a time schedule for new clean air standards, the auto lobbyists get Congress to postpone it."

"Don't the lobbyists breathe the same air we do?"

"I imagine they do. But they have to weigh the fees they get for lobbying against their own health. Besides, it's my understanding that the automobile companies have excellent medical plans for their lobbyists, including free vacations to Arizona, in case they get sick from breathing all the gunk in the air."

"You would think congressmen would care about air quality. After all, they and their families have to breathe the same air," she said.

"Congressmen are more concerned with votes than they are with living. If you told a congressman he could get the United Auto Workers' union backing in his district if he stuck his nose in the tailpipe of a trailer truck, he'd do it."

"How bad does the air quality on TV have to get before someone will do something about it?"

"Pretty bad. I think if the weatherman keeled over as he was giving his forecast, then people might get upset. But we're so used to having him tell how dangerous the pollution is that nobody pays any attention to him any more."

"Why doesn't the President do something about it?" my wife asked. "He and Rosalynn and Amy are all breathing the same air we are."

"They never tell the President what the pollution count is in Washington because they're afraid he'd move back to Plains, Ga. The most they do is keep him out of the Rose Garden on a bad day."

"I don't understand," she said. "This is the capital of the nation. People here have the power to do anything they want to, including blowing up the world, and no one does a thing about us poisoning each other to death."

"That's not their job," I said. "All Washington is concerned with is death and taxes—and we seem to be getting both."

My wife sighed. "I wish Anita Bryant cared as much about clean air as she does about homosexuals. I'll bet you we'd get some action then."

[From the Washington Post, June 26, 1977]

ANOTHER SETBACK IN THE QUEST FOR CLEAN AIR

(By George F. Will)

It is a moment for unminced words. If the House of Representatives gets its way with amendments to the Clean Air Act of 1970, Congress will have chosen to increase the incidences of various respiratory ailments. And it will have committed a retrograde act against the nation's natural beauty.

Three times since 1970 Congress has delayed implementation of automobile emissions standards. Now the House has voted a fourth delay. Worse, it has voted to weaken standards for carbon monoxide and nitrogen oxide, and has created a mechanism for indefinite weakening of even the weakened nitrogen oxide standards in the future. The Senate has voted for less delay, and for no weakening of carbon monoxide standards. Furthermore, although the Senate has voted to weaken nitrogen oxide standards, it has not provided a mechanism for indefinite weakening.

To some extent, society chooses its disease rates. Societies, like individuals, constantly choose between health and competing goals and pleasures. The House has made an unacceptable choice against the health of Americans who breathe.

For example, the House would allow a five-fold increase in nitrogen oxide emissions over what would be required under existing law. About 40 percent of nitrogen oxide pollution comes from vehicles, and the percentage is substantially higher in urban areas. Such pollution may produce the carcinogenic (cancer-causing) chemicals called "nitrosamines."

The automobile industry says it does not know how to meet the present, unrevised standards. But the industry has a dismal record of asserting what can't be done, and an admirable record of doing what it is forced to do. The lash of necessity concentrates the mind.

Automobiles should be the focus of the fight for clear air because they are the most pervasive source of pollution. And it is easier to shape the decisions of four automobile companies than it is to deal with scores of thousands of fuel-burning industries. But advocates for the automobile industry say that unless pollution standards are relaxed, jobs will be lost because automobile prices will rise unreasonably, and production may be disrupted.

The House bill is an attempt to secure jobs at the expense of the health of millions, especially children and the aged. But more permissive automobile pollution standards will be an obstacle to industrial growth in many areas.

Where pollution already is the maximum permitted, only a decrease in automobile pollution can make possible increased industrial pollution. So the House bill sacrifices other industries, as well as the breathing public, to the automobile industry.

Some advocates for the automobile industry seem to have learned their science from the tobacco industry. They argue that there is little "scientific proof" of the connection between automobile pollution and particular diseases. Such arguments deny the undeniable: statistical patterns that demonstrate a correlation between high pollution and high disease rates.

The House bill is especially unacceptable, given President Carter's energy program. Carter's plan to substitute coal for oil means increased nitrogen oxide pollution from stationary sources. So a compensatory decline in automobile emissions is imperative.

Another provision of the House bill, if it survives the House-Senate conference, would justify a veto. If enjoyment of natural beauty is, as I believe, important to the serenity of one's soul, then the House bill jeopardizes the nation's spiritual as well as physical well-being. It undoes the policy that prevents "significant deterioration" of the air in several categories of clean-air regions.

The House did this to permit construction of a gigantic coal-fired generating plant in Utah to provide power for Los Angeles. The plant would be near Capitol Reef National Park, not far from Bryce Canyon and near enough to Arches and Canyonlands National Parks to cast haze over them on many days. And this House provision threatens all national parks and wilderness areas where air is supposed to be preserved in its natural pristine quality.

This provision might mean a dramatic decline in scenic values. Rep. Paul Rogers (D-Fla.) says it would be the pollution equivalent of putting a city of 500,000 next to a national park. Rep. Bob Eckhardt (D-Tex.) dryly suggests that "it will be difficult to tell which of our mountain ranges should be called the Great Smokies."

To govern is to choose, and to choose is to reveal values. If the House gets its way, we shall have glimpsed a dark future.

SOLAR ENERGY

Mr. HART. Mr. President, I wish to make certain that there is no possible misunderstanding regarding funds earmarked for the Solar Energy Research

Institute—SERI—as provided for in the fiscal year 1978 ERDA authorization bill, S. 1340. The source of possible misunderstanding is a floor statement of the senior Senator from Minnesota which accompanied his unprinted amendment to that bill. In that statement, Senator HUMPHREY described another amendment which he originally planned to offer but which the committee refused to accept. His statement, while very explicit in its purpose, unfortunately did not describe the modified amendment which the committee did accept. For my colleagues' benefit, let me review the chronology of events.

On Monday, June 13, Senator HUMPHREY offered an unprinted amendment to S. 1340. It provided that $10 million, which was already provided in the committee bill, would be specifically earmarked for SERI and the regional centers. This amendment differed significantly from an earlier draft which Senator HUMPHREY had proposed regarding SERI funding. That earlier draft not only earmarked funds but also prescribed that 90 percent of the funds authorized for SERI be equally divided among the four regional SERI facilities.

As ERDA and the National Academy of Sciences, NAS, have concluded, funding flexibility is essential for SERI and the regional centers to function most effectively.

During debate of S. 1340, the able floor manager, Mr. CHURCH, resisted Senator HUMPHREY's original amendment and instead accepted a modified Humphrey unprinted amendment which merely restated that the Energy and Natural Resources Committee had understood ERDA to be planning—namely, $10 million be provided by ERDA for the operation of SERI and its associated regional centers.

Senator HUMPHREY's floor statement which accompanied the modified amendment, however, unfortunately pertained to the original amendment which committee refused to accept. Thus, in that statement, my distinguished colleague spoke of 80 or 90 percent of SERI's funding being controlled by the regional centers.

Let me reiterate that this statement related to an amendment which was specifically rejected by the committee through its floor manager, and had no relevance to the amendment which was accepted by the committee.

When Senator CHURCH accepted Senator HUMPHREY's amendment, he stated that—

> . . . This amendment does not increase the level of funding . . . But since it does not increase the limit of funding, since it clarifies the purpose for which $10,000,000 already in the bill will be used [i.e., for the operation of SERI and its associated regional centers], I certainly have no objection to the amendment.

Mr. President, I applaud the Senator from Minnesota, who has long been a champion of solar energy, in his efforts to earmark money for SERI and its associated regional centers. I agree with the apparent objectives of Senator HUMPHREY's amendment: to insure that a significant portion of ERDA's resources are devoted to solar research conducted by SERI, and to insure that the regional SERI centers serve as active, contributing partners to SERI's efforts to develop this important alternative energy resource.

Anyone familiar with development of SERI knows that experts who looked at the structure for SERI specifically rejected development of regional research centers which would receive upward of 80 to 90 percent of the Institute's funding and in which a national SERI facility be relegated solely to administrative functions. The statement of the senior Senator from Minnesota, which was to accompany the original amendment, would stand in glaring contradiction to the goal of Congress in establishing SERI—to accelerate the realization of solar technologies as well as to insure their widespread commercialization. Senator HUMPHREY would have unwittingly reversed years of careful study and policy formulation to establish the most advantageous organizational framework for SERI.

Mr. President, I would like to cite a 1975 National Science Foundation, NSF, study entitled "Establishment of a Solar Energy Research Institute" (pp. 9–10):

> We conclude that (the requirements of SERI pursuant to P.L. 93-473) can best be met by a single Solar Energy Research Institute with a number of relatively small field stations under its direct management. Multiple centers either would have to be specialized in individual areas of interest in solar energy or they would be multi-project centers to some extent overlapping one another.
>
> We reject the first alternative of permanent specialized multiple research centers because we believe that the evolution of the solar energy field will require frequent redeployment of research resources. This can be most readily achieved if the resources are not divided into rather fixed packets so that a decision to phase down or abandon one line threatens the continued existence of a specialized research institute. Furthermore, although it is easy enough to establish a specialized center sufficiently large to sustain a single project team, the availability of specialized personnel, or readily deployable additional resources, and of stimulative job rotation is better the larger the institute.
>
> We reject the concept of fuly duplicative Solar Energy Research Centers, in part because of the inefficiencies involved in creating large enough staffs in each of the centers to sustain competence in each discipline and project but also because the analysis and integrative functions of SERI would have to be completely replicated if each of the institutions were to contribute responsibly in providing ERDA with the basis for policy formulation in the solar energy field. In foregoing competition between multiple research centers of SERI, we do not wish to suggest that competition is bad or necessarily wasteful. In fact, competition would be necessary if SERI is to continue to be active and effective. We believe that adequate competition and criticism will come on the one hand from partialy overlapping but not duplicative university, nonprofit and government laboratory projects and large and small development programs funded by ERDA headquarters.

To date, ERDA has adhered closely to the NAS guidelines in developing the regional SERI network. Clearly, this is the most rational and equitable approach to accelerating development of solar technologies while providing opportunities for establishment of a nationwide solar energy industry. I believe it would have been a grievous error for Congress to institutionalize a fixed regional funding provision for SERI which in no way reflects the research, development, demonstration, and commercialization requirements for various solar technologies. SERI must have sufficient flexibility in the allocation of its limited funds in order to maximize the tremendous potential of new solar technologies. Fortunately, the Energy and Natural Resources Committee agreed.

Mr. President, I hope that my comments today will clarify any potential confusion which might have arisen regarding Senator HUMPHREY's statement.

FIRST MICHIGAN COLONIAL FIFE AND DRUM CORPS

Mr. RIEGLE. Mr. President, in 1975, a group of 25 talented and dedicated young musicians came together to form the First Michigan Colonial Fife and Drum Corps. Since then, they have made more than 60 public appearances throughout southeastern Michigan and have received the special recognition of the Colonial Williamsburg Foundation, of the Brigade of the American Revolution, and of the Company of Military Historians.

The intent of the First Michigan Colonial Fife and Drum Corps was to recreate the music and the spirit of the American Revolution. Music is said to have power to soothe the savage beast. Music creates an emotional fervor that can enliven or deaden, that can elate or depress, that can inspire or disenchant. These outstanding young performers have chosen to give of a spirit they, themselves, have already found through the medium of music.

The mood and the music created by the First Michigan Colonial Fife and Drum Corps is a genuine reproduction of the sounds of 1776. To insure authenticity, these young adults, using the same materials, the same tools, and the same methods that our ancestors had, made their own uniforms and musical instruments.

I, as a Senator from Michigan, proudly commend these fine young adults who have chosen to produce rather than to destroy, to elate rather than to depress, to inspire rather than to disenchant. I also wish to thank the First Michigan Colonial Fife and Drum Corps, for through their continued efforts, we can still enjoy the spirit of the American Revolution and of Bicentennial America.

ICF STRIP MINE STUDY

Mr. METCALF. Mr. President, questions have been raised regarding a study of the economic impacts of the Federal Surface Mining Control and Reclamation Act of 1976 which was undertaken by ICF, Inc., on behalf of EPA and CEQ.

At the request of Senator HATCH, the Subcommittee on Public Lands and Resources held a hearing on May 11, 1977 to explore this question. Mr. C. Hoff Stauffer, Jr., president of ICF, Inc. was the chief witness. In response to ques-

tioning by Senator HATCH, Mr. Stauffer submitted supplemental material following the hearing, which I promised Senator HATCH would be incorporated into the RECORD. I ask unanimous consent that these statements regarding the ICF study be printed in the RECORD.

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

ICF INC.,
Washington, D.C., May 31, 1977.

Senator LEE METCALF,
Chairman, Subcommittee on Minerals, Materials and Fuels, Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR METCALF: Thank you for the opportunity to appear before your Subcommittee on May 11, 1977. We have reviewed the Transcript of Proceedings from that hearing, making corrections and supplying additional information where requested. This material has been transmitted under separate cover.

During the hearing, you extended an offer to us to submit additional comments for the record. Enclosed with this letter is a Supplementary Exposition, in which we attempt to clarify points which may not have been fully understood during the hearing. We would appreciate your including this Supplementary Exposition as part of the official hearing record.

We feel that our report and our written and oral testimony show conclusively that our report was not "tampered with" or "doctored" in any way. The salient points, which we have demonstrated repeatedly, are the following:

The report was prepared in accordance with our contract, which specifically required draft reports and solicitation of review comments.

Any changes made during the review process were made by ICF. No changes were forced upon us by any government official.

Any textual changes were made to improve readability or to impart a more neutral tone. No textual changes were made to obscure or distort substantive findings.

Any numerical changes were made on a sound analytical basis, and in all cases are fully documented. These numerical changes did not alter any conclusions which were drawn from the estimates.

We are anxious to work with you, Senator Hatch, and your staffs in any way possible to dispose of finally any remaining doubts regarding substantive changes or processes followed in report preparation. We are concerned when such doubts exist, because we interpret this to reflect adversely upon our professional integrity.

We would like to keep an open channel of communication with you and your staff. Through a free and open exchange of questions and answers, we feel the truth can best be determined. As suggested during the hearing, we contacted the staffs after the hearing to express our willingness to continue this dialogue. We were distressed when Minority Counsel, Fred Kraft, rejected our offer and refused to allow this dialogue to continue. We are hopeful that his attitude will not inhibit any further dialogue that may be appropriate.

Again, we thank you for the opportunity to testify and for this opportunity to respond.

Sincerely yours,

C. HOFF STAUFFER, Jr.

Enclosure.

SUPPLEMENTARY EXPOSITION BY ICF INCORPORATED

During testimony by ICF Incorporated before the Subcommittee on Public Lands and Resources on May 11, 1977, Senator Metcalf suggested that ICF review the transcript of proceedings and supply further comments where desired. This supplementary exposition presents our comments regarding statements made and questions raised during that hearing.

We feel that our report and our written and oral testimony show conclusively that our report was not "tampered with" or "doctored" in any way. The salient points, which we have demonstrated repeatedly, are the following:

The report was prepared in accordance with contract, which specifically required draft reports and solicitation of review comments.

Any changes made during the review process were made by ICF. No changes were forced upon us by any government official or anyone else.

Any textual changes were made to improve readibility or to impart a more neutral tone. No textual changes were made to obscure or distort substantive findings.

Any numerical changes were made on a sound analytical basis, and in all cases are fully documented. These numerical changes did not alter any conclusions which were drawn from the estimates.

The remainder of our comments here are organized into two parts. The first part addresses points and issues raised during the hearing, and summarizes and supplements the testimony. The second part makes a response to statements made during the hearing which appeared to reflect a misunderstanding of our report or procedures followed in developing our report.

ISSUES RAISED DURING THE HEARING

In our review of the hearing transcript, we have identified four issues which were raised by Senator Hatch in his questioning. Each is summarized below.

INVOLVEMENT OF GOVERNMENT PERSONNEL

Senator Hatch posed numerous questions regarding the names and roles of the government personnel involved during the report review process. In particular, his concern appeared to be that during this review process, government personnel either "'doctored" our report or unduly influenced us to make changes.

We believe our testimony conclusively repudiates this contention. It is clear that the review process followed is a common and effective proccss used in government and academia. The report schedule and review process had been arranged well in advance, and was fully understood by all agencies participating in the review. It was ICF, and no one else, who decided how to respond to each and every review comment.

Senator Hatch expressed particular concern that Ms. Kathy Fletcher from the White House staff may have influenced our report. To reiterate, at no time during the study did we see Ms. Fletcher, meet her, talk with her, write to her, or receive material from her. It is our understanding that she did talk with our clients. However, our clients never attributed any of their comments to her.

Senator Hatch also suggested that our report was one-sided because the information came largely from the government. This is not the case. In addition to our clients, ICF received review comments from five other federal agencies and one other consulting firm. We solicited oral and written information from officials in virtually every coal mining state. Three mining engineering firms provided input to our analyses. Data was collected from at least 19 western mine operators and 27 eastern mine operations. Numerous other exchanges of information were made with knowledgeable individuals in government, industry, academia, and public interest groups. Far from being a one-sided report, we believe that our efforts represent the most comprehensive, thorough, and open analyses ever made of federal surface mining legislation.

ALLUVIAL VALLEY FLOORS

Senator Hatch posed several questions regarding the revision of the high end of the range of potential production impacts resulting from the alluvial valley floor provisions. We believe that our report documentation, as well as our written and oral testimony, effectively shows that this change (1) was based on sound analytical reasoning, (2) was fully documented, and (3) did not alter the conclusions drawn from these numbers. Accordingly, we see no need to belabor these points.

We would, however, like to respond to Senator Hatch's assertion that this change was a last-minute change, after six to nine months of work. The implication here is that the "bottom line" had been known by our clients for months. This is not so. The first full draft report containing the alluvial valley floor findings was the January 24th draft. The January 10, 1977 draft to our clients did not include Chapter V ("Production and Reserve Base Impacts of Non-Cost Factors"), in which the alluvial valley floor findings are presented. This omission of Chapter V from the January 10 draft was necessary in order to transmit Chapters I–IV, which at that time were the primary focus of our efforts and our clients' concern, in a time that would permit review of that part of the report. Thus, although our data and methodology had been known and reviewed for some time, the "bottom line" shown in Chapter V was not available for review comments until January 24th. Thus, the comments received on this point were made shortly after it was available for review.

We are also concerned that Senator Hatch's remarks that the alluvial valley floor findings "pertain to the most critical part of our report" carry an adverse connotation—namely, that although no other numbers were refined, these "most critical" numbers were. We can understand that Senator Hatch believes these numbers are currently "the most critical." However, when our study began, a host of other numbers were viewed as equally critical. These included incremental production costs, production and employment losses due to cost increases, electricity rate increases, and impacts of steep slope provisions. We suggest that the alluvial valley floor findings may currently be viewed as "the most critical" only because these other issues (a) were addressed adequately in our report, and (b) were shown to have less uncertainty regarding their impacts than did the alluvial valley floor provisions. For better or worse, during the course of our study, we and (we believe) our clients viewed the alluvial valley floor issues as subsidiary to the cost, production, and employment impacts associated with the reclamation requirements. This is not to say that we disagree that the alluvial valley floor issues are currently critical. Rather, we wish to put these issues in the perspective of the other issues that were also viewed as being "critical" prior to the distribution of our report.

FIRST SUMMARY PARAGRAPH

A substantial part of the hearing was devoted to detailing the reasoning behind a rewording of our first summary paragraph. An implication was made that the rewording was an effort to "weaken" or omit relevant findings. Our testimony described in detail that this change was made in order to (1) balance the opening of the summary and not create a lack of parallelism by mixing general with specific points, and (2) avoid giving the impression that those were the only specific impacts, when really there are more.

In order to better prove our point, it is useful to reprint the relevant text from both drafts. In the January 24th interagency review draft, the first paragraph under the "Summary of Major Conclusions" reads:

"The findings of this analysis indicate that

the cost-related impacts due to H.R. 13950 are generally not great. These cost impacts are not likely to significantly affect national coal production, coal consumption, coal prices, employment, or electricity prices. However, there are numerous provisions in H.R. 13950 not directly related to costs which could create major difficulties. Such impacts include (1) substantial production impacts that could result from possible interpretations of the alluvial valley provisions, (2) delays in permitting due to inability to comply within established timetables and/or insufficient administrative funding, (3) extensive litigation resulting from ambiguous and undefined terms, (4) unintended effects due to mismatches between the apparent intent and the actual wording, and (5) losses to the coal reserve base."

In the February 1 Draft Final Report, this paragraph is reworded and presented as the following two paragraphs:

"The findings of this analysis indicate that the cost-related impacts due to H.R. 13950 are generally not great. These cost impacts are not likely to significantly affect national coal production, coal consumption, coal prices, employment, or electricity prices.

"However, several provisions in H.R. 13950 are subject to varying interpretations. In the event that these terms are given very stringent interpretations, the impacts could be substantially higher."

As a background note, the Executive Summary is organized into three sections. The second section summarizes the cost-related impacts, and the third summaries the impacts not related to costs. The first section is in essence a summary of these other two summary sections. The initial paragraphs shown above are the initial paragraphs of this "summary of summaries," and attempt to state in a few sentences the essence of this 500+ page report.

The first reason for rewording these paragraphs as shown was to achieve a more balanced introduction to our findings. Specifically, it was noted that while the first part (relating to cost impacts) was expressed in general terms, the second part (relating to non-cost impacts) expressed specific points. Reviewers noted that the approach lacked balance and parallelism, and the specific points were too detailed to present at the very outset.

In response to what we considered valid criticism, we reworded this to read as two general conclusions. In making this change, our intent was to be clear and to impart a neutral tone. Since all of the specific points cited in the January 24th draft are still cited in the Summary and in the body of the report, we certainly do not consider our conclusions to be weakened or watered down in any way.

The second reason for rewording these paragraphs was to avoid misleading the readers into thinking that these five specific points were in fact the only potentially adverse impacts, when actually there were several more. This concern for possibly being misleading seems to have been borne out during the hearing when Senator Hatch, after citing material prepared by his staff, raised the following question:

Senator HATCH. You are saying that these are additional impacts to the ones that were listed on January 24? . . . In January 24th it was pretty well laid out in cryptic language exactly what the impacts were. You are saying that there are more than those five that we mentioned—that you mentioned in January 24, '77?

Mr. KLEIN. That is one of the reasons we rephrased it. That is one of the reasons that the summary paragraph on the January 24th draft was modified, because the impression was given that there were only four or five possibly adverse impacts or unintended impacts of H.R. 13950.

By rewording this paragraph in more general terms, our intent was to express to the reader that there were potentially adverse impacts, but not that there were only five. In fact, over one-half of the Executive Summary discusses the impacts of these provisions not related to cost (pages 3, 9–19). In addition, some reviewers disagreed that the specific points we had chosen to cite in that initial paragraph were really the most important points we had developed. By not imposing our own ranking criteria at the very beginning, we hoped to avoid unnecessary influencing of the reader.

The charge that this rewording in effect deleted substantive findings cannot be substantiated. As noted before, this paragraph was only an introduction to a "summary of summaries." Any points mentioned there are still raised in the remainder of the "summary of summaries," in the section of the Executive Summary dealing with non-cost impacts, in the summaries chapter and in the main body of the report. To illustrate, the five specific points mentioned in the January 24th draft are referenced elsewhere in the Summary of the February 1 Draft Final Report (as well as being discussed in full in the main body of the report) as follows:

PHRASE IN JANUARY 24, 1977 DRAFT	PAGE NUMBERS IN FEBRUARY 1, 1977 SUMMARY	EXAMPLE IN FEBRUARY 1, 1977 SUMMARY
"substantial production impacts that could result from interpretations of the alluvial valley floor provisions"	3, 12–14, 19	". . . while a moderate scenario of the alluvial valley floor provisions could affect four mines with an additional production in 1978 of 12 million tons, a high impact interpretation could impact up to 25 million tons of western production by 1978 and 104 million tons by 1985." (pg. 3)
"delays in permitting due to inability to comply with established timetables and/or insufficient administrative funding"	18, 19	"In order for existing mines to meet the deadlines established for obtaining permits, it would be necessary for operators to begin collecting data to meet requirements before such requirements have even been proposed." (pg. 19)
"extensive litigation resulting from ambiguous and undefined terms"	3, 19	"In addition there are several other non-cost provisions in H.R. 13950 in which the wording of the provisions could result in additional restrictions, administrative inflexibility, and/or delays." (pg. 3)
"unintended effects due to mismatches between the apparent intent and the actual wording"	3, 14, 19	". . . several aspects of the bill appear to merit further consideration. The characteristic common to all of the issues raised here is that the impacts of the bill could be exacerbated due to varying interpretations, which in some cases differ from the apparent intent (as reflected in the statutory language and Committee Report)." (pg. 19)
"losses to the coal reserve base"	3, 13, 15, 16, 17	"The reserve impacts of H.R. 13950 could range between 8.1 and 24.0 billion tons, or between 1.9 and 5.5 percent of total reserves. These impacts are equivalent to between 5.9 and 17.6 percent of strippable reserves." (pg. 3).

SENTENCE LEFT OUT

During the hearing, Senator Hatch stated that we had left out an important sentence in our February 1 draft:

Senator HATCH: Now, let me just make this point. Then you leave this out: "In most cases the intent of the"—and this is in your January 24th one—"in most cases the intent of the provision would have little cost or production impact. However, the actual wording could result in unecessary restrictions, administrative inflexibility and/or additional litigation." Basically, this is all left out of your February 1st report.

In order that there be no confusion on this point, the first part of that paragraph in the January 24th report reads (on page 3):

"In addition there are several other non-cost provisions in H.R. 13950 in which the wording of the provisions could have effects quite different from the apparent Congressional intent. In most cases, the intent of the provision would have little cost or production impact. However, the actual wording could result in unnecessary restrictions, administrative inflexibility, and/or additional litigation."

In the February 1 Draft Final Report, this text is reworded (on page 3) as:

"In addition there are several other non-cost provisions in H.R. 13950 in which the wording of the provisions could result in additional restrictions, administrative inflexibility, and/or delays. In most cases, the intent of the provision would have little cost or production impact."

In our view, there is very little difference between the two, and the assertion that the

content was "left out" of the February 1st draft is unsupportable. The reason the third sentence was "left out" was that it was combined with the first sentence. The third sentence in the January 24th draft was " . . . the actual wording could result in unnecessary restrictions, administrative inflexibility, and/or additional litigation." The first sentence of the February 1 draft contains " . . . the wording of the provisions could result in additional restrictions, administrative inflexibility, and/or delays." We believe the two sentences of the February 1 draft say the same thing as the three sentences of the January 24th draft.

The reason we revised this paragraph was to avoid reference to the "apparent Congressional intent." Reviewers noted that it was presumptuous of ICF to proclaim what the Congressional intent actually was. Further, it was pointed out that since H.R. 13950 did not pass in either house of Congress, the bill itself was not a reflection of Congressional intent. Accordingly, we sought a rewording which would convey the point that the literal wording could have unintended effects, while avoiding the phrase "Congressional intent." Elsewhere in the Summary and in Chapter V, we made frequent use of the phrase "apparent intent (as reflected in the statutory language and Committee Report)."

RESPONSE TO STATEMENTS MADE IN THE HEARING

The above sections clearly show that the specific points raised during the hearings are in fact easily explainable, fully documented, and analytically sound. We can see no way in which they can seriously be construed as evidence of "tampering" or "doctoring."

In this section, we would like to make note of other statements made during the hearing which appear to reflect a misunderstanding of either our report or our testimony.

President Ford's veto message

During the hearing, an impression was given that we were not familiar with the analysis used to justify President Ford's veto of H.R. 25. This is not so.

The misimpression was created by a statement that we had not read the veto message. By this, we were making reference to the actual statement President Ford made when he vetoed H.R. 25. We had not read this particular statement because we knew it was basically a summation of the staff analysis.

We are extensively familiar with the staff analysis of H.R. 25. ICF has spent over 100 man-hours in analyzing and critiquing this analysis. All of the issues covered in that analysis are considered in our report. Hence, our not having read the veto message (which did not contain any information not found in the staff analysis) does not in any way imply a lack of familiarity with the analysis of H.R. 25.

Numerical changes

In two instances during the hearing, Senator Hatch suggested that the February 1 Draft Final Report differed from the January 24 interagency review draft in several aspects. The differences he cites are incorrect in that the findings are the same in both drafts.

In one instance, Senator Hatch said that the January 24 draft agrees with the H.R. 25 analysis "in more stringent terms" than the February 1 draft with respect to production, cost of energy, unemployment, and litigation. As shown below, there are no changes in any of these parameters between drafts:

	January 24 draft	*February 1 draft*
Production:		
1978 net production curtailments	7–22 million tons (page 8)	
Cost of energy:		
Coal price increases:		
Appalachia	$1.00/ton (page 8)	$1.00/ton (page 8)
Central West	1.00/ton (page 8)	1.00/ton (page 8)
Elsewhere	0.50/ton (page 8)	0.50/ton (page 8)
Electricity price increases	<1% (page 9)	<1% (page 9)
Unemployment (net direct employment impacts):		
1978	max. 1,400 (page 3)	max. 1,400 (page 3)
1979 and after	0 (page 3)	0 (page 3)
Litigation	Cited throughout but not quantified	Cited throughout but not quantified

In another instance, Senator Hatch implied that our estimates of employment impacts had changed:

Senator HATCH. (President Ford) said (H.R. 25) would cost 46,000 jobs . . .

Mr. STAUFFER. I know that we had very different findings.

Senator HATCH. But the fact of the matter is your findings weren't so different in the January 24th.

There was no change made to this paragraph between drafts. In both drafts, the exact wording on page 3 reads as follows:

"The net direct employment impacts (i.e., lost jobs due to production curtailments minus new jobs due to increased reclamation) in 1978 could be a loss of about 1,400 jobs in surface mining in Appalachia, if the net production curtailments were 22 million tons. If the curtailments were lower, the net direct employment impacts would be lower. However, additional jobs could be created in both government and industry to implement the legislation and conduct the studies required for permit applications."

It is important to note that between our January 24 and February 1 draft, there were no changes in the numerical estimates of any of the cost and related economic impacts. As noted before, this covered four of the five chapters in the report. As regards the non-cost impacts in Chapter V, numerical changes were made only in portions of two sets of numbers. In both cases, the underlying data and assumptions are fully documented, and the numerical change did not change the conclusions which were drawn from those estimates.

SPECIFICATION OF SCENARIOS

In reference to our summary of impacts from alluvial valley floor provisions, Senator Hatch suggested that ICF should have used scenarios to depict a range of impacts rather than a single interpretation:

Senator HATCH. In order to accurately reflect the data developed, in order to avoid bias and present an objective analysis, I would think that it would have made sense to include a moderate scenario, a high impact scenario and a low and worst case scenario instead of just leaving a worst case scenario. I think that we deserve to know.

Mr. STAUFFER. We do. We have three scenarios there.

Senator HATCH. No.

We note that our analysis develops (and reports in the summary) production and reserve base impacts under low, moderate, and high scenarios. As our report notes:

"Production and reserve base impacts were estimated for three scenarios—low, moderate, and high impacts. These different scenarios were developed to reflect future regulatory uncertainty, judicial interpretations, and data uncertainty. The moderate impact scenarios were developed to reflect (1) what we believe would happen if the bill was interpreted consistent with the apparent intent (as reflected in the statutory language or Committee Report), and (2) our best judgments based on existing data. Low impact scenarios reflect data uncertainty and regulatory flexibility to meet the standards of the Act. High impact scenarios are based upon very stringent interpretations and data assumptions which tend to exacerbate the impacts."

Further, the estimates of alluvial valley floor impacts made under the low and moderate scenarios did not change at all between drafts.

SOCIAL SECURITY

Mr. McCLURE. Mr. President, a recent editorial in the Sandpoint Daily Bee, published in Sandpoint, Idaho, presents an all too accurate picture of the dilemma we face regarding the social security system Not only is it correct in pointing out some of the major reasons for the system's insolvency, but it also rightly charges Congress with failing to take action to address it for fear of the political repercussions a serious assault on the problem might generate. We all know attempts at merely patching up the system to keep it limping along for a few more years will not solve anything in the long run, and it is the long run we must look to in terms of correcting the situation. Basic, difficult decisions are called for and it seems to me the American people deserve to be told the truth in this regard. This editorial clearly points out the people we represent are capable of understanding that these hard decisions are necessary, and that consideration of ways to head off a disaster in the social security system does not amount to an attack on those people currently relying on social security to meet their living expenses. I ask unanimous consent that this editorial be printed in the RECORD.

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

SOCIAL SECURITY

Sen. Frank Church, while in Sandpoint last week, told Bonner County Senior Citizens there is no substance to the rumor that Congress is contemplating imposing an income tax on Social Security income.

The rumor is apparently circulating Northern Idaho and has shaken those Senior Citizens who depend almost solely on Social Security to meet monthly living expenses. If Church's assurances have made these individuals breathe somewhat easier, the feeling may be short-lived.

When the Franklin D. Roosevelt administration sold the American people on the concept of a "government insurance", the people bought the program under the assumption that a deduction from their paychecks would be set aside to be drawn from during their retirement years, with interest.

The truth is the Social Security system is bankrupt.

Social Security pays out from what it takes in, and still must rely on other sources to pay recipients.

Church is no doubt correct when he says Congress is not considering a tax on Social Security benefits, but if we blindly assume that everything is right with the Social Security system because such drastic measure need not be imposed, then we are all in for an unpleasant payday.

Thirty years ago taxpayers outnumbered retirees 22 to . Now, the ratio is three to one. Most workers are paying more in Social Security taxes than in federal income tax, and if the Social Security program is going to continue to exist workers or employers or both will have to pay more taxes.

To those who paid patiently into the Social Security system all those years and are now eligible for the benefits, the whole mess must seem like deception in the highest order.

Whether the F.D.R. Administration was aware of the inherent problems of such a system when it was instituted 30 years ago, and intentionally overlooked the problems we cannot say.

But, the problem has been spotlighted several times in the last decade, yet Congress has made no serious attempt to deal with it. In fact, Congressional action in 1972 compounded the crisis. By voting an automatic cost-of-living increase to Social Security recipients, Congress has made it possible, at present escalation rates, for recipients to actually receive more money in benefits than they formerly earned in wages.

The trouble with blasting the Social Security system is that such criticism is viewed as a direct assault on those who faithfully paid in during their working years, and who have earned the benefits. No, our criticism lies not with the recipients, but with a government which has allowed a tiny lie to grow into one of such complexity that there now seems no solution to the problem. If someone were to ask F.D.R. today whether the government belongs in the insurance business we wonder what he would say? K.F.

LIFE IN DERRY, NORTHERN IRELAND, 1977

Mr. KENNEDY. Mr. President, today's Boston Globe contains an excellent and extremely sensitive article by David Nyhan on the effects of the violence in Northern Ireland on the people of the city of Derry.

As Mr. Nyhan points out, the 8 years of killing and volence have taken their toll on the city of Derry and its people More than 100 citizens have been murdered since the violence began. As Mr. Nyhan states, the people of the city are its prisoners—all 80,000 of them, Protestant and Catholics, soldiers and civilians—all caught up in the senseless violence and destruction, the sectarian passions, and the daily security precautions that have turned the city into an armed camp.

Mr. President, all of us hope that a way can soon be found to stop the violence in Northern Ireland and end the nightmare that has become the routine of daily life for the people of Derry and other cities for so long. Mr. Nyhan's article is itself a powerful plea for peace, and I ask unanimous consent that it be printed in the RECORD.

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

[From the Boston Globe, June 27, 1977]

DERRY PEOPLE ARE PRISONERS IN THE CITY THEY LOVE

(By David Nyhan)

LONDONDERRY, NORTHERN IRELAND.—You take your life in your hands, living in this bloodied medieval city.

The bombs and guns of the sectarian terrorists—Provisional Irish Republican Army on the Catholic side and Protestant paramilitaries on the other—constitute a threat of aimless death or maiming to rival the plague.

In the name of God, patriotism and fallen comrades, the killing by both sides goes on, despite the demonstrated preference of the vast majority at the polls for political accommodation.

Officially it is named Londonderry. But the Catholics, who outnumber the Protestants about 2–1 in this city of 80,000 (the reverse of the 2–1 Protestant majority in Northern Ireland as a whole), call it by the old name of Derry, rejecting the Anglicization of the name.

The River Foyle flows north from Strabane to the harbor, Lough Foyle. Londonderry straddles the river, spanned by only one bridge. Sub-marine nets keep floating bombs away from the underpinnings of the bridge.

It has plenty of churches: eight Catholic, five Church of Ireland, four Presbyterian. It also has had more than 100 citizens murdered in the last seven years.

The people wait for a political settlement that cannot come until the leaders can escape the bonds imposed by terrorist elements. Outrages fan emotions on both sides.

Every family has been scarred by tragedy. The mother listened to her daughter tell of the disappearance of a 15-year-old boy she used to dance with at the disco. The boy had been "lifted" by the security forces for questioning.

"It's only when your own family knows someone in trouble that it comes home to you," the mother said quietly. "If you don't know your children well, and keep tabs on them all the time, you never stop worrying."

People who live this way are crammed onto the hillsides and flatland of a city with breathtaking potential. Belfast is a grimy industrial port city; Derry could be like Marblehead were it not for the tiny old rowhouses strung like beads on a dirty necklace on the narrow, twisting streets.

The countryside is lush, fertile and inspiring. Before the troubles resumed in the late 1960s, a million tourists a year came to Northern Ireland. In their absence, the poverty that has dogged Ireland for centuries has reasserted itself. Now unemployment rages as high as 30 percent among Catholics. The dole is a way of life, an unclimbable wall for thousands.

It is disconcerning for a stranger to see how easily the people have adapted to this kind of life. It is "A Clockwork Orange" come to life, accommodation to death, destruction, violence.

Women coming into the walled city from the Catholic or Protestant ghettoes to shop have to pass through military checkpoints. Their purses and baby carriages are searched. The women themselves must submit to frisking, present their identification, answer questions as to their destination and intent. It is literally like living in a big outdoor prison.

Cars are banned from the central shopping district. Too many with bombs hidden underneath have exploded. Extensive security precautions multiply the petty complications of life. Don't forget your identification. Find a safe place to park the car. Carry everything you buy by hand. Make sure the children are close at hand on every excursion. Warn fractious children not to mouth off at the soldiers.

The army has a thankless job. It was first brought in to protect the Catholic minority from the depredations of the Protestant gangs that the civilian police were unable to contain. The army's image in the eyes of Catholic ghetto residents turned ugly after the shooting of 13 rioters on Bloody Sunday in 1972.

A middle-class woman who abhors the violence that has marked the municipal life of recent years tried to explain how it feels to confront the soldiers every day.

"No matter how polite they are to you—and they usually are—they have those awful guns. They look you up and down as you approach, they pick through your pocketbook, and when they frisk you—when their hands touch me I shiver all over."

The soldiers know two things. They know that 400 of their number have been killed doing this kind of work since the Troubles began again. And they know that women, even children, have been used as couriers for bombs, guns, ammunition. They suspect everything.

They get shot at, stoned, reviled, almost daily.

From their armored enclosure on an isolated hilltop overlooking the Bogside, they sally forth to patrol the sullen ghetto.

In armored Saracens and heavy-duty personnel carriers, the combat-fatigued troops go patrolling.

They rumble past walls smeared with slogans: "Brits Out" . . . "Release All Political Hostages" . . . "Provos Rule."

It is commonplace to see troops race up in a small convoy of vehicles unship their automatic rifles, and fan out through a neighborhood, always wary of ambush.

Atop a hill over the Bogside called Creggan Estates, the army's Creggan Camp stands out like an ugly caricature of a cavalry fort in the Wild West. The Catholics call it Piggery Ridge, a derisive reference to the fact the army set up camp in an old pig farm.

Here it looks as if the soldiers are the prisoners. A lone road pierces the hilltop meadow. First there is a tall barbed-wire fence. Near the camp gate lies an overturned, burned car. When the shift changes, the Saracens roar up the hill from the Bogside, helmeted drivers peering out of narrow slits to negotiate the sharp turn into the courtyard.

The troops pile out with youthful shouts and catcalls, the tensions of patrol at an end. The guns are emptied under the eyes of superiors; ammunition is supposed to be carefully logged.

An American reporter who seeks permission to photograph the outside of the camp is greeted frostily by a sentry and politely by the officer in charge.

"It looks like Ft. Laramie from down there," the officer said with a smile, "but it isn't."

What it looks like is a terribly depressing place for a young soldier from England to spend time in. Steel shields protect the roofs of the barracks against lobbed bombs and mortar rounds. The off-duty soldiers are virtual prisoners in the area they are supposed to dominate.

It would be very dangerous for them to consort with the young women or seek a drink or a dance in Londonderry.

A young Protestant soldier from Londonderry, not even assigned to the peace-keeping force but home on leave from duty abroad in the army, was drinking with boyhood friends in a Bogside pub one night recently. He was singled out, taken outside at gunpoint and murdered. Authorities blamed the Provisional IRA. The youth's family is mixed; he was related to both Catholics and Protestants. That didn't save him.

At night the soldiers get edgy if an approaching car does not dim its lights as it coasts up to the checkpoint.

"One of the tricks to getting through the roadblock easily is to turn off your lights so you're not illuminating them," says a man who has to cross the bridge as many as 10 times a day in the course of his work.

More than 100 people have been murdered here in the last seven years.

Since Bloody Sunday, five years ago, Londonderry is a city under siege. At the core is the old walled city, grimy blocks of stone enclosing the tightly packed downtown. At the center of that is the Diamond, a graceful plaza dominated by a 40-foot monument.

The streets leading out of the central shopping district contain ugly gaps, vacant lots or bombed-out shells where the terrorists' gelignite or the arsonists' torch struck another blow in the bloody war that has flared periodically in Ireland for hundreds of years.

Walking through the downtown area, a Catholic leader, John Hume, pointed out vacant lots or bombed out buildings.

"Almost every one a Provisional IRA bomb. They claim they are trying to drive the Brit-

ish out by raising the cost of doing business. But most of these shops were owned by Catholics."

Hume, one of the leading Catholic politicians in Northern Ireland, grew up in and still lives in the Bogside.

The deputy leader of the principal Catholic political party, the Social Democratic and Labor Party (SDLP), said of his city:

"Derry is a microcosm of the whole Irish problem. In the siege of Derry in 1688, the Protestants held off King James. This is the Unionists' Mecca. For the Catholics, Derry became a symbol of the worst inequities of the Unionist State. People here are victims of two sets of circumstances, from the IRA in our midst, and from the British."

Hume apparently has unshakable faith in the eventual political resolution of the conflict, though he believes it will take years.

"The vast majority of the people vote for moderation. They see through the slogans, see how they were being manipulated by incidents designed to arouse their emotions."

Hume's faith may be grounded on the feeling of Derry residents for their city.

"Derry people," says Belfast journalist Patrick Scott, "love their city. They are like the salmon; they come back to spawn and die."

It seems odds to talk of civic pride in a city of bomb scars, an occupying Army, more security checkpoints than perhaps any other place of its size anywhere.

They are all prisoners in a way, Catholic, Protestant, soldier. It is an outdoor prison for 80,000 inmates, with walls of sectarian hatred.

On a rainy Sunday morning in June, John Hume passed by the 15-foot granite monument to the 13 demonstrators killed on Bloody Sunday.

"The trouble with the British is that they never remember," he said. "The trouble with the Irish is that they never forget."

TRIBUTE TO GEORGE B. DELAPLAINE

Mr. MATHIAS. Mr. President, last week the people of Frederick, Md., indeed all Marylanders, suffered a very great loss: George B. Delaplaine, Sr., died at the age of 88.

"Mr. George," as he was affectionately known by his whole community, was president of the Great Southern Printing and Manufacturing Co. which publishes the Frederick News and the Frederick Post. But to identify "Mr. George" in terms of his vocation conveys only the frailest suggestion of the real dimension of this remarkable man. It is certainly true that he was a versatile businessman and a member of a notable publishing family, but first and foremost George Delaplaine was a consummate human being.

When I was growing up in Frederick and indeed until the day of his death, "Mr. George" set an example of courtesy, kindness, and Christian commitment that were an inspiration to the entire community.

For many years, "Mr. George" was superintendent of the Sunday school at All Saint's Church in Frederick. His funeral was held there on Friday and 2 days later I was privileged to address that congregation of which he had been such a very special member. Although "Mr. George's" absence already was profoundly felt, I also sensed that the Christian challenge which his modest, gentle way of living had represented will remain fresh in the hearts of the people of Frederick for a long time to come.

An affectionate editorial published in the Frederick News the day after his death captured much of "Mr. George's" special charm and explains his claim on the affections of his townsfolk. I ask unanimous consent that that editorial entitled "George Delaplaine, Sr." be printed in the RECORD so that my colleagues may savor and appreciate the spirit of "Mr. George," who rode his bicycle joyfully up to the last day of his life. I also ask unanimous consent to have printed in the RECORD an account of George Delaplaine's life printed in the Baltimore Sun on June 23.

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

[From the Frederick News Post, June 23, 1977]

GEORGE DELAPLAINE, SR.

At 88, with little intention of slowing down, George B. Delaplaine Sr. was an inspiration to everyone who knew him. He kept active in body, mind and spirit, and his remarkable awareness of what was going on was matched only by his wit and wisdom and sincere compassion for other people.

"Mister George," as he was known by his fellow employes, was president of the Great Southern Printing and Manufacturing Co., which publishes The News and the Frederick Post.

Mr. Delaplaine died suddenly Wednesday morning at Frederick Memorial Hospital, where he had been admitted Tuesday evening after complaining of chest pains. He had been in excellent health, had worked at the newspaper during the day, and later in the afternoon had completed his daily bicycle ride.

Everyone who knew him has been stunned and saddened by his death. He was a man beloved and respected.

Mr. Delaplaine leaves his wife of 56 years, Mrs. Ruth Carty Delaplaine; two children, Mrs. Myron W. (Frances Ann) Randall of Braddock Heights, and George B. Delaplaine Jr., of Central; eight grandchildren; and one brother, Judge Edward S. Delaplaine of Frederick.

Two brothers are deceased, William T. Delaplaine and Robert E. Delaplaine, both of whom played prominent leadership roles with the News-Post and in the community.

Funeral services will be held at 2 p.m. Friday from All Saints Episcopal Church which he had served in many capacities during his life of devoted membership.

(Friends may call at Smith, Fadeley, Keeney & Basford Funeral Home, 106 E. Church St., this evening from 7 to 9. The family requests that in lieu of flowers, contributions may be sent to the Memorial Fund of All Saints Church).

Mr. Delaplaine, a lineal descendant of John Thomas Schley, who built the first house in Frederick, was a native of Frederick, the son of the founder of The News, the late William Theodore Delaplaine, and Fannie Birely Delaplaine.

Young in spirit and ideas, few people lived to see the changes brought about in the past century and adapted to them as did Mr. Delaplaine.

He was born in the horse and buggy days. The automobile had not been invented. He saw the rise of the automobile, the coming of the telephone, electric light, phonograph, airplane, refrigeration and air conditioning, movies, color photography, rockets to the moon, radar, sonar, the computer sciences, advances in education in both numbers of people educated, and in better facilities and to higher grade levels.

Mr. Delaplaine adapted to change. When the rise of the automobile caused the demise of the horse as a draft animal, the outlet for leather products shrank to where his first business endeavor, a small tanning business, no longer had a market. He readily adapted to change in the newer environment of the newspaper.

When changes came in the newspaper industry, he recognized the advantages of the new and approved the moving to a new plant with an offset newspaper press cold type composition. In fact, when the News-Post converted to the new offset process, it was one of the 32 largest in terms of circulation to convert. And he approved the entry into the cable television field, with the ownership and development of Frederick Cablevision.

He was an "East Patrick Street kid," and very few days in his 88 years was he not seen on East Patrick Street. As a child, at one time he and his family lived in the second block of East Patrick Street. His first business was with the family run tannery at the location of W and W Poultry, adjacent to the News-Post building. When he became associated full-time with the newspaper, which was then located on North Court Street, he stopped at the Post Office daily for the company mail.

He remembers the building of the Post Office, and its selection as midway between the two railroad terminals—the B&O and the Pennsylvania, which is no longer existing at Patrick and East Streets. He remarked that during the October 9, 1976, flood, which occurred on his 88th birthday, he had never seen Carroll Creek flood so much as it did that day.

He prided himself on the education which he had received at the old Boys High School under the tutelage of the late Professor Amon Burgee. He was living proof that it is the teacher, not the facilities, which makes an education, and often quoted Shakespeare which he learned while in high school.

The brief outline of Mr. Delaplaine's life (in the news account of his death) reflects a rare contribution of business acumen and ability to articulate management problems in plain and simple terms—always with a dash of humor and a generous helping of human kindness, understanding and encouragement. And he worked at this until the end—seven days a week, including holidays.

As his father and brothers before him, he earned a lasting place in Maryland's daily newspaper industry, and was one of the oldest, active practitioners in the Maryland-Delaware-District of Columbia Press Association territory.

His example serves to encourage all of us who strive in this busy life toward our own goals never to forget from whence we come, and that the most sincere kindness is that which we do for others, no matter how small or insignificant it may seem—a card, a letter, a memento, a quiet thank-you, or a word of praise . . . even a cheery hello.

We at the News-Post, and everyone who knew him, will miss that warm hello—mixed in with a comment on the weather or some current event. But we cannot say goodbye to "Mister George," because we shall always be reminded that he—a rare man indeed—lives on through his contributions to our newspapers, our community and ourselves.

[From the Baltimore Sun, June 23, 1977]

DELAPLAINE, NEWSPAPER OFFICIAL, DIES

FREDERICK.—George B. Delaplaine, Sr., president of the Great Southern Printing and Manufacturing Company, which publishes the Frederick *News* and the Frederick *Post*, died yesterday of a heart attack. He was 88.

Mr. Delaplaine, son of the late William Theodore Delaplaine, who founded the *News* in 1883, had been a director of the newspaper since 1913.

A life-long resident of Frederick, he began his business career with his uncles in the George K. Birely & Sons Tannery here, but joined the newspaper full-time in 1944 when activities at the tanning business were being phased out.

Following the death of a brother, William T. Delaplaine, he was elected president of the newspaper company in 1964.

A life-long member of the All Saints Episcopal Church, Mr. Delaplaine had served as the superintendent of the Sunday School for 30 years and also served as vestryman.

He was a veteran of World War I and served in the Engineers Corps in the Washington area.

An avid bicyclist, he was an ardent outdoorsman in his youth and was active in the early days of the YMCA.

He is survived by his wife, Ruth; a daughter, Mrs. Myron Randall; a son, George B. Delaplaine, Jr., the publisher and general manager of the company, a brother, retired Maryland Court of Appeals Judge Edward S. Delaplaine, and eight grandchildren.

Funeral services will be held at 2 P.M. tomorrow at the All Saints Episcopal Church.

THE NATURAL GAS CHALLENGE

Mr. McCLURE. Mr. President, the critical issue of natural gas availability and Federal price controls has been the subject of extensive hearings before the Senate Committee on Energy and Natural Resources, Gov. Dolph Briscoe of Texas presented the committee with a pointed summary of the problem facing the Congress and the Nation, when he stated:

Let me emphasize a central fact not widely recognized. The energy development requirements, given in the President's National Energy Plan, are unprecedented, compared to any nine-year period of our history. More than half of the 1985 domestic production must come from newly found and newly developed sources. To achieve his requirements in oil and gas in the face of recent and present declines, reserves must be found to provide 11 million barrels of oil equivalent a day of new production. Simply put, that will require the discovery of about 60 billion barrels of oil or oil equivalent over the next nine years, more than we have ever found in any nine years of our history.

The Governor's remarks present us with a challenge—a challenge which cannot be met by further delays and political sidestepping of the natural gas issue. Again, Governor Briscoe accurately assesses our situation and our immediate need for action, by concluding that—

We have wasted more than three and a half years since OPEC quadrupled the oil price. Time is getting very short because the lead times involved in both conserving energy and expanding energy production are quite long. We are already in a precarious economic and strategic situation because of rising oil imports. If we do not radically modify President Carter's energy plan along the lines I have indicated, our import requirements in the 1980's could break the back of the world economy and endanger the peace. There is no need for that. The fate of the United States and the other OECD nations must not be permitted to depend on whether or not Saudi Arabia is prepared to expand its oil production capacity. We are blessed with large energy reserves. Now is the time to bring them into production. We shall not win this moral equivalent of war with one hand tied behind our back. I came here today to urge you to untie the hand of production.

In addition, the committee heard testimony from Dr. W. Philip Gramm of Texas A. & M. University, concerning deregulation of natural gas. As Dr. Gramm states:

The notion that deregulation is a producer versus consumer issue is a falsehood. Deregulation of interstate sales of new gas is in the interest of the Nation, the consumer, and the producer.

Dr. Gramm went on to describe in detail the history of Federal price controls on natural gas, together with an accurate analysis of the serious consequences that have befallen us. As he stated—

Federal Power Commission regulation of natural gas prices was a tragic mistake for which every American has paid in terms of increased energy costs, foreign dependence, fuel shortages, and stagnation of economic growth.

Mr. President, it is time that the Congress stopped playing politics with the natural gas issue and finally corrected that tragic mistake.

So that my colleagues will have the benefit of Dr. Gramm's full analysis, I ask unanimous consent that it be printed in the RECORD.

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

STATEMENT BY DR. W. PHILIP GRAMM

I welcome the opportunity to testify before the Senate Energy Committee on what I consider to be the most important step in dealing with America's energy problems, the deregulation of new natural gas prices on the interstate market. No single factor has done more to produce the energy crisis than Federal Power Commission regulation of natural gas prices, and no action by the Congress could do more to eliminate the natural gas shortage and benefit the consumer than the deregulation of the price of new natural gas. The notion that deregulation is a producer versus consumer issue is a falsehood. Deregulation of interstate sales of new gas is in the interest of the nation, the consumer, and the producer. Only the Arabs and the producers of far more expensive fuels benefit from F.P.C. regulation of natural gas prices.

As late as the 1930's, natural gas was still a semi-waste product. Demand was not sufficient to produce a market price which would finance the development of a distribution system for those deposits of natural gas that were found away from existing pipelines in small quantities. Therefore, when natural gas was discovered in remote areas, it was often flared into the atmosphere.

In the postwar period with growing energy demand and increasing concern about clean air, the demand for natural gas expanded rapidly. Natural gas had two desirable qualities: it was clean burning and it was cheap. We saw the development of what could have become a nation-wide distribution system as natural gas production expanded to provide cheap fuel for the growth of America. In 1954 all that changed. It changed because the Supreme Court ruled that the Federal Power Commission under the Natural Gas Act of 1938 could regulate the price of gas that was produced within a state but sold to an interstate pipeline.

It is clear from the debates and from the votes cast on the Natural Gas Act of 1938 that the author and supporters of the Natural Gas Act did not intend to regulate natural gas producers within states. The intent of the bill was to regulate natural gas pipelines. The logical distinction between the market structure of the natural gas exploration industry and the interstate pipeline industry was clear cut. Over five thousand firms were engaged in exploration for natural gas whereas there was only one pipeline from Texas to Detroit. Not only did the pipelines operate in interstate commerce but they were, to a significant extent, potential monopolies. The Natural Gas Act brought interstate pipelines under regulation but not intrastate producers of natural gas who sold to pipelines.

In the 1954 Phillips decision the Supreme Court extended the regulatory power of the Federal Power Commission to intrastate producers who sold to pipelines by ruling that their production was clearly intended for interstate commerce and by traditional definitions of interstate commerce their production activities came under federal jurisdiction. Congress responded to the Phillips decision, which was clearly at variance with the intent of the 1938 law, by amending the Natural Gas Act to exempt intrastate producers from federal price regulation. President Eisenhower vetoed the amendment to the Natural Gas Act due to alleged attempts to bribe Congressmen to vote for the amendment. By the time the issue was brought up again for discussion in the Congress, sufficient vested interest in the new regulation had developed to prevent the deregulation of natural gas produced by intrastate producers selling through interstate pipelines. It is therefore an accident of history that due to the ineptitude of the Natural Gas Act of 1938, the Supreme Court decision, and attempted bribery that the great bulk of natural gas sold in interstate commerce ever came under the regulatory authority of the Federal Power Commission.

With the Supreme Court decision of 1954, the Federal Power Commission sought to regulate natural gas prices on a field by field basis. In 1961 the Federal Power Commission imposed a price ceiling at the wellhead on interstate sales of natural gas. In 1962 and 63 it looked as if the Federal Power Commission had achieved what government in the 5,000 years of recorded history had failed to accomplish. Under price regulation production of natural gas sold in interstate commerce did not initially fall despite the fact that a differential development between interstate prices, under federal control, and intrastate prices, which were basically free market prices. The clear proof of consumer benefit was supposedly that prices were lower in interstate commerce than on intrastate sales and yet production had not fallen. By the late 1960's it had become apparent that the reserves committed to interstate commerce and the production of natural gas were not keeping pace with demand. As America grew and the demand for natural gas grew, the supply of natural gas in interstate commerce did not keep pace. In 1956 fifty-eight thousand oil and gas wells were drilled. By 1971 that number had dropped to 27,000. The number of natural gas producers dropped from 18,000 in 1956 to 4,000 by 1971. The old truths were still true. Water wets, fire burns, and artificially low prices set by government must cause output to fall and shortages to occur. What Hammurabi, Pericles, and Diocletian had learned thousands of years earlier the American people were about to find out.

Despite the fact that the Federal Power Commission has held the price of natural gas sold on interstate commerce below its free market level since 1961, it is not clear that interstate consumers have benefited from price regulation. Some present might find this to be a peculiar statement when up until this year, natural gas was shipped to New York at 52 cents per thousand cubic feet while Texans, who were producing the gas, were paying a marginal price as high as $2.20 per thousand cubic feet. But there are

two questions that are necessary in order to gauge the benefit from price control. The first is the obvious question, what is price relative to the level which might have existed in the absence of regulation? The second question is, are adequate supplies available to meet existing demands and if not, what are the prices of substitutes?

A review of natural gas supply under Federal Power Commission regulation clearly indicates that during the period of regulation natural gas production for interstate sales has not kept pace with growing demand. This has forced potential interstate consumers of natural gas to find substitutes. The consumer in the nonproducing states has bought fuel oil, liquified gas from Algeria and synthetic gas as substitutes for natural gas and paid up to $5.35 per 1000 cubic feet. In 1972 eighty-nine percent of finished petroleum products imported into the U. S. consisted of fuel oil and 46 percent of all petroleum imported including crude was fuel oil. In terms of BTU yield, fuel oil has on average in the 1970's sold at roughly twice the free market price of natural gas.

To gauge the benefit or cost to the consumer of FPC regulation on interstate natural gas, it would be necessary to look at total energy consumption and to compare the total price paid for energy under regulation with the total price which would have existed without regulation. While deregulation would have driven up the price of natural gas, it would have expanded the supply and displaced fuels that were far more expensive than natural gas. In 1975 the interstate pipelines serving the Northeast were 15 percent empty due to the shortage of natural gas produced by FPC price regulation. While unused pipeline is by no means a total measure of the real shortage of natural gas, it is interesting to look at what this one manifestation of the shortage cost the consumer. The 15 percent of unused pipeline cost the gas consumer $1 billion in added overhead on delivered gas. Those consumers who were not lucky enough to get gas made up for the 15 percent shortage by buying substitutes and paid as much for alternative fuels to make up for the 15 percent shortage as they paid for the 85 percent of the gas that was delivered.

The possibility that the consumer facing regulated prices may have actually lost by regulation is amplified by the fact that wellhead prices of natural gas represents only a fractional part of the price of natural gas paid at the point of consumption. This is especially significant in the Northeast where 81 percent of the residential gas bill is for pipeline and distribution costs. To the consumer of natural gas in the Northeast a doubling of wellhead prices causes only a 20 percent increase in point of use cost. Therefore even if the output of natural gas were relatively unresponsive to wellhead prices it could be very responsive to point of use prices. This is crucially important because the more responsive the supply of natural gas is to price changes the smaller is the number of gainers from FPC regulations due to a fall off in supply at artificially low prices and the larger is the number of losers who must make up a bigger shortage by purchasing alternative fuels.

Given government regulation of interstate pipelines that guarantees the pipelines a fixed return on investment, any fall-off in natural gas production and sales means that the portion of the pipeline overhead that has to be borne by each unit of gas delivered rises. Zinder and Associates have estimated in a report filed with the Federal Power Commission that if the 52¢ price ceiling had been retained by the FPC the interstate pipelines would be 45 percent empty by 1980. The average wellhead price would be 37¢, the pipeline transportation cost would be $2.03 and the point of use cost to the consumer would be $2.40 per thousand cubic feet. The short-fall in supply would have to be made up for electricity, fuel oil, synthetic gas and imported liquefied gas at over $4.00. By way of comparison, with a $2.00 new gas price and a full pipeline, the average wellhead price would be $1.12 and the cost of pipeline transportation would be $1.27. Cost at point of consumption would be $2.39, about the same as the estimated cost with 52¢ marginal prices and 55 percent utilization of the pipeline. However, the big cost differential produced by regulation comes with the cost of the 5.89 trillion cubic feet shortage of natural gas which would cost about $24 billion to replace with substitute fuels.

While the interstate price of natural gas has been regulated by the FPC, the intrastate price has generally fluctuated with market prices. With the expansion in the demand for gas in 1972 and 1973, the unregulated price of natural gas rose sharply. The Texas consumer saw the marginal price rise from 75¢ in 1972 to a high of $2.20 in 1975. With the new price incentive drilling rigs came to Texas from all over the country and even from Canada. In 1971 only 1,056 new wells were drilled, but by 1975, 2,275 new wells were completed. The expansion in supply drove prices down to $1.76 as the average new price for gas. The Texas consumer had to pay more for gas but he got more gas at higher prices. The gas he got was still a bargain. According to Federal Power Commission price projections the free market price for natural gas in 1975 was 22 percent cheaper than liquefied natural gas, 31 percent cheaper than Alaska gas, 44 percent cheaper than coal gas and 46 percent cheaper than synthetic gas.

The Texas consumer benefited from the ability of prices to rise and affect exploration and production. There is no alternative fuel known or planned in America today that is cheaper than the most expensive natural gas produced and sold. As Philadelphia Electric said of their special purchase of 1.3 billion cubic feet of gas from the Southwest at a delivered price of $2.50, "It's a bargain, it's less than half the price we're paying to make and supply supplemental gas."

By regulating the price of natural gas at the wellhead, the Federal Power Commission has produced several undesirable effects. It has stifled the development of a cheap and clean burning domestic fuel. It has produced a higher price to the consumer because he has been forced to rely on more expensive substitutes. And it has produced foreign dependence because the consumer has been forced to make up for the failure of natural gas suppliers to grow by importing petroleum products as substitutes. In a very real sense, our foreign dependence has not been produced by the failure of American ingenuity to produce oil and gas but by governmental interference, for which we have all paid in higher prices and shortages.

The exploration, production, and gathering of natural gas is one of the most competitive industries in America. Only agriculture can lay a firm claim to having a more competitive market structure. Traditional definitions of monopoly power as measured by the control of a market by a small number of producers or by the persistance of profitability beyond the range normally attained by industry in general are not present today and have never been present in the history of the American natural gas industry. The deregulation of new natural gas prices will not invalidate any existing contracts for natural gas and will not change the price of gas which has already been found and contracted for. It will, however, provide increased incentives for new exploration and drilling, which are desperately needed to expand the production of the cheapest fuel available to the American consumer.

Federal Power Commission regulation of natural gas prices was a tragic mistake for which every American has paid in terms of increased energy costs, foreign dependence, fuel shortages, and stagnation of economic growth. President Carter has called the energy crisis a moral equivalent of war. Surely in such a struggle, government cannot ask the American people to pay higher taxes and to make sacrifices without doing everything within its power to expand the production of energy to turn the wheels of industry and agriculture.

The deregulation of new natural gas prices will, in the short run, send the price of new natural gas above the level that would exist in the absence of such deregulation. But the experience of Texas and Oklahoma clearly demonstrates that it will expand exploration and drilling. The expansion of natural gas production will in turn displace fuels that are three times as expensive as natural gas. There will be a lag, however, between drilling and production. Deregulation will not instantly eliminate the natural gas shortage, but it will plant the seeds which can, over the next decade, benefit every American consumer. I urge you to take the long view and to vote for deregulation of new gas as a first step in the long, hard struggle to eliminate the energy crisis.

GOVERNOR KNEIP

Mr. McGOVERN. Mr. President, South Dakota Gov. Richard F. Kneip has ended some months of speculation in my State by deciding not to seek public office in 1978.

Governor Kneip has had a distinguished career in the public service of our State. As a State senator and as Governor he has provided progressive representation and leadership for South Dakota.

The Governor's many friends regret his decision, but understand his interest in being able to spend more time with his family as he returns to private life at the end of his term in January 1979.

Mr. President, I ask unanimous consent that the Governor's address to the South Dakota Democratic Party's State convention and editorial from the Watertown Public Opinion and the Mitchell Daily Republic be printed in the RECORD.

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

STATEMENT BY GOVERNOR RICHARD F. KNEIP

Elected public service, even in this, the world's greatest democracy, is a rare experience. To have served the people of South Dakota for the past 13 years as State Senator and as governor has been an even more extraordinary experience.

To serve the people is to know them. To know them is to draw strength from them. Through floods and drought, through civil unrest and economic hardship, the people of South Dakota have prevailed. Through victory and defeat, through times of hope and times of despair we have survived and grown stronger in that struggle.

It was in November of 1964, that I first experienced election to public office. In that year, I was elected to the South Dakota State Senate as a Democrat from McCook County. Since that time, the people of South Dakota have honored me by electing or re-electing me to public office six times. My last four elections, including a primary and general election in 1974, have been to attain or retain the office of the governorship of South Dakota. That first night in early November 1964, started for me what has been one of the most exhilarating and rewarding experi-

ences of my life—and at the same time, one of the most frustrating and demanding times of my life.

Many of you here tonight will recall that it was on January 5, 1971—my first day as Governor—that I said in my inaugural address, and I quote, "it is the task of government to build on this (democratic) system (of law) . . . our needs are not only those of the present, but certainly those of the future. For history will judge us not on how well we satisfied those temporary demands, but how wisely we provided for those of the future."

Working together these past years, we have accomplished a great deal.

No State has a more modern State government structure than that mandated by the people in 1972. Through the "executive reorganization" constitutional amendment which we recommended and the people approved, we have honed and fine-tuned a bureaucracy which I think is truly responsive to your needs, and the needs of all the people of this State.

We have begun to understand and move toward the realization of the value of our great water resources, and we have exerted our claim to the vast reservoirs of water held in the Missouri River.

We have taken the first and tentative steps toward solving the severe social, economic and cultural differences that divide our Indian and non-Indian peoples.

We have instituted and strengthened many programs designed to improve the quality of life of the less fortunate, the low income, the elderly and the handicapped citizens of our State.

We have instituted a school of medicine and adopted policies which will ultimately mean a vast improvement in the quality of health care we can provide our people.

We have made substantial progress toward stabilizing and balancing our economic base through industrialization and tourism expansion.

We are coping with the inevitable conflict between environmental integrity and economic development.

We are attempting to nurture policies which lend themselves to the promotion of the family farm unit, which is so basic to the strength of this State.

We have done this and more because we have always had the courage to grapple with tough issues. We have done all this because you have backed us in these endeavors—you, as Democrats, have mandated that your elected representatives not be afraid to confront controversy head-on. You have given us strength to do these and many other things because you know and truly believe that the most basic precept of the Democratic Party is to courageously and forthrightly seek to solve the challenges confronting our people. For your support in this work, I am truly indebted, and I thank you.

In the past couple of months, my family—Nancy, myself and our eight sons—have taken the time to do much serious thinking as to exactly how involved we can or should be in the democratic process. Admittedly, the occasion for such reflection has been partially precipitated by the opportunity to seek the United States Senate seat which is now occupied by my good friend James Abourezk.

Two decisions have been made: First, the option to seek reelection to the governorship next year exists in a legal sense, but I believe my contribution to state government will be complete by 1978 and I will not seek reelection as governor.

Secondly, many South Dakotans of both parties have asked that I seek election to the United States Senate in 1978.

My family and I have given this alternative the most careful consideration. I have sought election to public office six times and have been successful on as many occasions. There is little doubt that with the continued support of a dedicated, positive and issue-oriented democratic party, we would succeed in a campaign for that office.

I wish to announce tonight, however, that I will not be a candidate for the United States Senate—or any other elective public office in 1978. Together, as a family, we have arrived at our decision.

Please know that there is no personal honor greater than service to the people of South Dakota, but there are few efforts more stressful in the life of a family than a prolonged political campaign and the daily pressures of elected public service. Nancy and the boys have had to make many sacrifices—sacrifices which most human beings are never called upon to endure and probably should not have to endure. And they have done all of this with grace and understanding, and, more than that, have provided me with the support I needed to be your governor.

In announcing my immediate future political plans today, I wish to emphasize the importance of giving ample time for others in the democratic party to make their own plans for 1978. Our party has many able and articulate men and women who have much to contribute to high public office, and it is my hope that this decision clears the way for one of them to enter the United States Senate.

The success of the democratic party in South Dakota has been grounded in our determination to face the difficult issues squarely, with clear proposals for their solution. And our success in the future depends on our continued adherence to these principles. A united and aggressive democratic party will win in South Dakota in 1978. I pledge myself to this end during my remaining days as Governor of this great State.

I wish to conclude tonight by quoting from the late Adlai Stevenson, a great and noble Democrat. He said, "politics is the most hazardous of all professions. There is not another in which a man can hope to do so much good to his fellow creatures; neither is there any in which by a mere loss of nerve he may do much widespread harm; nor is there another in which he may so easily lose his own soul; nor is there another in which a positive and strict veracity is so difficult. But danger is the inseparable companion of honor. With all the temptations and degradations that beset it, politics is still the noblest career any man can choose."

Politics is indeed the noblest career any man or woman can choose.

[From the Watertown (S. Dak.) Public Opinion, June 21, 1977]

"POLITICS IS STILL THE NOBLEST CAREER . . ."

From a personal standpoint, Gov. Richard F. Kneip has undoubtedly made a wise decision in turning his back upon the 1978 U.S. Senate race "or any other elective office." From the political standpoint, he has probably created a double-barrelled donnybrook.

The Kneip announcement closed off months of speculation which began long before Sen. James Abourezk announced last winter he won't try for another term. It has been widely felt that Kneip would cry "done!" with the governor's office after seven years of it and try for something else, probably the Senate seat which is a natural progression point.

Because of this, several would-be contenders have held off. It has been conceded that if Kneip did decide to run for the Senate, he would have the best chance in next year's general election of anyone the Democrats could put up and his candidacy would help avoid the possibility of a scarring primary battle for the nomination since he would (A) be unopposed or (B) meet only token opposition from a party dissident or two.

This comforting outlook now has been erased and the field is wide open. There is every likelihood that a clutch of legislators will feel the urge to declare plus others whose names also rank large in terms of Democratic party prominence and service. A shotgun rush toward the job may well be in the offing.

The Republicans also have a classic building for the Senate nomination between Congressman Larry Pressler and James Abdnor. The governorship, too, holds great potential for trial and tribulation for both parties.

Thus, as been frequently observed, 1978 may well be a political year to remember for parties, candidates and voters in whose hands all ultimate decisions always lie.

Meanwhile, the governor in his no-go announcement made some remarks well worth remembering. Said he:

"Politics is the most hazardous of all professions . . . but danger is the inseparable companion of honor. With all the temptations and degradation that beset it, politics is still the noblest career any man can choose."

And Senator Abourezk added another rhetorical nugget, one which should be pasted in the hat of many an office-holder:

"The most honest of all public servants are those who know when they have given all that they have to give and have the personal courage to step aside when that time comes."

And yet another:

"The toll of public service on personal life is tremendous."

Gov. Kneip's weekend statement indicated the latter consideration was the key one in his decision. Everyone will understand it . . . but there are many South Dakotans who will deeply regret his withdrawal from political life. They will hope . . . and many believe . . . it is only temporary.

[From the Mitchell (S. Dak.) Daily Republic, June 22, 1977]

KNEIP BOWS OUT

Gov. Kneip's announcement Saturday that he will not seek any public office in 1978 will remove from the South Dakota political scene, one of the state's most successful political figures.

Kneip, who was considered the overwhelming favorite to gain the Democratic senate nomination for the seat being vacated by Sen. James Abourezk in 1978, cited the occupying of public office as a duty that taxed his responsibilities toward his family. Noting the sacrifices made by his family, he said a family decision brought him to his own ultimate decision to bow out.

Kneip has been a strong political figure since 1964 when he first was elected to the state legislature. After gaining stature in the state senate, he sought the governorship against Gov. Frank Farrar and in a rare instance ousted the incumbent in 1970.

Re-elected in 1972 by a good majority, Kneip tested his political strength again in 1974 after the constitution was revised to allow two four-year terms for governor. The courts ruled in his favor and the OK was given to seek the unprecedented third term. Again he was re-elected despite primary opposition from his Lt. Governor, and battling the third term issue in the general election. The fact that he could win re-election under such circumstances was testimony to the governor's popularity.

The governorship in 1978 really was a consideration in his decision for the future.

Only the U.S. Senate race was attractive enough to gain Kneip's attention.

There is no question that the Governor has had his difficulties in recent months, but as he indicated Saturday, he is positive such a bid would have been successful had he opted for it.

Criticized for his government reorganization, plea for a single university system, a revised criminal justice code and other dealings with the legislature, Kneip became the target of Republicans in the 1976 election—one that saw Republicans regain their traditional domination of the House and Senate.

But Kneip didn't back away from the challenges. He serves as a powerful governor who commands the attention of his public.

His programs and his power of veto became the issue in the 1977 session. He didn't gain success with most of his own personal programs, but he was able to garner support to sustain many of the vetoes which he considered to be poor legislation.

He put forth efforts typical of a leader in his terms as governor and will likely conclude his final year and one half with that same fierce dedication to do what he feels is best for the people of South Dakota.

Whether this is the conclusion of his career in politics, or whether it is a brief pause, Richard Kneip has made his mark on political history in South Dakota, and that history will treat that era in South Dakota government kindly.

LEAVE ELECTORAL SYSTEM AS IT IS

Mr. McCLURE. Mr. President, in February I testified before the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee regarding the proposal to do away with the electoral college and move to a system of direct election of the President and Vice President. At that time I voiced my strong opposition to this plan. Since then two additional proposals have been added to the plan for reshaping our system of election by the Carter administration, specifically proposals to provide for public financing of congressional elections and to set up a system of automatic voter registration. A recent editorial in the South Idaho Press, published in Burley, Idaho, is illustrative of the views of the majority of my constituents in Idaho, who recognize that the ideas and concepts binding this Nation together are not simple, and that these proposals overlook some of the most basic and important of them. For example, the great compromise imbedded in our Constitution was intended to protect the rights of the small, rural States, and while the idea of direct election of the President is appealing because it is so easy to understand, it totally overlooks the more difficult concept of federalism, which is the very basis for our union. I subscribe fully to these editorial comments, and I ask unanimous consent that the editorial be printed in the RECORD.

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

LEAVE ELECTORAL SYSTEM AS IT IS

Public funding of elections has been a long-time favorite goal of Ralph Nader and some of his radical cohorts. President Carter seems to be joining the group with his recently avowed objective of doing away with the influence of rich people like the Kennedys and the Rockefellers. But what actually happens is quite the contrary when you install public funding of elections. The average citizen is then taken for granted with influence completely eliminated. The importance of special interest groups is magnified. We learned in last year's "publicly financed" presidential campaign, with most private contributions limited, that Big Labor could assist liberal candidates to the extent of over $100 million.

If public campaign financing is extended to Congress, nearly every candidate will be forced to please the George Meanys because they can provide millions of dollars worth of phone banks, campaign advisors, billboard and parade supervisors, and leadership for voter registration drives.

Voter registration simplification is another facet of the Nader-Carter plan. Instant registration by identification card is already well know in Chicago and south Texas and frequently produces one-sided vote totals of amazing magnitude. Why issue such encouragement to all the corrupt politicians? The political machines of big city bosses would completely dominate elections because there is absolutely no way to screen out fraud.

The third gimmick, to assure incumbents perpetual political office, involves elimination of the Electoral College. The proposal seems to be directed against the small states and the West for non-conforming at last November's election. Our Founding Fathers devised the best political system in the world and intended to balance the influence of large and small states. If the Electoral College was eliminated in favor of direct elections, the real power increase would go to large cities like New York and Chicago. The small states like Idaho, with no large cities, would become insignificant as far as the election of Presidents and vice presidents is concerned.

Let's not upset the balance and allow our wonderful country to revert back to machine political manipulation at election time. Let's retain our revered election system with private financing, a respected Electoral College and an honest method of voter registration. Tampering with our election rules and playing politics in such a blatantly transparent manner can only come about when one party not only dominates both congressional houses but possesses the Presidency too!

OAHE PROJECT

Mr. McGOVERN. Mr. President, in deciding to delete funding for the Oahe irrigation project for fiscal year 1978, the Senate Appropriations Committee—following an earlier decision of the administration—has predicated their decision on the "lack of local support and commitment" for the project in South Dakota.

Under State senate bill 246—as more closely defined by the attorney general of South Dakota—the Oahe Unit Task Force was created to be the official voice for our State in relation to the Oahe irrigation project.

This task force has provided me with a memorandum setting forth their official views in relation to the public works appropriations funding for Oahe for fiscal year 1978. They have requested that their views be called to the attention of the Members of the U.S. Senate in advance of our consideration of the public works appropriation bill.

Mr. President, I ask unanimous consent that the formal memorandum for the South Dakota Oahe Unit Task Force be printed in the RECORD.

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

MEMORANDUM

Re All Members of the United States Senate.
By Senator Curtis Jones, Chairman, State Senate Democratic Member, Representative James Endres, House of Representatives Democratic Member, Representative Don Ham, House of Representatives Republican Member, Richard F. Kneip, Governor of South Dakota, Senator George Shanard, State Senate Republican Member.
Re Fiscal Year 1978 Funding for the South Dakota Oahe Irrigation Unit.

The action by President Jimmy Carter to delete funding for the Oahe Irrigation Unit project from the Fiscal Year 1978 Department of Interior budget request has served to rekindle the controversy surrounding this project among the citizens and elected officials of South Dakota.

Realizing that there are strong feelings toward the proposed Oahe Unit by both the opponents and supporters of the project and realizing that the project can be improved to reflect a greater public benefit, the South Dakota State Legislature in the 1977 session passed legislation (S.B. 246) supporting continual funding of the Oahe Project and creating a special Task Force consisting of four legislators, the Governor and two members of the Oahe Sub-district board of directors. This Task Force was assigned the task of working to help bring about those changes that will make the Oahe project a better project for the people of South Dakota.

We wish to report to you that this Task Force has been organized and is now operational. Senator Curt Jones of Britton, has been elected Chairman; Representative Don Ham of Rapid City has been elected Vice-Chairman; other members of the Task Force are Senator George Shanard of Mitchell, Representative Jim Endres of Watertown, Oahe Conservancy Sub-district board members John Sieh of Groton and Glenn Overby of Mellette and, of course, Governor Richard F. Kneip. We have the services of Mr. Douglas Haeder of Pierre as Director for the Task Force. He will be on board by July 1st at an office in the Capitol Building in Pierre.

The legislation that created the Task Force supported continual funding of the Oahe project, and as we've said earlier in the letter, also mandated the Task Force to work with all concerned to effect changes needed to improve the project and named several areas in which the Legislature wanted this Task Force to work. We have started that program and are getting underway by working at this time with the Oahe Sub-District Board, the Bureau of Reclamation, the Irrigation Districts involved, departments of State Government, the Lower James Conservancy District and citizens in general who have been in attendance at our meetings.

The Oahe Sub-district board of directors has been fit to ask that funding be discontinued. That board feels they are representing the people of the 15½ counties in the Sub-district; however, the Legislature has passed a bill stating that continued funding is now the law of the State of South Dakota.

The Task Force takes no power away from the Sub-district board and will work very closely with the Sub-district board to effect change and to work on other problems that are related to the Oahe Project, but which are of a local nature. These could include such areas as the loss of tax base and highway costs related to the building of the project, as well as others. This Task Force will present needed leadership in our Legislature to face the challenges involved in and surrounding the project.

Finally, being aware of the budget cycle which the Department of Interior operates under for their Fiscal Year 1979 requests,

we wish to inform you that we intend to forward to you in a timely fashion, recommendations to modify and change the design features so as to improve the project. Accordingly, we will be forwarding to you mutually agreed upon modifications by November of this current year.

We send you this letter in order that you might be aware of the actions going on here in South Dakota dealing with and surrounding the Oahe Project. You should know that a majority of 5 of the 7 Task Force members have signed this letter.

Thank you for considering our request in this matter.

IDAHO NATIONAL GUARD MARKS 100 YEARS' SERVICE TO STATE

Mr. McCLURE. Mr. President, on June 18 of this year, Idaho commemorated the formation of a group of Idahoans who have been serving the interest of both the State and the Nation for 100 years. This group is the Idaho National Guard. I ask unanimous consent that a short description of the Guard which appeared in the June 16 issue of the Buhl Herald be printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. McCLURE. Mr. President, in both war and peace, Idaho's own weekend warriors have been active and effective in fulfilling their duty. During the recent Teton Dam disaster, the 116th Engineering Battalion evacuated a great deal of Government equipment from the path of the flood waters, and in turn used this equipment to help rebuild the area. During the North Idaho floods of 1974, and the great forest fires of that same year, the Guard once again was called in to save lives and property. The list of service goes on, but let me conclude it now by saying that the men in the Idaho Guard are the kind of men who have made this country free and strong, and they are the kind of men who will keep us that way.

EXHIBIT 1

IDAHO NATIONAL GUARD MARKS 100 YEARS SERVICE TO STATE

BOISE.—One hundred years of service to Idaho will be recognized Saturday, June 18, when units of the Idaho Air and Army National Guard participate in a military review for the general public at Gowen field near Boise. The review is scheduled for 11 a.m. An open house will follow.

A number of state and national dignitaries will attend the review, including Idaho Gov. John Evans and Major General LaVern Weber, Chief of the National Guard Bureau, Washington D.C.

The centennial review will be the first major exercise of its type conducted by the Idaho Guard since the mid-1950's, Approximately 2,000 Air and Army National Guardsmen will march in review.

A flyover of air and army guard Phantom jets and helicopters will coordinate with the review on the grounds. There will also be a display of various types of military aircraft and armored vehicles.

The Idaho National Guard traces its history to June 19, 1877, when Cpt. Edward McConville of Lewiston, organized a group of volunteers to act as scouts for the army in the Nez Perce war. McConville, who is recognized as the founder of the Idaho Guard, was killed in the Battle of Santa Anna in the Philippines during the Spanish-American war.

According to Major General Brooks, adjutant general for the state of Idaho, Idaho guardsmen have participated in every major callup of reserves since 1877. Idaho guardsmen fought in the Spanish-American war and served on the Mexican border campaign of 1916. They were called for both World Wars and Korea. Idaho units were activated during the Berlin crisis and again during Vietnam.

Idaho guardsmen have also brought aid to many communities following natural disasters such as floods and fires. Guard units are also active in supporting many community service projects.

CONCERN EXPRESSED TO PRESIDENT REGARDING FREEING OF WILLIAM NIEHOUS IN VENEZUELA

Mr. GLENN. Mr. President, I note with interest that Carlos Andres Perez, the President of Venezuela, will make an official state visit to the United States on June 29 and 30.

As Mrs. Carter learned on her recent visit to Venezuela, the people of the United States and Venezuela have many common bonds, including a willingness to work together for the good of both countries.

However, I am concerned about a situation which has existed for some time.

In February 1976, William F. Niehous, general manager of Venezuelan operations for Owens-Illinois, Inc., of Toledo, Ohio, was kidnaped from his home in Caracas. He remains a captive today.

In April 1976, after Owens-Illinois met with one of the terrorist kidnapers' demands and published their political manifesto in newspapers in New York, Paris, and London, the Government of Venezuela announced its intention to take control of assets of Owens-Illinois de Venezuela, a subsidiary of Owens-Illinois, Inc., which is headquartered in Ohio.

Although we have heard reports which indicate there have been efforts made to free Mr. Niehous and to bring the nationalization question to a conclusion, I hope the visit of President Perez will provide an opportunity for a resolution of these matters.

The welfare of an American citizen, kidnaped more than a year ago, is of vital concern to us all. The proposed nationalization of Owens-Illinois de Venezuela also casts a cloud upon the potential for investment in Venezuela by U.S. companies.

URBAN ELECTRIC AUTOMOBILES

Mr. McCLURE. Mr. President, last year the 94th Congress passed the Electric and Hybrid Vehicle Research, Development, and Demonstration Act, which encourages the development of electric car technology. In this spirit, Senator STONE and I have invited the developer of the XDH-1 Experimental Electric Car to Washington to demonstrate the feasibility of a practical electric car design. We will be demonstrating the car on Tuesday, June 28 through Thursday, June 30.

The XDH-1 was developed by Globe-Union Incorporated, Milwaukee, Wis. Globe-Union is the sole supplier of the DieHard battery to Sears-Roebuck. The XDH-1 was built under the direction of Everette Wilson, the head of the Sears electric car project.

Wilson began with a new Fiat 128-3P hatchback sedan and converted it to a solid-performing, reliable electric car using a rewound World War II-vintage 27-horsepower aircraft starter/generator motor, and a solid state speed control, married to the Fiat's own front-wheel drive transaxle unit.

The XDH-1 has reached speeds in excess of 75 miles per hour, and has been extensively tested in traffic on city streets and freeways. Another test saw it maintain an average speed of 45 miles per hour for a range of 94 miles through the hilly terrain of central Wisconsin just before arriving at the 1977 Indianapolis 500 for opening day ceremonies.

Sears has no foreseeable intention of marketing electric vehicles. The car was bought from a dealer's stock and Sears has no ties with its manufacturer, Fiat.

Sears also wanted to prove the DieHard could add an important contribution in the further refinement of practical, efficient, electric-powered cars for limited range use such as a second car for clean, dependable urban operation, or a "station car" for suburbanites.

The concept of electric vehicle transportation for our cities is now at the takeoff point with our current technology. The XDH-1 is a good example of the possibilities of a new transportation system which is economical, nonpolluting, and energy efficient.

A large number of this country's population now lives in urban areas which suffer the most from the fumes, noise, and the unwieldly size and shape of the big gasoline car. Those who refuse to listen to reasonable remarks about electric vehicles like to picture people making coast-to-coast ventures in something powered with C batteries. They do not stop and listen to our assertions of what we are trying to get them to picture. It is an urban area, with people going to work and to school, making deliveries or shopping and keeping appointments in electric vehicles—not exploring the mountains and crossing the deserts.

The XDH-1 is one of the most advanced applications of electric vehicle technology, and is capable of the speeds and the range required for normal commuting or around-town driving.

If we have learned nothing else in the last few years, we have learned the necessity for husbanding our precious supplies of oil. Oil must be diverted from uses for which substitutions are available and conserved for its most essential functions. We must have the oil to provide petrochemical feedstocks for synthetic fibers, for clothing, building materials and insulation. We may someday find we desperately need oil for the base for synthetic food supplements—if we do, it must be there. But we cannot grow much food very well without fertilizers and we cannot provide our farmers with the fertilizers they need unless

we have the petrochemicals to manufacture it. And feeding people is not enough. We have to think of their health. We depend on petrochemicals for antibiotics and other medicines as well as for the latest in medical devices, such as artificial heart valves.

One way to change the transportation energy base would be to shift a greater share to urban use of electric vehicles, which would indirectly allow a greater share of coal and nuclear reserves to go for transportation needs. As we are seeing, it is imperative that we find alternative sources of energy. Over the long run, this will not present an unsolvable problem. The physical supply of energy is bountiful, but it is man's technology which must improve to take advantage of it. We must also learn to husband our resources, using the precious, finite fuels for top priorities, where substitutes are not yet available. And, a switch to electric vehicles would allow in the future a greater use of the virtually infinite sources, such as coal, solar energy, geothermal energy, and the energy from nuclear breeder reactors. The name of the game should become, "Use oil only where you can't use something else."

I do not want anyone to conclude from my remarks that I am trying to say that all future vehicles should be electric. Nor should anyone conclude that because my remarks are addressed specifically to urban problems that I am not concerned about the rural and agricultural areas. One of the most important points I want to make today is that by easing the unnecessary use of fossil fuels in combustion engines, we will be allocating the various forms of available energy in a more efficient way. If tomorrow's farmer has enough gasoline and diesel fuel for his trucks and tractors, it will be precisely because these fuels were not used by commuters who were given a reasonably clean and economical alternative. If proper uses are not made of available resources, ultimately everyone suffers.

The commuter depends upon the farmer for food and it now seems that the farmer, at least in the short run, may depend upon the commuter for fuel. But first we must see that the commuter has that choice to make. We must do everything we can to see that the truth of this situation is put before the public. I believe the average citizen has no idea what already is, and what could be, available in the electric car field. I further believe that if he knew, he would be significantly more interested trying one out. Once that demand begins, market forces will take over, and you and I will not be stuck having to make embarrassing explanations to our grandchildren about why we burned such valuable and ueful substances as oil and natural gas liquids, in the face of excellent alternatives.

Apparently people still have to be educated to the fact that many electric vehicles are currently being used. They are doing good service as forklifts, golf carts, work trucks, motorcycles, and even snowmobiles. The electric snowmobile has won the admiration of those enemies of the gas-operated version. Covering territory in a machine that proceeds steadily and cleanly without breaking the eardrums has achieved a new respectability. And, various cities have found the electric bus an efficient and economical answer to mass transportation. In a sense we have a sort of chicken and egg situation. If the Government were to spend more of its transportation dollars on electric road vehicles, the public would become educated as to their value. On the other hand, if the public knew the benefits they could expect from electrical alternatives to the IC engine, it would begin to demand that its tax dollars be spent accordingly. What the first step is to be is now uncertain. But one thing is certain. Those of us here today can continue to help others to change their picture of the electric vehicle.

I will leave it to others, though, to discuss the technical and economic merits of electric vehicles. Speaking as a legislator, though I am deeply concerned with the growing tendency to solve society's problems by reducing the freedom of the individual. I am sure that we have all heard some of the proposals being suggested for solving our energy crisis—particularly with regard to transportation—which require that the individual give up some degree of decision-making to the Government.

We know that electric vehicles cannot solve the long-range energy shortages facing private transportation. But, electric vehicles are a step in the right direction. Instead of telling the commuter or the housewife that they have to give up their gasoline-powered automobile, and rely on mass transit, there is an alternative form of transportation—a form which does not emit pollution, either air or noise, and does not consume precious petroleum supplies. Instead, it is a form which can help maintain the degree of personal freedom which the individual now experiences, whether it involves where to work, where to shop, or even where to live.

There are, of course, some modern planners who express concern at this freedom—freedom which allows a family to choose a house instead of an apartment, for instance—but history has shown that the mistakes made by individuals planning their daily lives are never as horrendous as the mistakes made by Government planners. For that reason alone, continued effort on electric vehicle development is justified—to help insure that future generations will enjoy the dual benefits of a better environment and the freedom of mobility.

Among those who have personally driven the XDH–1 are: Race drivers Dave Marcis and Indianapolis 500 winner Johnny Rutherford, international known race car builder George Bignotti, and a number of members of the motoring press including James Mateja of the Chicago Tribune and Dan Jedlicka of the Chicago Sun-Times. The car was also demonstrated for industrial designer Brooks Stevens who has extensive experience in automotive design. All were unmistakably impressed with the car's performance.

In the words of Everette Wilson:

The purpose of the XDH–1 was to make an acceptable car. The idea was to build a car equal to the cars now in use. The American people have an image of what they like and the idea was to build a car that would simply drive like a 4-speed stick shift. We wanted a car that looked and drove like a regular car and that is something unique with this car. This is a "happy" car—the components fit, the weight is right, the power is right and the batteries are excellent. Everything is working together, and that is what makes it different and better. We have, for the most part, off-the-shelf components—nothing that any machine shop throughout the country couldn't produce. We did do a cosmetic job to make it a show-piece and adjusted it for wind resistence. Wind resistence is a big matter when you get it up to speeds. At speeds of 75 miles per hour you want to get around something or change lanes—you need power in reserve. The 76 miles per hour is a burst of power for 3 to 5 minutes only. If we had wanted 75 miles per hour cruising speed, we would have made a larger engine. The car will cruise at 65 miles per hour easily. It uses 27 horse power at 65 miles per hour and 40 and 75 miles per hour.

We started showing this car privately to Sears people in the middle of April. I was driving it back and forth to work regularly and people would look and wonder. When I started giving people rides, I was amazed at the interest. The thing that amazed me was the real interest and curiosity and these were just people walking by—not electric car enthusiasts. In Chicago, when I stopped it, I had an interested crowd immediately. I kept getting the standard questions along with, "When can I buy this car?" I told them it was up to them—when they were ready to open their wallets for it.

I hope that all of my colleagues in this body avail themselves of the opportunity to test, for themselves, this XDH–1 experimental electric car. I think they will then discover that this is indeed a practical, reliable, pollution-free alternative to the internal combustion engine.

This car is not a golf cart. It is a powerful, comfortable, uncomplicated, quiet automobile which will perform along with, or better than, other compact cars you might see driving home tonight.

Mr. President, I ask for unanimous consent that several articles be printed in the RECORD.

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

SEARS XDH–1 EXPERIMENTAL ELECTRIC VEHICLE

(Specifications)

GENERAL

Curbweight: 3,110 lbs.
Weight distribution: front/rear percent 48/52
Wheelbase in: 87.5
Track: front/rear in: 52.2/52.5
Length: 150.5 in.
Width: 61.4 in.
Height: 52 in.
Ground clearance: 6.25 in.
Overhang-front/rear: 31/32 in.
Usable trunk space, cu ft: 27
Styling: Alumimum front end cap with integral bumper, quad rectangular headlights with transparent covers, custom fabricated for maximum free air flow and pleasing appearance. Rear bumper removed. Custom-designed paint scheme, based on DieHard racing orange.

POWER PLANT

Type: 120-volt compound wound electric motor: transverse mounted.
Power rating: cruising 27 hp @ 2000 rpm. Acceleration 40 hp @ all rpm.
Speed control: Solid state, field weakening.
Batteries: Sears DieHard experimental

electric vehicle type (20 batteries), plus one accessory battery (DieHard Marine).

DRIVE TRAIN

Transmission: 4-speed, manual all synchromesh transaxle, FIAT 124-type clutch
Final drive ratio: 12/53.

CHASSIS & BODY

Layout: front motor/front drive (based on FIAT 128-3P auto).
Body/frame: all steel/unit.
Brakes front disc/rear drum, PLUS electric regenerative system.
Effective brake area, f/r: 19.2/34.1 sq. ft.
Wheel size: 5-in. rim x 13 in. diameter.
Tires: Sears steel belted "Roadhandler" radials, sizes A78SRx13 (165 x 13).
Steering: direct acting rack and pinion.
Turns, lock-to-lock: 3.5.
Turning Circle, ft.: 32.
Front suspension: Independent McPherson strut, coil springs.
Rear suspension: Independent transverse leaf spring (specially modified for extra strength) acting as anti-sway bar.
Shock absorbers: tube-type.

ACCOMMODATION

Seating capacity: 2 persons (bucket seats).

INSTRUMENTATION

Instruments: Voltmeters for accessory battery, DieHard power packs and gel cell motor control power pack. Ammeters for driving current and field control current. Speedometer, motor temperature gauge, tachometer, battery charge gauge.
Warning lights: Handbrake, hi-low beam indicator, turn signals, emergency flashers.

MAINTENANCE

Service intervals:
Electric motor: Replace brushes @ 50,000 mi.; rewind motor @ 100,000 (est.).
Chassis lube: Lifetime type.

PERFORMANCE

Speed at end of ¼ mi., mph: 75.
Speeds in gears: 4th gear (5000 rpm) 75 mph; 3rd gear (5000 rpm) 60 mph; 2nd gear (5000 rpm) 45 mph; 1st gear (5000 rpm) 25 mph.
Top speed (est.): 75 mph.
Cruising range (est.): 90 miles @ 47 mph.

CHARGING RATES

110-volt line: amps to each of two battery packs/18 hrs. from "full discharge."
220-volt line: 15 amps to each of two battery packs/6 hrs. from "full discharge."
Recharging: two solid state, phase angle control circuits, plus 12-volt accessory charger. (10 batteries per circuit for recharging). Chargers sense 110 or 220-volt input and automatically adjust charge rate.

ACCESSORIES

Heater/defroster, operated by 120-volt electric system.
Windshield wipers rear window defogger: operated by single 12-volt accessory battery.

[Technical Backgrounder]

DEVELOPMENT OF THE SEARS XDH-1

The Sears "XDH-1" was based on an existing passenger car, a Fiat 128-3P, three-door hatchback with transverse-mounted engine, and front-wheel drive because its selection provided a vehicle where power losses through the gear train could be minimized, through the use of a transaxle with straight-cut spur gears rather than a hypoid differential.

The car was also chosen for its front-wheel drive traction, and as a good passenger package for two, with adequate comfort and leg room.

The XDH-1's revamped front end styling offers a minimal frontal area and low wind resistance. The car also has a sturdy chassis, body, frame and suspension, needed to handle the additional load in the form of the two DieHard battery power packs made up of a total of 20 DieHards and located beneath the hood and in the car's former rear seat area.

With it's new front end styling and custom paint job, the car has a pleasing and sporty appearance, coupled with a neat-appearing, fully-accessorized interior.

Conversion of the car to DieHard power was begun by removing the engine, radiator, gas tank, gas lines and all un-needed accessories.

Basis for the power plant is a World War II era aircraft-type starter/generator motor that is compound wound with a portion of its field coil in series with the armature, but a separate field coil energized from an outside source to control motor speed.

The motor is coupled to the original transaxle unit using an intermediate section between the motor and transaxle.

The motor is rated at 167 amps load continuously (65 mph); intermittent load rating is 300 amps for 3-5 minutes.

The intermediate adaptor shaft which is supported by twin tapered roller bearings carries the flywheel and the clutch assembly. Original engine mounts were adapted to the new electric motor. Then the electrics were installed.

A heavy-duty contactor is used to start the motor rolling. It puts the current through a pair of resistors at 40-50 amps under no load. After one second, a time delay cuts in another heavy-duty contactor which shorts-out resistance, then gives full current to the motor to operate the car.

The contactors are controlled by relays operating on 12 volts.

The starting procedure is simple: The ignition key is inserted in the lock, turned on, then advanced to the normal key-turn starting position. The motor starts and idles at 2000 rpm and is immediately capable of delivering full power with no speed control other than the transmission gears.

A solid state speed control is used, however, a unique field-weakening device. Current through the shunt winding suppresses the motor to a constant 2000 rpm. By weakening the current in the suppression coil, the motor goes faster—up to 5000 rpm. Ungoverned, the motor is capable of 8000 rpm.

The speed control utilizes a normal accelerator pedal that controls a rotary pot resistor which in turn operates a solid state speed control from 2000-5000 rpm.

The motor requires a cooling system, a "squirrel cage"-type 12-volt heavy-duty blower fan and ducting for forced cooling of the motor. The motor can run up to 220°F. but it is more efficient if it's run cooler for better performance and longer range from the batteries. Normal operating temperature is in the 120-160°F range.

Twenty batteries are required for the desired range of the car. They are mounted in the car in packs of 10 DieHard batteries each located in the area formerly occupied by the rear seat and extending partially into the luggage compartment. Under the hood are five DieHards and one DieHard Marine battery for auxiliary power to operate accessories. Additional weight on the car's front wheels is about 100 lbs.

The flexibility of on-board battery chargers is desirable, because conventional chargers are too bulky for this application. A new type of charging system was developed that charges between 94 and 96% efficiency of current drawn from an ordinary outlet, about a 20% improvement on other charging methods for batteries. Chargers measure only 6x2x9 in.

Instead of using a land line-type of cord inside the car's trunk, to be pulled out for charging, a plug-in into the car itself is used. It's installed in the former gas filler pipe opening and covered by a dummy gas cap, and there's an adapter for 110 or 220-volt power for charging.

A console-mounted switch inside the car turns on the chargers, and the rate of charge is 5 amps per battery pack using a 110-volt line and the system automatically boosts the charge to 15 amps when it senses a 220-volt current being fed to the car. An 18-hour charge is needed on a 110-volt line, for batteries that are completely discharged, and this time is reduced to just 6 hours with a 220-volt charge. Five amps is used to protect a 110-volt line from blowing a fuse or circuit breaker due to overload with other devices presumed to be drawing current from that line.

All batteries are recharged simultaneously, including the single 12-volt DieHard Marine used to operate wipers, heater, headlights, etc., and the two small 12-volt gel cell batteries that operate the speed controller. The charging system is designed so that all batteries reach peak charge at about the same time, in order to eliminate overcharge condition on any of them.

Each of the two chargers recharges one of the two battery packs independently of the other, through the use of an additional solenoid control that isolates the batteries for charging, then creates a parallel hookup for running.

To prevent driving away with the charging cord plugged into the car and a wall outlet, a relay senses current going into the car and automatically disconnects its starting circuit, making it impossible to start the car with its charging cord connected.

To assist the original equipment brakes on the XDH-1, its electric motor, upon deceleration and downshifting, becomes a powerful generator employing the principle of regenerative braking. Used properly, it increases the car's range by converting braking force to electricity that is fed back into the car's batteries.

The car's power plant permits the eventual inclusion of additional accessories: cruise control, a vacuum pump to add a power assist to the XDH-1's original brakes, and a device to automatically fill the car's batteries with water.

[From the Idaho Falls, Idaho Post-Register, June 21, 1977]

THE HYBRID CAR: CAR OF FUTURE?

Have we gone about as far as we can—or should go—with the conventional, gasoline-powered, piston-engine car?

Unmistakably, immense progress has been made in cleaning up the family gasper. In the decade or so since precontrol days, the average level of pollutants emitted by new cars—chiefly carbon monoxide, nitrogen oxide and hydrocarbons—has been reduced by 83 per cent, thanks to more efficient engines, add-on devices like the catalytic converter and government-mandated measures such as lead-free gasoline.

But we seem to be reaching a crunch point where more and more effort is required to produce smaller and smaller results. As it is, the even more stringent emissions standards that were scheduled to go into effect with 1978 models have been postponed by Congress at the behest of the industry.

The question is not so much whether Detroit can build virtually pollution-free automobiles, or when it can build them, as whether the benefits will be worth the cost.

According to an allegedly "suppressed" memo by the Environmental Protection Agency (EPA), the Carter administration's proposed regulations for pollution controls, fuel economy and safety would raise the average price of a new car $1,000 by 1985. Some automakers are claiming that government rule-making could force Americans to pay upwards of $10,000 for an ordinary 1985 model sedan.

Automobile safety is one thing, and cost considerations here should take a back seat to the savings of human lives. Unfortunately, when it comes to pollution control vs. fuel

economy, the trade-off is usually an adverse one.

For example, other EPA statistics indicate that, on a car-to-car basis, California's emissions standards, which are tougher than the federal ones, have cut average fuel economy by 12 per cent.

Committed as they are to the internal combustion engine for as far ahead as they can see, the automakers are turning to the strategy of reducing the size and weight of their products. The smaller the car and engine, the fewer pollutants generated and the less fuel used, even after the pollution-control penalty is paid.

That is one way to go. But there are other ways, and unless we want to be permanently at the mercy of the oil exporting countries, we should be devoting more attention to alternatives to the internal combustion engine.

Although an act of Congress last year provided $160 million to put a demonstration fleet of several thousand electric cars on the road by 1982, this is less than Detroit spends to change the shape of fenders in a given year.

No electric car yet built or envisioned will totally replace the gas buggy. The best ones available right now can go perhaps 50 miles between charges. They are also tiny and comparatively slow.

But these same characteristics make them ideal as a second car for local commuting and shopping—and some 27 million Americans families own a second car.

There would also seem to be a great deal of promise in hybrid cars, which combine the advantages of the internal combustion engine and the electric motor. In the hybrid, a small, constant-speed—and hence highly efficient and clean—gasoline engine would keep the batteries charged and provide reserve power for sustained freeway travel.

Another possibility is the flywheel-powered car, which uses energy stored in a spinning flywheel that is periodically charged up by plugging into a household electrical outlet.

All of these designs have limitations and drawbacks. But if their development were made a national priority, significant improvements could no doubt be made in battery design, power transmission and what-not.

In short, rather than telling Detroit to come up with the perfect conventional automobile, the government ought to try force feeding some of this alternative technology.

THE FEDERAL GOVERNMENT AND THE ECONOMY OF NEW YORK STATE

Mr. MOYNIHAN. Mr. President, during the last several weeks, I have spent a great deal of time trying to gather my thoughts together on a subject of overwhelming concern to me, the economy of my State. While there is room for debate as to the performance of the national economy, that of New York State, and especially of New York City, continues to be dismal. The Nation has come very far in recovering from the depths of the recent recession, but New York has never recovered, and the economy of the State is severely depressed.

I believe that this condition results not simply from bad luck, though we have had our share of that, nor from any failings on our part, though we have much to answer for on that point. I believe that policy is, in the main, responsible for our present condition, and for the most part I refer to Federal policy. The national government has followed, and continues now to follow, a number of policies which, whatever their purpose, have had the effect of deflating the economy of New York State to the very brink of bankruptcy.

I have had the opportunity to spell out my thoughts on this entire matter at some length in a paper I would like now to insert in the RECORD. Entitled "The Federal Government and the Economy of New York State," it represents the evolution of my thinking at this point, and I should be most grateful for any comments on my analysis and conclusions which my colleagues may have. I have similarly asked the President to seek the comments of the Council of Economic Advisers, and look forward to having their, and his, views.

Mr. President, I ask unanimous consent that the text of my statement, "The Federal Government and the Economy of New York State," be printed in the RECORD.

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

THE FEDERAL GOVERNMENT AND THE ECONOMY OF NEW YORK STATE

I have been in the Senate now for most of half a year, and it would seem time to make some general statement to New Yorkers about the economy of New York.[1] If I seem to have put off this plain duty, let me plead that even now I hesitate to speak on so large a subject which is so little understood.

It will be generally agreed that we no longer "know" nearly as much about the national economy as we may have thought we did some years ago, and even in the most self-confident days of the Council of Economic Advisers in the 1960s no one pretended to know much of regional economics, still less of the economics of the several states which are legal jurisdictions and not at all economic units.

Nonetheless, the fact that New York is a legal jurisdiction has economic consequences. To the degree that we are taxed at higher or lower levels than other jurisdictions, to the degree our public spending is more or public spending less, our public borrowing more or public borrowing less, then the economy of New York will be different from that of other states.

It is different, and in ways that are well known. But why is it so different, and why so much worse? There is surely enough evidence that something extraordinary is going on. The problem is to identify what is extraordinary.

A number of examples come readily to mind in which situations of seemingly great disequilibrium nonetheless admit of alternative explanations which are much less unsettling. For example, the near collapse of New York City's finances two years ago was not an isolated phenomenon. The State's Urban Development Corporation almost went under at about that time. The Cities of Yonkers and Niagara had the narrowest of escapes. Still, this was a time of the deepest recession since the great depression of the 1930s. This general constraint combined with a certain mindlessness in government,—I have elsewhere recalled Gibbon's phrase, a "leakage of reality"—could account for a good deal. We are not compelled by those events to conclude that we are caught up in systematic disorder.

Similarly, it is at least possible to interpret the physical decay of the city in terms that are less ominous than would otherwise seem required. In the history of urban settlement I do not suppose there has ever been a phenomenon such as the destruction of the South Bronx over the past decade. Never. Nowhere on earth.

In history, places aplenty have been destroyed by conquerors, and more places abandoned than we tend to recall—Mesa Verde, Angkor Wat, Machu Picchu, Pagan, for example—but never has an urban settlement been so destroyed by the people living there. Still, to repeat, it is possible to argue, as some have done, that what we really are seeing is abandonment, and that this is nothing unusual in the American experience, which for so long was singular in the way agricultural land on the frontier was settled, quickly worn out, and promptly left behind as the settlers moved on. In that sense the abandoned car in front of the burnt out apartment is part of a continuum.

The welfare system is surely also a factor in this process of abandonment. In February of this year I visited Roosevelt Gardens, the first apartment complex to be burnt out on the Grand Concourse. Assemblyman Seymour Posner, who took me on this tour, told of his efforts, unavailing, to persuade the last cohort of tenants of this once proud property not to take what was in effect the advice of their welfare workers and set fire to their apartments as the one way to get a lump sum of money with which to make a fresh start. It is no news that the welfare system makes for socially irrational decisions.

Nor is it baffling that one person in six in New York City is on welfare, and that other cities in the State have great welfare rolls. If a personal note may be allowed, as far back as 1965 I persuaded the third President before the present one that this was going to happen. To use an economist's term, the welfare system is exogenous. This is to say the influence comes from outside the system. New York State did not create the present welfare system—the Federal government did. If the system were changed, a great many of its symptoms might disappear, which would prove they had nothing to do with New York as such.

But there is one phenomenon that truly is baffling, is ominous, and cannot be explained away: The loss of jobs in the City and the State. If we go back to June, 1969—the last decennial census of manufactures, and a good baseline, for the economy was neither very strong nor very weak at the moment—we find that as of April of this year, New York City has lost 686,200 jobs. This is astounding. There are twelve states in the Union that don't have a work force of this size. This number of jobs would in normal circumstances support a population of one and a half million people—a city roughly the size of San Diego.[2]

For New York State, the loss is only slightly less, some 569,700 jobs.

This decline in the absolute number of jobs in New York State has continued during the current national upswing which began in June 1975. Indeed, the number of jobs lost per month during the period of the present recovery is half again as great as it was for the preceding period. We are confronted with an inverse ratio of sorts. The faster the number of jobs in the nation goes up, the faster the number of jobs in New York goes down.[3]

If the economy of New York State had kept pace with the economy of the nation since 1969, we would now have one million more jobs than we do. New York City would have one half million more.[4]

This loss of jobs in New York State is already having second order effects. The employment/population ratio for the New York SMSA is only 50.5 (and in the New York Central City still lower). By contrast the ratio in Texas is 60.0. The populations of the New York SMSA and that of Texas are roughly comparable. But from roughly the

Footnotes at end of article.

same population, Texas gets proportionately one-fifth more workers.[5]

Again, we shouldn't doubt that welfare payment levels in New York account for some of this disparity, but I would ascribe much the larger value to the absolute loss of jobs.

Population is declining in New York, a recent phenomenon, and the housing market suggests we are preparing for further decline. As recently as 1966 New York accounted for almost seven percent of the national housing starts. Last year we were down to two percent. In 1976 there were only 33,370 housing starts in all of the State. Clearly we are disinvesting in housing, especially in New York City, where 104,000 housing units have been abandoned since 1970.

After the 1980 census we will lose four Congressional seats, bringing the size of our delegation in the House down to 35. Not long ago, of course, it was 45.

Relative decline is natural. I have remarked before that if you invent air conditioning in Syracuse, you get factories in Phoenix. New York's relative share of such activities will diminish, which is well and good.

Absolute decline is not natural. This at least is my view. There are no sufficient reasons for the absolute decline of our State, not even our own considerable mismanagement of our affairs. To the contrary, I have reached the conclusion that our decline has come about as the largely unintended, but nonetheless direct and palpable consequence of the policies of the Federal government. I have come to the conclusion that much of our economic decline is imposed on us from the outside, much in the way our welfare predicament is imposed on us from the outside.

There are three areas of policy in which this process is most in evidence.

First, the overall pattern of Federal taxation and Federal expenditure has the effect of systematically deflating the economy of New York. In effect, national prosperity is traded for New York's decline. Federal statistics conceal the incredible gap between the sum Federal taxes that are levied in New York and the expenditures that are returned to it.

Second, Federal environmental policies are systematically biased against the maintenance even of the present levels of economic activity in New York.

Third, Federal international economic policies have permitted the desolation of New York City's largest industry, with considerable multiplier effect.

FEDERAL TAXATION AND FEDERAL EXPENDITURE

"Federal Outlays in New York" is an annual publication "compiled for the Executive Office of the President by the Community Services Administration". The volume is subtitled: "A Report of the Federal Government's Impact by State, County and Large City." The key section records the total expenditures of the Federal government by sixty-two functions, and records what portion of each was expended in New York.[6]

For Fiscal Year 1976, New York is recorded as having received $40.6 billion in Federal outlays. This is 11.3 percent of Federal outlays totaling $358.9 billion.

The Annual Report of the Commissioner of Internal Revenue for 1976 reports that New York State accounted for $36.9 billion in Internal Revenue collections, 12.2% of the total.

There would thus appear to be a surplus in New York's "account" with the Federal government. As with the nation at large, it would seem that the Federal government is spending more in New York than it is collecting, in this way contributing to the expansion of the economy. This has become, for better or worse, a feature of United States fiscal policy. There has been a deficit in almost every fiscal year since 1958.

Except in New York. The official statement of Federal outlays in New York includes a phantom $14 billion which is not expended in New York at all. In actual fact, in New York—in singular contrast to the pattern elsewhere—the Federal government has outlays of only $26.3 billion, against tax collections of $36.9 billion, making for a federal surplus of $10.6 billion. This much more is taken out than is put in, and to that extent the economy of New York State is deflated.

The discrepancy between reality and the official view of reality is readily explained. The official statistics record that New York, in Fiscal Year 1976, received $13.3 billion in "Interest on the Public Debt". Out of $27 billion total interest paid, some $17 billion was paid from the Federal Reserve Bank in New York City. These monies went every which way—$3 billion went to foreign official accounts—but Federal statistics apportion them among New York, western Connecticut and northern New Jersey, the areas served by the New York branch of the Federal Reserve Bank.

New York is thus recorded as receiving 49.1 percent of the "Interest on the Public Debt". ("Federal Outlays in New York" breaks down these sums by county. Delaware County, in which I reside, is recorded as receiving $32.9 million in interest payments, which comes to $736.39 per citizen. The capital funds of all the commercial banks in the county come to only $15.6 million.)

"Federal Outlays" also records New York as receiving $965 million in "Foreign Economic and Financial Assistance", or 41 percent of the national outlay. This, obviously, is made up of foreign aid transactions handled through New York banks.[7]

There are no grounds for including such sums as direct outlays in New York, and the question of motive cannot be avoided. A scrupulous accounting would ascribe a portion of interest payments to personal and institutional income flows in New York. But in direct terms the Federal government took $10.6 billion more out of New York's economy in fiscal year 1976 than it returned.

Two illustrations will suggest the impact of this large a "surplus." In the past two decades, the Federal government itself has only twice had a budget surplus. In fiscal year 1960 there was a surplus of $269 million. In fiscal year 1969 there was a surplus of $3.2 billion.

The economy of New York State is roughly equivalent in size to the that of Canada. A rough calculation of Gross State Product for 1975 comes to $143 billion.[8] The Gross National Product for Canada for the previous year was $140 billion. Canada, for its Fiscal Year 1976, had total receipts of $30 billion, and total expenditures of $34 billion, for a deficit of $4 billion. These will be seen to be sums that are in the range of Federal taxation and expenditure in New York. Supposing that instead of a $4 billion deficit, Canada had incurred a $10.6 billion surplus. Would not the economy of Canada have been seriously deflated? Would not unemployment have risen, jobs disappeared? Would not the whole of the international financial community have joined in counseling Canada to do what Canada in fact did do, which was to avoid that deflation. Is not the case of New York State comparable?

ENVIRONMENT

The New York Times in an editorial of June 18, 1977 commented, "Over the past decade the Federal government's urban policy shifted from a war on poverty to a war on dirty air." The occasion of the editorial was a Federal court order requiring New York City to reduce by half the number of cars in downtown Manhattan by 1980. This followed a Federal court order to impose tolls on bridges that connect Manhattan with Long Island and the mainland, and a sequence of bewildering Federal instructions, all of which seem designed in the first instance to reduce the economic activity of the nation's largest city.

In the terms of the Clean Air Act, New York City and New York State are, with respect to many pollutants, "non-attainment areas". This means that they do not attain "national ambient air quality standards" established by the Act.[9] And because the standards are not attained, new sources of pollution are not permitted to locate in these areas, or are permitted to do so only under very stringent regulations. New sources of pollution include power plants and factories, and might otherwise be defined as new sources of jobs.

Much attention has been focused on the standard for photochemical oxidants, which are assumed to be the product of automobiles. Yet, as Commissioner Peter Berle of the New York State Department of Environmental Conservation commented on February 11, 1977 to the Senate Committee on Environment and Public Works, "We further have violations of the oxidant standard in very remote areas, such as the top of Whiteface Mountain, which is hundreds of miles from any major municipality or industrial sources." The oxidant standard is violated in the entire northeastern area of the country during the summer months, and Commissioner Berle has stated that, "We believe first of all that the photochemical oxidant standard as currently written will never be achieved in New York State..." It seems worth noting that when the Clean Air Amendments of 1977 were before the Environment and Public Works Committee, the Senators representing Texas and New York—the two largest states, and the states with the largest cities, represented on the Committee—tried to have the oxidant standard relaxed significantly, and failed.

But our problems are not limited to the technological, or to the oxidant standard. Commissioner Berle has pointed as well to the standard for particulate matter—dust, if the truth be known. Mr. Berle has written that, "Deterioration and abandonment of buildings in portions of New York City due to economic problems are partly responsible for localized fugitive dust problems. Prohibition of major sources of particulates with little ground level impact will be counter to the economic stimulus needed to prevent urban deterioration. Fugitive dust problems can have dramatic effects on localized levels of suspended particulates."

For those unfamiliar with the language of environmentalism, the Commissioner is saying that there are lots of crumbling buildings in New York City, and that this is one reason there is a lot of dust, and further that if no economic expansion is permitted by the environmental regulations there will be a lot more deterioration of buildings, and, ultimately, a lot more dust.

The illogic of some of the environmental regulations is not, of course, limited to this one case. To take another, the Power Authority of the State of New York wishes to build a power plant on Staten Island, which would not only produce power but would do so by burning refuse. The proposed plant would burn 2,100 tons of refuse per day, which is over ten percent of the 20,000 tons of burnable refuse produced in the City each day, and would replace dumps, landfills, and incinerators. This plant has been delayed and perhaps will not be built because of environmental standards. It is not my purpose here to argue that the particular standards in question are overly strict, or that the value of this plant—as a producer of power, and as a reducer of pollution in that it will burn trash—is so great that all environmental restrictions must be discarded.

I would assert, though, that when environ-

Footnotes at end of article.

mental laws prohibit us from building such a plant; when they place over our cities standards that we do not always meet in the heart of our forests; when they tell us that we cannot have new factories because our old buildings are crumbling; then we begin to see that the economy of the city and of the state are as much affected by these laws as they are by the laws of economics. But the laws of economics are neutral in their impact, while the laws which set these environmental standards are, one must conclude, often very harmful in theirs.

For all this, there is an exception that must be taken to the New York Times' analysis. The war on dirty air did not come about as a deliberate aspect of national urban policy, still less of policy toward New York. It is, rather, one of those hidden policies of government, which often are the more important. In 1970, in a paper largely devoted to the question of national urban policy I described three propositions that relate to a concept of government by policy as distinguished from government by program—

"The second master proposition is that from the fact that everything relates to everything it follows that there are no social interests about which the national government does not have some policy or other, simply by virtue of the indirect influences of programs nominally directed to other areas. These are the hidden policies of government.

"This is not such a familiar proposition. The interconnections of programs directed to one area with outcomes in another are sometimes seen. Most of us have by now got it fairly straight that, for example, agricultural research can lead to the migration of farm populations, which has consequences for cities. But by and large these connections need to be pretty evident for much note to be taken of them, and ability to detect them is much influenced by intellectual and political fashion. It is fashion that dictates that some activities are interesting; others not. And if a subject is not interesting, it can have consequences all over the place of which no one is likely to take much heed." [10]

It was at just this time, in point of fact, that the present Clean Air legislation was taking shape. Three distinct influences can be detected.

First, and probably the most important is the changing cultural environment of recent years, reflecting, most likely, what Jay W. Forrester called the concluding phase of the life cycle of growth. "Environmental concerns," he writes, "falling birth rate, and pollution legislation are best interpreted as belonging to the transition from growth to equilibrium." Certainly there is a penumbra of anti-business, anti-growth attitudes in much environmental activity. Hence, the language in which we describe our economy has not so subtly changed. A new business becomes a "new pollution source".

Second—and this factor is singularly linked to urban policy, albeit in a negative way—by 1970 the intractability of so many urban problems had seemingly grown, while the psychological rewards of involvement with those problems had much diminished. Environmental issues provided a far greater return on political investment.

Third—a point of general relevance—is the organization of the Congress. The prime mover behind much of the environmental legislation has been the Senate Environment and Public Works Committee, a great committee of which I am a member, whose rural complexion is nonetheless plain. Of the fifteen states represented on the Committee, thirteen have no city even approaching one million in population, and of the top ten states in population, only two are represented on the Committee. Put otherwise, while New York is but one of the states on the Committee, its population is nearly as large as that of the thirteen smaller states put together. This is not a rhetorical point, but a substantive one, for some of the standards imposed on urban areas such as New York City are impossible ones, in that they will never be achieved. Others are achievable only if we adopt a firm no growth policy. Still others are simply based on at least partial misunderstandings of the conditions of life in a city such as New York.

It is one thing to account for a problem: another to resolve it. But clearly, environmental restrains imposed by the national government have become a distinct difficulty for the economy of New York. [11]

INTERNATIONAL ECONOMIC POLICIES

So, in a similar way, are the international economic policies of the Federal government, notably tariff policies. It is still, perhaps heretical to say this, but the doctrinal dedication of the Departments of State and Treasury to removing trade barriers has permitted severe economic dislocations in New York, again especially in New York City, of a sort which none of our trading partners would be expected to put up with, much less to promote.

Between 1969 and 1976, employment in the garment industry in New York City was reduced by more than one-third. The City thereby lost over 82,000 jobs. I do not insist that every one of these was lost due to foreign competition, for clearly this is not the case. It is the case, however, that foreign competition was responsible for much of this staggering loss in employment in one industry, and that our nation's tariff policy was responsible, in large part, for allowing foreign competition to have this effect.

Nor is the loss of jobs the only measure of the decline of the garment industry. Perhaps a fine measure is wage levels in the industry. Mr. Herbert Bienstock, who directs the regional office of the Bureau of Labor Statistics in New York, said recently that, "the garment industry was the highest paying industry in the country in 1939. Now the high paid industry is autos, and the garment industry is at the bottom." From top to bottom: such has been the experience of this industry, which employed 223,000 men and women in New York City in 1969, and which employs 140,000 now.

I take special note of the experiences of this industry because it has played a special role in the political and social, as well as the economic, history of New York City, and indeed of the nation. Surely no other industry had so great a role in providing a place in our economy, and through the garment workers' unions, in our political and social life to newcomers to our City and to our nation. And surely some of the difficulties which more recent immigrants to New York City have experienced can be linked to the decline of the garment industry.

Perhaps those who are in charge of our foreign economic relations have been unaware of the effects of their policies on New York. It is often said that it is impossible to measure these effects with anything approaching precision. This is true, if what is meant by it is that the exact number of New Yorkers who have lost their jobs due to the nation's tariff policies is unclear. But to argue that because we cannot with precision count the jobs lost, we cannot say that jobs have been lost, is not to use statistics but to misuse them. If anyone wishes to argue that the overall effect of these tariff policies on New York is unclear, I would take exception: the effect is clear, and the effect is greatly damaging.

* * * * *

FEDERAL POLICIES

If this analysis is correct, two large undertakings are in order.

The first task is to establish that it is correct. I have presented what appears to me to be a coherent hypothesis to account for much of the now sustained economic decline in New York. I have not presented a proof. It is not clear to me that in the present state of econometrics any final demonstration is possible. Yet there is a wide range of analytic techniques that can be brought to bear on the question, such that the hypothesis can be confirmed or disconfirmed, or (as is more likely) revised.

Clearly, for example, some portion of corporate income tax which is now recorded as paid in New York ($6.8 billion in FY 1976) should be allocated to other states, while some paid elsewhere should be credited to New York. No doubt this is also true of some portion of income tax collected through payroll deductions. Further, the idea that each State ought somehow to have a neutral or positive balance of payments with the Federal government has no more conceptual clarity than do similar notions about international trade. In theory the Federal government might have *no* outlays in New York but at the same time greatly benefit New York through expenditures elsewhere that ultimately reach our economy. My contention is simply that a deficit of $10.6 billion (however it might be reduced through finer calculation) is too huge to be overcome by indirect benefits. Along with the phantom $14 billion, there needs to be an accounting for the missing one million jobs.

This effort should now proceed. The Federal government has the capacity for such analysis, as do many public and private institutions in New York. I have asked for a meeting with President Carter at which I will request that he direct the Council of Economic Advisers, or whichever groups he wishes, to undertake such an analysis. I will ask Governor Carey that he do the same, again, with whichever group he chooses.

The second task is for the Federal government to commence a sustained effort to make New York whole. I submit that the case that the Federal government is directly accountable for a major proportion of New York's economic decline is strong enough that unless it is rebutted, the presumption must be that it is proven pending further refinement.

The Federal government must desist from a policy of further weakening the weakest economy in the nation. It must right the present imbalance between what the Federal government takes from New York and what it returns. There is no need to embellish this point with the hysterical social rhetoric of the 1960s.

We must commence to judge national leaders and parties by their willingness, first to acknowledge this entitlement, and second, to act upon it. There is perhaps a particular message for those who share the liberal political values which both parties in New York have sought to strengthen and advance over the years. There is no way to avoid the proposition that New York's troubles became severe only when the great upsurge in Federal spending occurred in the late 1960s and early 1970s. (I speak as one who recalls receiving the instruction of President Johnson in early 1964 that the forthcoming Federal budget should be under $100 billion.) In overwhelming degree, New York as a political entity supported the new programs for which these vast new expenditures were required. It surely will not serve any interest for us now to be forced to consider that in doing so we may have undone ourselves.

In just this way it may be remarked that New York's economic plummet very much coincided with the onset of severe Federal environmental restrictions. No causal relation has been established. But the coincidence is too strong to be dismissed.

We have had some success in this session of the Congress at improving some of the grant-in-aid formulas which have been

Footnotes at end of article.

biased in our favor which many will have to be if we are going to right the present imbalance. Not long ago, for example, I suggested a possible revision in the present medicaid formula. The present formula follows the practice begun under the Hill-Burton medical facilities legislation of 1946 whereby the amount of Federal aid undertakes to compensate not for the difference between the per capita incomes of the several states, but the difference between the squares of such incomes. I proposed square roots.

The Hill-Burton formula is one of the few to use squares of income, but it is unfortunately not one of the few whose effect, and perhaps whose design, is rather unfortunate for New York. Mass transit aid is provided to cities by Section 5 of the Urban Mass Transportation Act, and the formula which appears in Section 5 is described by the Department of Transportation as follows: "The formula currently used to allocate Section 5 funds to urbanized areas distributes them half in proportion to urbanized area population and half in proportion to urbanized area population weighted by population density." The Department goes on to note that, "When the resulting allocations are compared to transit ridership and vehicle miles, there are considerable variations within and between population groups."

This is an understatement, since the variations are not only considerable but enormous. The Section 5 formula ignores the two factors in which New York City ranks first, transit vehicle miles and transit ridership. As a result, New York receives three cents per rider in federal assistance, while, to cite a few examples, Los Angeles receives twenty cents, Houston nineteen cents, and Dallas twelve cents. The average assistance per rider for cities of over one million in population is six cents, twice what New York receives. The situation is the same for assistance per vehicle mile: New York City receives twelve cents, while, to cite some examples once again, Los Angeles receives forty-two cents, Houston thirty-three cents, and Kansas City thirty cents. The national average for cities of over one million in population is eighteen cents, or fifty percent more than New York City receives.

The result of the use of the Section 5 formula is simple. As Deputy Mayor John C. Burton told the Senate Banking, Housing, and Urban Affairs Committee on March 30, 1977, "New York City has more than thirty percent of the national transit ridership. Nevertheless, under the Section 5 formula, the City receives only 10.7 percent of the annual Section 5 authorization."

These issues will truly require a "long march" through the permanent institutions of the legislative and the executive branches of the national government. For there is a fundamental bias against New York State in the way the Federal government collects its taxes and distributes its revenues. Tax rates accelerate as money income goes up. Benefits accelerate as money income goes down. The Scythians could not have bred two wild horses better equipped to pull New York State apart.

Incomes are higher in New York in the way they are higher in Alaska—because the cost of living is higher. A final irony is that one of the reasons the cost of living is higher in New York is that our taxes are so high, and our taxes are so high in part because the draining away of revenue to the Federal government creates social problems which the state and local government feel they must deal with, and which in turn require them to impose devastatingly high taxes. The Regional Office of the Bureau of Labor Statistics had demonstrated this in a most graphic way, contrasting the money cost of a city worker's budget as between New York City and Austin, Texas.

Higher level budget, family of four—Autumn 1976

	New York	Austin	Difference
Total	$29,677	$20,628	$9,049
Of which:			
Federal income taxes	5,470	2,780	------
State and local income taxes	2,126	-------	------
	7,596	2,780	4,816

The same standard of living (not a remarkably "high" one—this budget enables a family to buy a "new" used car every four years) costs nine thousand dollars more in New York than Austin. More than half the difference arises because of State and local income tax, plus the greater Federal income tax which comes about because the New York family is presumedly better off. In fact, we see that each has precisely the same standard of living.

Federal aid programs must begin to take such cost of living factors into account. Nowhere is this opportunity so conspicuous as welfare reform. It is disheartening to read that the welfare reform proposal now being shaped by the Carter Administration will drain yet more money from New York and our region. Only mildly disheartening, however, for I cannot imagine that the administration will end by sending such a bill to the Congress, anymore than I can imagine that President Carter will not keep his solemn promise that he will propose that the Federal government assume the local costs of welfare in New York and the three other states where significant local contributions are required.

But the most important single approach would be an emergency revenue sharing program that would have the effect of closing the gap between what New York pays and what New York gets in order that New York might reduce taxes. I will ask the President to devise such a program. Alternately, as a member of the Finance Committee, I will devise one myself.

Similarly, the President and Congress really must address the question of military and veterans' expenditure. The United States Army today is trained almost exclusively to fight a war in Nicaragua, which is to say from training camps in the balmier regions of the Old South. I honor the Marines who, when tons of snow fell in upstate New York last winter, were discovered to have a few companies at Fort Drum on winter training exercises. Similarly, I honor the great Southern Congressional chairman who served their region and this nation so well in sustaining the Armed Forces in an earlier period of isolationist clamor. But the time has come to introduce our soldiery to the thought that in many parts of the world it frequently freezes and sometimes snows.

This matter touches the issue of national security. The distribution of veterans' benefits is a matter of good faith. Mr. Stuart Feldman has calculated that owing to the current formulas of aid adopted by the Veterans Administration, in the period from Fiscal Year 1968 to Fiscal Year 1976 California veterans have received $3,173,600,000 in GI bill payments, while New York veterans have received only $1,124,300,000.[12] One might ask whether in this respect this is a direct, if unintended policy of the Federal government to make veterans feel that New York is not a good place to settle down.

We should not exaggerate what is likely to happen. (If we were truly made whole, the amount involved would approach the entire cost of State government.) But we can begin, and the case is overwhelming that we should.

* * * * *

There remains the question of what we New Yorkers should expect of ourselves in this large enterprise.

I dare to suggest that our first task is to bring, finally, to our affairs that measure of social realism and social discipline which will give the nation confidence that what is done on our behalf will not be unavailing. We have already done much in this regard. But every week seemingly brings yet more evidence of how far we have to go. This statement, for example, was written during the week of June 19th. The week began with a major revelation by the New York City's Comptroller's office that while New York spends $500 a year more than most major American cities for each public school student, most of the extra money goes to administrators, and the City is actually spending "substantially less" than the national average on instruction. In that report we also learned that only 71.3 percent of all high school students in New York City attended such on any given day during 1976. (For Cleveland the proportion was 95.8 percent.)

On Monday, the Temporary Commission on City Finances reported that inefficiency in the administration of Medicaid costs the City $400 million a year, and that much of this is due to the "repeated refusal of the Legislature" to provide enough money to administer the programs properly.

On Thursday it was learned that the State Comptroller found utter failure in an eleven year old State program in New York City to build public schools in combination with income producing housing and private business, while from the State Commission on Investigation it was learned a huge program of the City University to aid disadvantaged students has been "so badly" and wastefully managed that the only solution will be to take it away from the university and put it under the State's Department of Education. Given that the State's Department of Education must share some responsibility for the report which began the week, this was not an altogether reassuring proposal. But this is the week that was, and it was typical.

Part of the difficulties New Yorkers have in recognizing their current experience is that our model of government corruption and mismanagement continues to be that which emerged from the three generation struggle between the forces of Good Government and Tammany Hall (to use the disparaging terms by which these opposing forces dominated one another). The problem is that, for good or ill, the organized political parties have little to do with our present difficulties. The week's scandals which I have related are without exception the scandals of Good Government, just as, for years now, the administrations in New York City, most of our other cities, and in our State have been "reform" administrations. We suffer less from bad government than from what Walter Lippmann called "the sickness of overgovernment."

Too much our tendency has been to equate what is good for government with what is good for the people. For years, as one example, New York has unhesitantly supported national programs which involve taxing our private sector one dollar in order to return eleven cents to our public sector. It is not good economics.

Footnotes at end of article.

It has also been our unbecoming habit to ascribe criticism of New York to meanspirited and conservative forces elsewhere in the nation. If we would see ourselves as others see us—as our best friends sometimes see us—we would do well to heed the words of former Senator Eugene J. McCarthy who recently said of us: "They voted for subsidized housing, subsidized medicine, subsidized transportation, subsidized college education and subsidized old age. The only thing they didn't subsidize was clothing, probably because of the garment industry." If he knew all the facts, he might have concluded that we didn't subsidize clothing because the production capacity of our garment industry was no longer great enough!

This year and next are election years in New York. We no more than other people have been able to escape overpromising. But we unlike most others can no longer really afford it, not least because of the impression it makes elsewhere. Surely the New York voters have come to see this. Almost the finest thing that can be said of the elected official in New York of late is that he has not kept his promises!

There is no need for the 1977 and 1978 elections turning into the familiar auctions of wealth. Everyone knows that no additional wealth will emerge from the process, and certainly no enhanced reputations.

Having said that, it is perhaps finally to be said that the single greatest contribution New Yorkers can make to the restoration of our economy is to learn for themselves and teach others just how much is at stake. When the French historian Fernand Braudel was seeking to describe what Venice meant to the Mediterranean world of the 15th or 16th Century, he wrote, "Venice dominated the 'Interior Sea' as New York dominates the western world today."

This is what is at stake: the fate of much that is finest in what the West has stood for in this awesome century.

FOOTNOTES

[1] I would like to acknowledge the assistance of Mr. Joseph Meresman and Mr. Elliott Abrams in preparing this analysis.

[2] and [3] See Appendix A for changes in Annual Average Non-Agricultural Payroll Employment, 1969–1976 for the United States, New York State and New York City.

[4] For this data and half a lifetime of adult education, I am indebted to Mr. Herbert Bienstock, Regional Commissioner of Labor Statistics.

[5] The labor force participation ratio for New York in 1976 was 56.4. For Texas it was 63.7.

[6] See Appendix B.

[7] I am indepted to Mr. Erik Johnsen of the Technical Assistance Center of the State University of New York for calling this matter to my attention in his paper, *A Critical Review of Federal Outlays in New York* (April, 1977). Neal Peirce and the staff of the *National Journal* have written on the subject in their June 26, 1976 issue, as has Bruce Drake of the *New York Daily News* on January 1, 1977.

[8] Calculation of New York Gross State Product—1975 New York State Per Capita Income, $6,564; 1975 New York State Population, 18,120,000; 1975 New York Personal Income, $118,939,680,000; Assumption: Personal Income equals five-sixths Gross Product; 1975 New York Gross State Product, $142,727,616,000.

[9] See Appendix C for potential non-attainment areas in New York State in 1985.

[10] Daniel P. Moynihan, COPING: Essays on the Practice of Government, Random House, New York, 1973. The material cited was read before a centennial observance of Hendrix College, April, 1970. It was first published in *The Public Interest*, Summer, 1970.

[11] One of the curiosities of the Federal environmental program is that in some circumstances it may be said to create a property right in pollution. Under regulations of the Environmental Protection Agency, new sources of pollution may locate in "non-attainment areas" only if equally polluting sources already there are shut down or cleaned up. New firms wishing to start up operations may find it necessary in an area such as New York to buy an old firm, hopefully an especially filthy one and close the firm down, so that the new firm may replace the old firm's pollution with its own. Clearly the time is at hand to try emission fees.

[12] See Appendix D.

APPENDIX A

ANNUAL AVERAGE NONAGRICULTURAL PAYROLL EMPLOYMENT

Year	National	Percent	New York State	Percent	New York City	Percent
1969	70,442,000	100.0	7,182,000	100.0	3,797,700	100.6
1970	70,920,000	100.7	7,154,800	99.6	3,744,800	98.0
1971	71,222,000	101.1	7,005,200	97.5	3,609,400	95.0
1972	73,714,000	104.6	7,030,200	97.9	3,563,100	39.8
1973	76,896,000	109.1	7,124,500	99.2	3,538,400	93.2
1974	78,413,000	111.3	7,070,200	98.4	3,444,600	90.7
1975	77,051,000	109.4	6,791,100	94.6	3,275,900	86.3
1976	79,443,000	112.8	6,708,800	93.4	3,189,200	84.0

Source: U.S. Department of Labor, Bureau of Labor Statistics.

APPENDIX B

FEDERAL INFORMATION EXCHANGE SYSTEM—NATIONAL AND STATE SUMMARIES—BY FUNCTION

[Dollar amounts in thousands]

	Fiscal year 1976 outlays		
	National total	State amount	State (percent)
NEW YORK			
Department of Defense—Military	$82,465,552	$4,126,479	5.0
Atomic Energy Defense activities	1,236,486	127,809	10.3
Defense-related activities	56,414	2,259	4.0
Foreign economic and financial assistance	2,385,105	965,416	40.5
Conduct of foreign affairs	483,990	107,507	22.2
Foreign information and exchange activities	283,378	31,562	11.1
General science, space, and technology	3,583,590	57,051	1.6
General science and basic research	1,128,739	119,811	10.6
Earth sciences	326,103	5,644	1.7
Natural resources, environment, and energy	126,024	1,347	1.1
Water resources and power	3,686,715	284,925	7.7
Conservation and land management	1,992,399	32,805	1.6
Recreational resources	870,620	23,402	2.7
Pollution control and abatement	4,903,061	356,606	7.3
Energy	2,704,475	50,936	1.9
Other natural resources	539,371	8,296	1.5
Farm income stabilization	2,609,583	206,422	7.9
Agricultural research and services	1,027,338	28,387	2.8
Mortgage credit and thrift insurance	92,062	1,390	1.5
Payment to the Postal Service	12,577,747	1,411,446	11.2
Other advancement and regulation of commerce	986,734	47,209	4.8
Ground transportation	7,340,810	706,537	9.6
Air transportation	1,670,409	79,338	4.7
Water transportation	1,498,047	256,064	17.1
Other transportation	103,880	2,434	2.3
Community development	3,001,030	153,112	5.1
Area and regional development	1,492,939	40,946	2.7
Disaster relief and insurance	170,220	32,704	19.2
Education, manpower, and social services	25,361	1,557	6.1
Elementary, secondary, and vocational education	4,392,329	322,920	7.4
Higher education	2,446,741	193,772	7.9
Research and general education aids	1,275,161	105,400	8.3
Manpower training	6,992,885	623,393	8.9
Other manpower services	264,228	11,635	4.4
Social services	2,897,480	248,712	8.6
Health	2,144,446	242,697	11.3
Health care services	$27,266,223	$3,365,730	12.3
Health research and education	1,490,700	153,155	10.3
Prevention and control of health problems	740,692	27,063	3.7
Health planning and construction	10,807	27	0.2
General retirement and disability insurance	78,555,818	7,131,669	9.1
Federal employee retirement and disability	9,169,916	904,681	9.9
Unemployment insurance	2,161,991	278,237	12.9
Public assistance and other income supplements	18,194,525	1,604,454	8.8
Income security for veterans	9,103,921	669,767	7.4
Veterans education, training, and rehabilitation	5,333,633	285,535	5.4
Hospital and medical care for veterans	4,207,418	385,053	9.2
Veteran's housing	70,910	318	0.4
Other veteran's benefits and services	501,821	19,100	3.8
Federal law enforcement and prosecution	1,179,926	130,637	11.1
Federal judicial activities	10,480	577	5.5
Federal correctional and rehabilitation activities	226,131	4,966	2.2
Law enforcement assistance	785,911	58,449	7.4
Executive direction and management	41,057		
Central fiscal operations	2,057,209	208,932	10.2
General property and records management	3,392,063	278,216	8.2
Central personnel management	141,811	7,122	5.0
Other general government	276,707	11,090	4.0
General revenue sharing	6,240,121	710,297	11.4
Other general purpose fiscal assistance	460,448	5	(1)
Interest on the public debt	27,179,203	13,341,122	49.1
Other interest	289,015	45,549	15.8
Total	358,869,914	40,639,679	11.3
INDIRECT FEDERAL SUPPORT:[2]			
Energy	(2,423,229)		
Farm income stabilization	(1,826,731)	(29,742)	10.3
Mortgage credit and thrift insurance	(9,543,483)	(483,114)	67.2
Other advancement and regulation of commerce	(1,604,677)	(105,018)	36.3
Water transportation	(3,430,882)	(893,003)	9.0

Footnotes at end of table.

APPENDIX B

FEDERAL INFORMATION EXCHANGE SYSTEM—NATIONAL AND STATE SUMMARIES—BY FUNCTION

[Dollar amounts in thousands]

	Fiscal year 1976 outlays		
	National total	State amount	State (percent)
Community development	(3)		
Area and regional development	($893, 441)	($34, 672)	12.0
Disaster relief and insurance	(3, 463)		
Higher education	(254, 062)	(23, 494)	8.1
Health	(997)	(1)	(2)
Public assistance and other income supplements	($513, 682)	($33, 541)	11.6
Veterans housing	(10, 461, 361)	(209, 285)	72.4
General property and records management	(139, 692)	(2, 608)	.9

[1] Less than 0.05 pct.

[2] These figures do not represent actual Federal funds and are not included in any totals.

APPENDIX C

Potential nonattainment areas in New York State—1985

Air quality maintenance area, counties or area description, and pollutants:

Binghamton, Broome (part), Binghamton City, Towns of: Vestal, Union, Binghamton, Conklin, Kirkwood, Fenton, Chenango, Oswego; Tioga County (part)—1.

New Jersey-New York Interstate, New York City, Nassau, Suffolk, Westchester and Rockland Counties—1, 2, 3, 4, 5.

Niagara Frontier, Erie and Niagara Counties—1, 2.

Utica-Rome, Herkimer (part), Oneida (part), Utica City, Rome City; Towns of: Schuyler, Frankfort, Lee, Floyd, Kirkland, Trenton, Deerfield, Marcy, Whitestown, Westmoreland, New Hartford, Paris, 1.

Elmira-Corning, Parts of: Chemung and Steuben, Elmira City, Corning City, Towns of Southport, Ashland, Elmira, Horseheads, Big Flats, Corning, Erwin—1.

Rochester, Monroe and parts of Livingston, Wayne and Ontario, Towns of: Caledonia, Avon, Lima, West Bloomfield, Victor, East Bloomfield, Farmington, Canandaigua (city), Ontario, Walworth, Macedon, Canandaigua (town)—1.

Jamestown, Chautauqua County (part), Jamestown, Towns of: Chautauqua, North Harmony, Ellery, Busti, Kiantone, Ellicott, Poland—1.

Syracuse, Onondago—1.

Capital District, Albany (part), Saratoga (part), Schenectady (part), Montgomery (part), Rensselear (part), Amsterdam City, Mechanicsville City, Towns of: Halfmoon, Waterford, Clifton Park, Amsterdam—1, 2.

Mid-Hudson, Dutchess (part), Ulster (part)—1.

Pollutants: 1-Suspended particulate matter, 2-Sulfur dioxide, 3-Photochemical oxidants, 4-Nitrogen dioxide, 5-Carbon monoxide.

(Source: EPA).

APPENDIX D

KEY GI BILL STATISTICS IN LARGE STATES FISCAL YEARS 1968–76

States ranked by veteran population	GI bill payments fiscal years 1968–76	Public college tuition	2 and 4 yr colleges, GI bill use rate (percent)	Per capita payments fiscal years 1968–76	Vietnam veteran population
California	$3, 173, 600, 000	$189– $667	52.5	$3, 484	911, 000
New York	1, 124, 300, 000	850–1, 000	30.4	1, 973	570, 000
Texas	1, 235, 600, 000	280– 460	37.4	2, 740	451, 000
Pennsylvania	781, 300, 000	876–1, 300	19.7	1, 768	442, 000
Ohio	747, 200, 000	663– 870	23.4	1, 822	410, 000
Illinois	900, 600, 000	440– 687	29.6	2, 292	393, 000
Michigan	762, 500, 000	627–1, 052	31.8	2, 290	333, 000

Source: National League of Cities, U.S. Conference of Mayors, Dec. 8, 1976 announcement.

TRANSKEI LOOKS FOR RECOGNITION

Mr. McCLURE. Mr. President, the world has long been guilty of applying radically different standards to nations of different political complexions.

The United Nations, for example, repeatedly passes resolutions criticizing Israel and South Africa, but never passes resolutions critical of the Soviet Union, Communist China, or such Third World dictatorships as Uganda.

Similarly, the international community has described as "legitimate" such nonelected Marxist dictatorships as those which rule Mozambique and Angola.

It has, however, declared to be "illegitimate" a black African State which is not Marxist, which is not racist, which believes in free enterprise and opposes current Soviet encroachment in Africa. That newly independent state, the Republic of Transkei, achieved its independence peacefully on October 26, 1976. Much of the world has rejected it simply because Transkei's independence came from South Africa and was achieved without violence.

Fortunately, many Americans of differing political philosophies have shown a willingness to look at Transkei for themselves and come to their own conclusions.

One such observer, Lorna Hahn, director of the Association on Third World Affairs, has written an important article about Transkei for the liberal journal, the New Leader.

Miss Hahn, who has visited Transkei and interviewed its leaders, notes that—

The criticisms of Transkei hardly constitute a case against Transkei's qualifications for either independence or acceptance by the United Nations. While it is indeed small, it is larger than Belgium, Israel, Lebanon and 25 other U.N. members; has more inhabitants than do 31 U.N. members; has a higher annual per capita income ($210) than 17 of its neighbors; and has a literacy rate of 22 per cent, above that of 19 African countries.

There is considerable hypocrisy in the rejection of the legitimacy of Transkei independence by the member states of the Organization of African Unity. Miss Hahn points out that—

At least 19 of the African states that refuse to help Transkei do some sort of business with South Africa; the U.S. has diplomatic relations with Pretoria, too, and is probably in the most hypocritical and least logical position of all. "Your country," wryly observes Secretary for Planning and Commerce Dunjwa, "assists white South Africa, but will not assist black Transkei, which has broken away from South Africa. And you say you are against racism?"

In my view, the case for U.S. recognition of Transkei is a compelling one. I wish to share with my colleagues the article, "Transkei Looks for Recognition," by Lorna Hahn, as it appeared in the New Leader of April 25, 1977, and ask unanimous consent that it be printed in the RECORD at this time.

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

[From the New Leader, April 25, 1977]

TRANSKEI LOOKS FOR RECOGNITION

(By Lorna Hahn)

UMTATA.—Since it officially became independent of South Africa on October 26, 1976, the Republic of Transkei has been rapidly desegregating schools, hospitals, hotels, swimming pools, and other facilities. Further, the Constitution of this small predominantly black country on the Indian Ocean, states that all persons born here, regardlesss of color, are to be considered citizens. And although some preindependence statutes—notably the (anti-) Mixed Marriages Act, the (anti-) Terrorism Act and the Suppression of Communism Act remain on the books, Minister of Justice George Matanzima promises, "These laws will be repealed as soon as we can draft suitable ones to replace them." His brother, Prime Minister Kaiser D. Matanzima, has in a similar vein declared that neighboring blacks seeking to overthrow the apartheid system, including members of the outlawed Pan African Congress (PAC), are welcome.

Yet thus far only South Africa has recognized Transkei. The reason for this, of course, is that the rest of the world, taking its cue from black Africa, shuns the new

nation as a puppet of Pretoria, a product of the policy of "separate development."

"Grand apartheid," as the program is also called, has grouped South Africa's blacks into 10 homelands or *bantustans*, with the ostensible objective of grooming them for self-rule. Should the plan fully succeed—and several homeland leaders have recently opted to follow Transkei's example—South Africa, a highly industrialized society built largely by native labor, will have managed to strip all its blacks of citizenship and other rights. Critics therefore charge that the Transkei leaders are simply playing along with Pretoria in accepting a sham "independence," and denounce them as stooges and traitors who must not be awarded the dignity of recognition.

Led by the Organization of African Unity (OAU), whose offensive began well over a year ago, a spate of international organizations have echoed a UN General Assembly resolution last October 26 opposing "any dealings with the so-called independent Transkei or other *bantustans*." The United States abstained in the 134–0 vote, but the State Department, whose Africa Bureau has stayed virtually intact under the new Administration, firmly supports the UN position.

The anti-Transkei forces have devoted much of their effort to demonstrating that the tiny, geographically split, underdeveloped country is incapable of standing on its own feet. Its rural economy is still based largely on traditional tribal land tenure systems and primitive farming methods, they note, and cannot provide sufficient food or employment for a population of roughly 3.5 million: Some 335,000 Transkeians, most of them young men, must work in South Africa, and with their families make up a total of about 1.5 million Transkeians now living in South Africa.

In fact, says the Potomac Association on Southern Africa (a Washington-based study group), Transkei simply provides "labor reserves for the white-controlled economy of South Africa, and a location for agricultural workers and those deemed unproductive: the old, the very young, the sick, those 'endorsed out' of the white areas and resettled to the home lands, and the 'undesirables.'" South Africa, meanwhile, subsidizes 65 per cent of Transkei's $180-million annual budget and trains its 250-man Army.

As for Prime Minister Matanzima, critics point out that he is a conservative chief handpicked for leadership by Pretoria, and has made sharply contradictory statements for and against the separate development policy. He rules with the help of emergency regulations that have permitted him to control the opposition, win elections and prevent the formation of trade unions.

All of the criticisms are essentially correct, but in themselves they hardly constitute a case against Transkei's qualifications for either independence or acceptance by the United Nations. While it is indeed small, it is larger than Belgium, Israel, Lebanon, and 25 other UN members; has more inhabitants than do 31 UN members; has a higher annual per capita income ($210) than 17 of its neighbors; and has a literacy rate of 22 per cent, above that of 19 African countries.

In addition, Lesotho and Mozambique send far more laborers to South Africa than does Transkei; Pretoria extends technological assistance to a number of its black neighbors; several long-independent African nations continue to depend on their former colonizers for assistance; and Transkei happens to be phasing out its South African officials. Finally, few African leaders are in a position to protest authoritarian tendencies on the part of anyone else; Transkei's opposition party is at least functioning.

There is no gainsaying the fundamental objection to Transkei: Its leaders did achieve independence by working under the separate development policy, and Pretoria does believe the policy will be legitimized if other nations recognize Transkei. But officials here argue it does not automatically follow that the country is a puppet, or that to deal with it is to play into Pretoria's hands. And they are particularly distressed that critics such as Senator Dick Clark (D.-Iowa), who turned down an invitation to visit Transkei during a recent trip to southern Africa, refuse to investigate the situation for themselves.

Transkei is determined, one official after another insists, to do everything possible "to help our people" and "to become as independent as possible of South Africa." It hopes to capitalize on the beauty of the lush, rolling countryside, and of the untouched Wild Coast along the Indian Ocean, by developing a tourist industry. The government also plans to modernize agriculture, introduce cash crops, and create jobs and income by adding to the 31 modern textile factories already here. But beyond these aims that pretty much resemble those of almost every other newly independent state, Transkei has taken on a special mission: leading the drive for the liberation of blacks still under South African control.

"Transkei's decision to become an independent, sovereign state," explains Finance Minister Tsepo T. Letlaka, a youthful-looking 51-year-old lawyer, "introduces an altogether new factor in debates between black and white in South Africa. An important section of the victims of apartheid can now speak to the world not only on the race issue, but also on other issues concerning national domination and oppression. What is significant and new is that we speak as equals, as free people who can look the white oppressor in the eye. Whether or not the outside world likes it, Transkei can speak on apartheid with an authority no self-appointed outside body or nation possesses today."

The belief that an independent Transkei could and must lead the liberation struggle caused Letlaka, an erstwhile PAC militant, to return from enforced exile in 1975, take diplomatic training in the South African Embassy in Washington, run for Parliament last September, and then accept his present Cabinet post. It induced other militants—like his brother-in-law Digby Koyana and sociology professor Mlahlene Njisana, now ambassador to Pretoria—to return home as well. Interestingly, the feasibility of the idea is even being accepted by the opposition Democratic party, which formerly claimed independence would weaken rather than strengthen the fight for freedom. But perhaps most important, it has become the preoccupation of Prime Minister Matanzima.

Throughout most of his career, the 61-year-old leader had been devoted more to his Xhosa tribe than to his race. "I am a disciple of the creed of nationalism," he stated in 1966 at Rhodes University. "I believe in Xhosa nationalism because I was born to it. I was swaddled in it since the day of my birth. . . . It commands me in the name of nationhood to sacrifice the best of my abilities to the advancement of my own nation in its own country according to the terms of its own culture."

Such statements, despite their ring of old-fashioned tribalism, reflected Transkei's history. As opposed to the other homelands created under the relatively recent separate development laws, Transkei had been a recognized independent entity at the end of the 19th century: It received its name in 1895 (before the Union of South Africa was formed or christened) and for many years had its own legislative assembly, the Bunga. Forced by accident into South Africa in 1910, it was not able to work for independence through internationally acceptable anticolonial means—as were, say, the former British protectorates of Botswana, Lesotho and Swaziland.

The separate development policy, actively initiated by Pretoria in 1951, suited Matanzima's early concepts of developing Transkei nationalism. And since South Africa had decided that its natural allies within the homelands would be the tribal leaders, Matanzima, a minor Tembu chief with a good reputation as a lawyer, was a candidate for power. He played ball with Pretoria, becoming the head of an internationally autonomous Transkei in 1963, and founding his Transkei National Independence party shortly thereafter.

Like other politicians whose only weapon is language, Matanzima used words to gain whatever he could from his adversary. (His strategy sometimes resembles that of Tunisia's Habib Bourguiba). Alternately cajoling and threatening, he obtained another patch of land here, another fiscal favor there.

At the same time, through his growing contacts with black southern African leaders, trips abroad and recruitment of militants like Letlaka, Matanzima became increasingly conscious of his kinship with other blacks. As a result, he has advocated association of the homelands (most of them are small, fragmented and poor), and in 1973 he suggested their federation with South Africa, which would give blacks a Parliamentary majority. In October 1975, just before announcing Transkei's decision to become independent (he "consulted" about this with his people but did not hold a referendum), Matanzima declared: "The black people of Africa can never be entirely free until the blacks of South Africa are free. Transkei's independence will be a material contribution to that cause."

Matanzima has been equally outspoken in demanding more land to accommodate Transkei's rapidly growing population and to link its two sections. Most troublesome to Pretoria, though, has been his stand on the crucial matter of whether persons of Transkeian origin who were born in South Africa, or have long resided there, can be forced to accept Transkeian citizenship. South African Premier John Borster says they can and will; Matanzima insists that they are as much South Africa's responsibility as black children born within Britain are Britain's. This position constitutes a mighty blow to the theory of separate development and the ultimate placing of all blacks under homeland jurisdiction.

Independent Transkei, in short, is considered by Matanzima and his colleagues as both an end in itself and a beachhead in the overall liberation struggle. Some Africans from countries that ostracize Transkei will admit in private to feeling that the Transkeians are on the right track; that Matanzima achieved the best possible deal for his people; that Transkeians are far better off and live in a far more dignified fashion than they did prior to independence; and that Transkei could play an important role in promoting change within South Africa. A Marxist diplomat from Mozambique even went so far as to contend that Matanzima's strategy is comparable to Chairman Mao's concept of building liberated areas from which to attack the enemy.

But officially Africa continues to oppose any recognition of Transkei. It does so partly out of sheer ignorance, partly because the OAU has so often and so ritualistically condemned separate development that the merits of Transkei have been obscured, partly because individual nations are afraid to break ranks, and perhaps partly, as some Transkeians suspect, because Tanzania and Zambia wish to monopolize the antiapartheid assault themselves. Whatever the motives, though, the result of nonrecognition is that South Africa is not being harmed, while Transkei is.

At least 19 of the African states that refuse to help Transkei do some sort of business with South Africa; the United States has diplomatic relations with Pretoria, too, and

is probably in the most hypocritical and least logical position of all. "Your country," wryly observes Secretary for Planning and Commerce Dunjwa, "assists white South Africa, but will not assist black Transkei, which has broken away from South Africa. And you say you are against racism?"

Their disappointment with the world's attitude notwithstanding, the Transkeians are hopeful that things will change. "It is ironic," says Chief George, as the Justice Minister is called here, "that the world associates us with South Africa when we are so busy trying to disassociate ourselves from it. But this situation cannot last for long. Our top priority right now is the development of our country. Once we are able to devote our energies to putting our case for recognition before other countries, they will surely see what we are accomplishing and are bound to recognize us. Then we will really be able to accomplish something in southern Africa."

SECURITY AND COOPERATION IN EUROPE

Mr. KENNEDY. Mr. President, on June 15, delegates from 33 European countries, the United States, and Canada gathered in Belgrade to review what progress has been made in implementing the Helsinki Accords—the Final Act of the Conference on Security and Cooperation in Europe—CSCE—signed by their heads of state in August 1975. The nearly 200 delegates are engaged in preparations for the main conference which will open in Belgrade this fall.

Although the CSCE review is still in a preparatory stage, I believe it is vital for our country to apply its full influence from the very start for the full and scrupulous implementation of the Helsinki Accords. They have responded to the aspirations of people across Europe for increased East-West cooperation which will directly benefit their own lives. This Nation should not only be conscious of these aspirations, it should work vigorously with all other CSCE members to meet them with all the power at our collective command. To do less is to invite popular disillusionment about our country's commitment to both détente and human rights: objectives to which both the Congress and the administration must remain firmly committed.

The critical task which faces us is how to reconcile the support of détente with the advocacy of human rights. On the one hand, it is vital to nurture the relaxation of tensions between East and West: the most fundamental human right remains freedom from war—freedom from even the fear of a return to the nightmarish violence which has twice swept the European continent in this century. On the other hand, it is the moral duty of statesmen not only to protect their citizens from violence within their societies, but to expand political, economic, and social freedoms despite differences of ideology and social order.

Pursuit of détente and human rights is too serious an imperative for governments to be sidetracked into righteous posturing and rhetoric which set back either or both of these objectives. What is needed, instead, is a good-faith and constructive effort to achieve meaningful arms control, to narrow political differences between states, and to respond to legitimate expectations of increased individual freedoms. Just because we encounter difficulties in one or another of these areas is no excuse for us to lose heart about possibilities for progress in the other areas—nor to abandon our dedication to achieving the most rapid possible progress across the board.

To press to fulfill the humanitarian promise inherent in the Helsinki Final Act is hardly a matter of ideology of the right or the left. Twelve days ago, Mr. President, this House voted to cut off military aid to Argentina and Ethiopia because of human rights violations in those two countries. Together with my good friend, Senator CHURCH, I sponsored the move on Argentina and welcomed the one on Ethiopia. But human rights concerns are surely not limited to developing countries; they apply equally to societies which are labeled relatively advanced—those in America and Europe.

First the Helsinki and now the Belgrade meetings have provided a unique multilateral framework through which to pursue these aims. They can serve as the catalyst for breaking down the barriers between East and West and for ushering in a new period of security, cooperation, and human rights in Europe.

Popular hopes have been rightly raised by the seventh Helsinki principle of respect by the participating states for human rights and freedoms, including the freedom of thought, conscience, religion, or belief. It is worth recalling one element of the elaboration of this principle in particular:

> The participating states recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and cooperation among themselves as among all states.

This principle was agreed among all CSCE participants at the summit level. It is spelled out further and in quite specific ways in the humanitarian provisions of the so-called Basket Three of the Helsinki Accords: Expanded human contacts, including travel and reunification of families; free flow of information and improvement of working conditions for journalists; and cooperation and exchanges in the fields of culture and education.

In this context, one can only be distressed when the Soviet Union and some states in Eastern Europe take actions opposing fulfillment of Helsinki's humanitarian promise in their own countries. Surely the well-known cases of Anatoly Shcharansky and Robert Toth are cases in point. Shcharansky is no traitor for speaking out in support of human rights; Toth is no spy for pursuing the free flow of information. The Helsinki signers reaffirmed "that the legitimate pursuit of their professional activity will neither render journalists liable to expulsion nor otherwise penalize them."

These are unfortunately not isolated incidents. There are others:

Yuriy Orlov, Aleksandr Ginzburg, and Mikola Rudenko, among others, were arrested because of their efforts to monitor Soviet implementation of the Helsinki Final Act.

The Czechoslovak Government has arrested many of the signers of "Charter 77," whose only offense was to call upon it to implement its own legal commitments in the field of civil and political, as well as economic, social, and cultural rights.

In May, the Polish Government arrested six members of the Workers Defense Committee, including the writer Adam Michnik and philosopher Jacek Kuron, formed to protest police brutality following the June 1976 food price riots.

Incidents such as these must cause continuing concern among all peoples interested in the full implementation of Helsinki, both in letter and in spirit. I welcome, Mr. President, the constructive and important actions to this end of the U.S. Commission on Security and Cooperation in Europe, under the leadership of Congressman FASCELL. And I applaud the full and candid report of this administration responding to the requirements legislated by the Congress.

Our strong support must surely go to the efforts of our representatives to follow through on the promise of the Helsinki Final Act. This is why I joined 40 of my colleagues in this Chamber in assuring President Carter of our support for his raising "human rights concerns as priority considerations during the Belgrade conference," and in advising him that the Final Act is an integral whole which "must be implemented in its entirety."

It is important to recognize, however, that the record of implementation of the Helsinki Accords is not entirely bleak. To my knowledge, all participating states have adhered to the literal provisions for notification of major military maneuvers under Basket One; trade ties are being expanded somewhat under Basket Two; Soviet emigration visas are again on the increase, and Eastern European countries are taking some steps toward resolving divided family cases under Basket Three. These are moves in the right direction, and they demonstrate that governments can move to implement the Final Act without confrontation—and without challenge to their own legitimacy. Here again, much more can and should be done to make further progress.

Nor should we be deterred by false arguments that criticisms of inadequate performance constitute interference in internal affairs barred by the declaration on principles. As the President stated eloquently last March at the United Nations:

> No member of the United Nations can claim that mistreatment of its citizens is solely its own business. Equally, no member can avoid its responsibilities to review and to speak when torture or unwarranted deprivation occurs in any part of the world.
>
> The basic thrust of human affairs points toward a more universal demand for fundamental human rights. The United States has a historical birthright to be associated with this process.

What can the Congress and the country do to help advance this "basic thrust of human affairs"—in the face of what we must acknowledge as some frustrations, even setbacks, in dealing with the Soviet Union and its allies? We need not merely human rights, arms control,

trade and other policies which are applied piecemeal to the U.S.S.R.; we need an up-to-date Soviet and East European policy. This should be a policy that is attuned to our own priorities, relates our objectives to differing national circumstances, reflects the continued importance of the United States-Soviet relationship, and looks forward to the progressive relaxation of tensions and liberalization of societies.

Our country needs to develop, therefore, a program of action which takes account of the many dimensions of our bilateral relationship—including the likelihood that the Soviet leadership feels beset by an unprecedented number of internal and external challenges. On the one hand, we must be sensitive to Soviet concerns with prestige and equality of treatment; on the other hand, we should recognize that we are likely to make progress in each field because of specific national and global interests in doing so.

We should not accept the idea that arms control negotiations are imperiled by our consistent stand on human rights. At the same time, we should remain ever alert to the imperative of avoiding a return to the confrontation which characterized our relations in the 1950's. We need, therefore, to take reasonable stands on the merits of each issue, and we have a right to expect the Soviet Union to do the same.

While necessarily complex because of the multifaceted nature of the East/West relationship, this strategy has specific policy implications both for our future conduct in Belgrade and for U.S. policies toward the U.S.S.R. and Eastern Europe.

First, we must not be deterred from standing up for our principles over the long haul. Nothing could be more damaging to our relation with the U.S.S.R.—not only in human rights, but in arms control and other fields—than reversing course now under Soviet pressure.

Indeed, I believe the strong Soviet reaction to our stand betrays serious concern that history may be on the side of advocates of increased human rights. At the same time, we should seek to project our views in a manner which will support the process of constructive change and directly benefit the peoples of Eastern Europe and the U.S.S.R. In so doing, we should heed Ludmila Alexeyeva, and other Russians monitoring Soviet implementation of the Helsinki accords, when she writes that if free citizens express "their sympathy for us and offer us their moral support, it cannot weaken us. It can only help us, although this may not happen immediately."

Second, we should respond positively even to limited moves in the direction of increased implementation of the Helsinki accords, and we should encourage further moves in the same direction. Internal liberalization in Hungary; the first hopeful signs of East German flexibility; and Romania's release of the imprisoned novelist Paul Goma are cases in point. In each of these differing societies, however, the situation could be significantly improved.

Third, we can give serious consideration to Communist suggestions for government-to-government cooperation under baskets one and two of the Helsinki accords. In turn we should expect the Soviets and their allies to seriously consider our suggestions on the humanitarian provisions of basket three. And both sides should move, in their joint interest, to notify each other more completely of military maneuvers and military movements; expand economic and commercial interchange; and broaden the exchange of ideas and information.

Fourth, we can attempt more generally to narrow East/West differences on both détente and human rights. I have no argument with General Secretary Brezhnev's recent statement—on French television—that Belgrade should be—

> As it was planned, the continuation and development of the Helsinki spirit and another link in the continuing process of détente.

It is evident that a constructive outcome in Belgrade requires honest discussion of implementation of the final act; it also requires results which are acceptable to all participants.

Fifth, and finally, we should seek ways to enhance our own, already strong record on human rights. I concur with moves the administration has taken to expand freedom of movement outside and into the United States. And I strongly support the President's call for prompt ratification of the two United Nations convenants on economic, social and cultural rights and on civil and political rights, and the two conventions on the prevention and punishment of the crime of genocide and on the elimination of all forms of racial discrimination.

Mr. President, 30 years ago the U.N. Commission on Human Rights began work on the Universal Declaration of Human Rights. That declaration, to which all countries represented at Belgrade are also party, affirmed that—

> It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Nations and peoples are still struggling today to give meaning to that declaration. We should not sell its noble objectives short because of any transitory setbacks in that struggle.

HOW TO BUY A TREE

Mr. McCLURE. Mr. President, the June 26 Washington Post contained an editorial titled "How To Buy a Tree," which presents the paper's views on pending legislation, S. 1360, which is jointly referred to the Agriculture Committee and the Energy and Natural Resources Committee. I ask unanimous consent that the editorial along with my letter to the editor be printed in the RECORD.

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

[From the Washington Post, June 26, 1977]

How To Buy a Tree

Consider the social value of collusive bidding. Think, for a moment, of all the ways in which the wink, the nod and the prearranged price can serve to strengthen community ties and local values. Perhaps you think we're kidding. But Congress isn't. The Senate's Energy and Natural Resources Committee has just voted, 11 to 3, for collusive bidding on those grounds. The 11 senators take a deep and abiding interest in community traditions.

Last year, without giving it much thought, Congress passed into law a provision designed—all too effectively—to end collusion in the bidding for the right to cut timber in federal forests. The new law merely required sealed bids instead of oral auctions. Sealed bidding has been the practice in most of the country. The exception was the Pacific Northwest, where the rigging of timber auctions was becoming notorious.

Collusive auctions permit the insiders—the companies regularly working an area—to divide up the sales among themselves and hold down the payments to the government. Equally important, it permits them to band together to keep out the outsiders. When the new law went into effect, the first response was a loud and steady yowling from the Northwest. Then came a steady hammering on congressmen's doors.

This sudden threat to the established folkways of the region would mean, according to some of the timbermen, upheaval and social collapse. Towns would be left destitute, children would go hungry and crime rates would soar (except, of course, for the crimes of fraud, collusion and violation of the antitrust statutes). Confronted with this dire prospect, Congress is acting fast.

Corrective legislation to restore oral—that is, collusive—auctions in the Northwest has already cleared the House Agriculture Committee. Things also look pretty good in the Senate Agriculture Committee, which shares jurisdiction with the Energy and Natural Resources Committee. The cause of community preservation and economic togetherness rests in good hands.

COMMITTEE ON ENERGY AND
NATURAL RESOURCES,
Washington, D.C., June 27, 1977.

Mr. KEN BOYDE,
The Washington Post, Editorial Department, Washington, D.C.

DEAR EDITOR: The Post—in its editorial, "How to Buy a Tree"—has thrust a piece of sawdust into the public eye, blinding its readers to the truths about forest management.

The Senate Committee on Energy and Natural Resources does not deserve the slap in the face from the Post for reporting out by a 11 to 3 vote of a bill to revert to historic patterns of public auction for the sale of timber. If the Post is so certain that "collusive bidding" practices is rampant, it should turn over any evidence it has to the Justice Department, just as the Forest Service is required to do under the monitoring provisions of the bill. Indeed, there are checks and balances on public timber sale practices throughout the law:

1. The Forest Service can deny award of a sale if it sees evidence of collusion.

2. All suggestions of collusion are examined by the Department of Justice for possible Grand Jury action and prosecution.

3. Timber sales from the public lands have been monitored and examined for decades to protect the Government and public interest. Out of the many thousands of sales that have been held, only two have been prosecuted, with one conviction resulting.

Large areas of the South and East are satisfied with the Forest Service sealed bid selling. It should be noted that the Forest Service timber in these areas is in the minority of timber volume available to local mills. If a lumber company misses a successful bid on a Forest Service offering, other volumes from other sources are available. This is not the case in many areas of the West, such as Idaho, where ⅔ of the State is Federally-owned. The bill voted out by

the Energy and Natural Resources Committee merely allows the mill owner to meet his competition on other than a "Russian Roulette" chance. It does not condone collusion as suggested by the Post.

It is hoped the Post will continue to show interest in other forest issues of great importance, such as the implementation and funding of the Resources Planning Act, and resolving of the current conflict over the use and designation of our forest land base. The Post will find the effort to be spent in thoroughly researching these complex issues a challenging one.

Sincerely,

JAMES A. MCCLURE,
U.S. Senator.

CLEAN AIR: ISSUES AND CHOICES

Mr. HART. Mr. President, the Congress of the United States is in the midst of considering a comprehensive modification of the Clean Air Act. The Senate Committee on Environment and Public Works, after 2½ years of deliberations sent to the Senate floor S. 252 which the Senate endorsed by an overwhelming majority. The House has also acted, passing its version of the amendments, H.R. 6101. Now the issue resides with the House-Senate Conference Committee, where the differences between the House-Senate versions must be resolved. As a member of that conference, I hope the resolution of those differences will be in the best interest of the health of the people of this country.

Mr. President, yesterday the Washington Post printed an article by George F. Will which eloquently describes some of the choices which the House-Senate conferees will be facing in the coming weeks. I hope that my colleagues in the Congress, especially those serving on the Clean Air Act Conference Committee, will have a chance to read this article. For, as Mr. Will suggests, if we make the wrong choices now, we will have a glimpse of a dark future.

Mr. President, rather than attempt to summarize Mr. Will's essay, I ask unanimous consent that the text of this perceptive article be printed in the RECORD.

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

ANOTHER SETBACK IN THE QUEST FOR CLEAN AIR

(By George F. Will)

It is a moment for unminced words. If the House of Representatives gets its way with amendments to the Clean Air Act of 1970, Congress will have chosen to increase the incidences of various respiratory ailments. And it will have committed a retrograde act against the nation's natural beauty.

Three times since 1970 Congress has delayed implementation of automobile emissions standards. Now the House has voted a fourth delay. Worse, it has voted to weaken standards for carbon monoxide and nitrogen oxide, and has created a mechanism for indefinite weakening of even the weakened nitrogen oxide standards in the future. The Senate has voted for less delay, and for no weakening of carbon monoxide standards. Furthermore, although the Senate has voted to weaken nitrogen oxide standards, it has not provided a mechanism for indefinite weakening.

To some extent, society chooses its disease rates. Societies, like individuals, constantly choose between health and competing goals and pleasures. The House has made an unacceptable choice against the health of Americans who breathe.

For example, the House would allow a fivefold increase in nitrogen oxide emissions over what would be required under existing law. About 40 percent of nitrogen oxide pollution comes from vehicles, and the percentage is substantially higher in urban areas. Such pollution may produce the carcinogenic (cancer-causing) chemicals called "nitrosamines."

The automobile industry says it does not know how to meet the present, unrevised standards. But the industry has a dismal record of asserting what can't be done, and an admirable record of doing what it is forced to do. The lash of necessity concentrates the mind.

Automobiles should be the focus of the fight for clean air because they are the most pervasive source of pollution. And it is easier to shape the decisions of four automobile companies than it is to deal with scores of thousands of fuel-burning industries. But advocates for the automobile industry say that unless pollution standards are relaxed, jobs will be lost because automobile prices will rise unreasonably, and production may be disrupted.

The House bill is an attempt to secure jobs at the expense of the health of millions, especially children and the aged. But more permissive automobile pollution standards will be an obstacle to industrial growth in many areas.

Where pollution already is the maximum permitted, only a decrease in automobile pollution can make possible increased industrial pollution. So the House bill sacrifices other industries, as well as the breathing public, to the automobile industry.

Some advocates for the automobile industry seem to have learned their science from the tobacco industry. They argue that there is little "scientific proof" of the connection between automobile pollution and particular diseases. Such arguments deny the undeniable: statistical patterns that demonstrate a correlation between high pollution and high disease rates.

The House bill is especially unacceptable, given President Carter's energy program. Carter's plan to substitute coal for oil means increased nitrogen oxide pollution from stationary sources. So a compensatory decline in automobile emissions is imperative.

Another provision of the House bill, if it survives the House-Senate conference, would justify a veto. If enjoyment of natural beauty is, as I believe, important to the serenity of one's soul, then the House bill jeopardizes the nation's spiritual as well as physical well-being. It undoes the policy that prevents "significant deterioration" of the air in several categories of clean-air regions.

The House did this to permit construction of a gigantic coal-fired generating plant in Utah to provide power for Los Angeles. The plant would be near Capitol Reef National Park, not far from Bryce Canyon and near enough to Arches and Canyonlands National Parks to cast haze over them on many days. And this House provision threatens all national parks and wilderness areas where air is supposed to be preserved in its natural pristine quality.

This provision might mean a dramatic decline in scenic values. Rep. Paul Rogers (D-Fla.) says it would be the pollution equivalent of putting a city of 500,000 next to a national park. Rep. Bob Eckhardt (D-Tex.) dryly suggests that "it will be difficult to tell which of our mountain ranges should be called the Great Smokies."

To govern is to choose, and to choose is to reveal values. If the House gets its way, we shall have glimpsed a dark future.

OUR INLAND WATERWAY SYSTEM

Mr. BAYH. Mr. President, last week the Senate authorized the construction of a new and enlarged lock and dam at Alton, Ill. At the same time, it made a decision of major importance by approving, in principle, the establishment of user fees to partially cover expenses associated with the construction, operation and maintenance of our inland waterway system. The impetus to link these two issues stems from the fact that we are on the verge of beginning a major reconstruction and enlargement of our inland waterway system.

Over the course of our history, the American taxpayer has built and maintained 25,000 miles of inland water routes, at a cost of some $8 billion. Currently, annual expenses for building and running this system come to about $400 million and another $3.4 billion will be needed to finish projects already under construction. An additional $4.3 billion have been authorized for proposed projects. At a time when we are trying to reduce our Federal deficit, lower taxes and closely scrutinize Federal outlays for new and existing military and social programs, it seems to me that it was most appropriate for the Senate to raise the question of future funding for waterway expansion.

Mr. President, a full public subsidy of our inland waterway system made sense a century ago when we were bent on western expansion and our railroads, which had a monopoly over freight transport, were receiving substantial assistance through land grant programs. Today this rationale no longer obtains. With costs soaring, major replacements and expansions planned and competing modes of transportation, especially rail transit, in financial difficulty, it seems only reasonable to partially phase out full Federal responsibility for expenses associated with the inland waterway system and ask waterway users to share the costs of enlarging and operating the system.

The user fee proposal which passed the Senate continues a generous amount of Federal assistance to the waterway system. Waterway users will be asked, over a 10-year period, to gradually assume full responsibility for operating and maintenance costs. But the Federal Government will still pay for 50 percent of construction costs, which constitute the lion's share of waterway expenses. No charges for construction costs will begin for 5 years. This delay in imposing cost sharing, as well as the overall 10-year phase in of fees, should give the industry sufficient time to adjust to the new economic climate they will face.

The Senate included certain protections in its authorizing legislation to guard against economic hardship and will have ample opportunity to review

the fee system proposed by the Department of Transportation. The authorization specifies that user fees must be developed so as not to result in severe economic impacts on particular waterway segments or users or charges higher than 1 percent of the delivered value of any commodity.

Further, the Senate has approved a system of user fees in principle only, and can reject or amend the specific schedule developed by DOT if it is found to be inequitable to particular users or regions, or unlikely to promote an efficient inland waterway system. Once the Department develops regulations for implementing user fees, they will have to be submitted to the Congress, which will have 90 days to amend or reject them. Finally, DOT, in cooperation with the Corps of Engineers, must submit a report to the Congress by October 1982 on the impact of implementation to date. These procedures should provide the Congress with the information necessary to make modifications, both during the development stage and once the fee system has been tested, if they should be found desirable.

Mr. President, the establishment of a system of user fees is a change in national transportation policy that is fair and timely. Every President since Franklin Roosevelt has recommended this course of action, and 15 comprehensive studies of the issue have been undertaken by the Government since 1939. In the last 2 years, the DOT has spent a considerable amount of time and money studying the costs and benefits of such a system. I think we have reached the point where further studies are not necessary, and would constitute a delaying tactic rather than a bona fide effort to analyze the issue in a fruitful manner.

The establishment of user fees to partially pay the expenses of our inland waterway system meets the test of equity, both for taxpayers and competing transportation modes who pay their own way. Hopefully, this reform will insure that future expansion of our waterways will be undertaken only when warranted by objective needs.

NOTICE CONCERNING NOMINATIONS BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, the following nominations have been referred to and are now pending before the Committee on the Judiciary:

Frank J. Anderson, of Indiana, to be U.S. marshal for the southern district of Indiana for the term of 4 years vice Charles D. Loos.

Ronald S. Reed, Jr., of Missouri, to be U.S. attorney for the western district of Missouri for the term of 4 years vice Bert C. Hurn.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee, in writing, on or before Monday, July 4, 1977, any representations or objections they may wish to present concerning the above nominations with a further statement whether it is their intention to appear at any hearing which may be scheduled.

EXTENSIONS OF REMARKS

"THE UNFINISHED AGENDA"—CONSERVATION OF ELECTRICAL ENERGY

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, June 27, 1977

Mr. OTTINGER. Mr. Speaker, the Washington Star on June 7, carried an interview with Gerald Barney, who edited "the Unfinished Agenda," the report of the environmental agenda project. That project, which was funded by the Rockefeller Brothers Fund, brought together a large number of the Nation's environmental leaders to identify and suggest solutions to environmental problems facing the United States.

As the Congress moves forward in its consideration of President Carter's energy plan, and as the Commerce Committee's Energy and Power Subcommittee prepares to mark up part E, the section on public utility regulatory policies, I believe my colleagues will find the Barney interview to be of interest. In addition to submitting the interview for inclusion in the RECORD, I would like to quote from "The Unfinished Agenda's" section on electricity:

Our basic recommendations therefore are:

To avoid the formidable economic and political costs of further centralized electrification, we should make every effort to supply energy only in the quantity needed for the task at hand and not to use up quality electricity or premium fuels for unnecessary purposes.

Study of energy end-uses has revealed that more than half of delivered energy in the United States (generally more abroad) is required as heat, mainly at low and moderate temperatures, and that only a small fraction of end-uses can use to advantage the versatility and high energy quality of electricity. It appears that the United States, like other industrial countries, already has far more electricity than it can thermodynamically justify. Reducing electricity generation would save enormous amounts of capital and fuel by decreasing the wastes associated with central power stations.

"The Unfinished Agenda" also recommends such policies as having utility price structures overhauled to reflect "both policy priorities and sound economic principles" and "smaller-scale energy generations."

In his comments to the Star, Mr. Barney emphasized the degree to which energy is wasted in conversion from fuel to electricity:

For example, we're wasting somewhere between a half and two thirds of all the energy that is used in the production of electricity. That's not necessary. It's useless waste.

Following is the interview with Mr. Barney:

AN ARGUMENT AGAINST MORE ELECTRICITY USE

Gerald A. Barney, editor of "The Unfinished Agenda," an environmentalist view of major issues facing the nation commissioned by the Rockefeller Brothers Fund, was interviewed by Washington Star Staff Writer Thomas Love.

QUESTION: Does your study support the thesis that we are facing an energy crisis?

BARNEY: Basically, the nation stands at a kind of turning point in the road. There's no question that President Carter is correct when he says the nation is approaching a real crisis with energy—that we are depleting our stocks of fluid fuel, oil and gas in particular. We have a choice as to what we're going to do. The policy to date has been one of thinking about going from the present energy economy that we have to one that is highly electrified, probably with a substantial amount of nuclear energy involved.

Q. Did your group of environmentalists agree?

A. No. We came to the conclusion that should not be the approach. Rather, we should go directly from the kind of fossil fuel-based economy that we have now to a sustainable income energy type of economy, based largely on solar and geothermal forces.

Q. Would that be based on electrical distribution?

A. No, it would be far less electric than is being planned. The reason we recommend that we not go so much electric is because electricity wastes so much of the energy. One thing that we found distressing is that Carter's recommendations call for a lot of conservation from the energy user—you and me and the average person in the street—but do not require much attention to conservation of energy within the energy industry. And the energy industry is the biggest waster of energy of all the sectors of the economy. For example, we're wasting somewhere between a half or two-thirds of all the energy that is used in the production of electricity. That's not necessary. It's useless waste.

Q. How does this waste come about?

A. Suppose, for example, you have three barrels of some kind of fuel to heat a house. If you take that fuel to your house and burn it, you get the heat from roughly three barrels of oil. If you take those same three barrels to a power plant and burn them to make electricity and use the electricity to heat your house, you get the heat from one barrel of oil in your house. The heat from the other two barrels is waste heat that's dumped into the river through cooling. Anytime you convert one form of energy into another, the laws of thermodynamics require that there be a substantial energy cost associated with it. And the present master plan of the energy economy of the future for this country calls for an immense amount of conversions of one sort or another—to electricity, from coal to liquids, etc. All this is basically not necessary and results in tremendous waste. We're advocating that conservation not be restricted just to the people at the end of the line, the end-use user, but that the energy industry itself be required to face up to the tremendous waste that's going on there at this point.

Q. How can you get around that problem?

A. In the end, there has to be heavy reliance on solar energy for home heating and cooling. But before you can get to solar, there has to be a transition period. We have to make increasingly intelligent relatively small-scale applications of coal—direct applications. The technology is one that ERDA keeps saying they have in their research objectives, but, in fact, the technology is already available. It's basically one called fluidized bed combustion. It is a process by which you can burn coal in small scale, from